Tab 1	**SB 92** by **Bean**; (Identical to H 01417) Department of Children and Families

519024	PCS	S		RCS	AP, AHS		04/20 03:04 PM
914946	A	S		RCS	AP, Bean	Delete L.755 - 778:	04/20 03:04 PM
857460	A	S		RCS	AP, Book	btw L.953 - 954:	04/20 03:04 PM

Tab 2	**SB 122** by **Baxley (CO-INTRODUCERS) Garcia, Albritton, Harrell**; (Similar to CS/H 00133) Surrendered Newborn Infants

242386	A	S	L	RCS	AP, Baxley	Delete L.21 - 114:	04/20 03:06 PM

Tab 3	**CS/SB 192** by **ED, Book (CO-INTRODUCERS) Rodrigues**; (Similar to CS/H 00149) Students with Disabilities in Public Schools

Tab 4	**CS/SB 200** by **ED, Berman (CO-INTRODUCERS) Stewart, Book, Cruz**; (Compare to CS/H 01025) Student Retention

808686	PCS	S		RCS	AP, AED		04/20 03:07 PM
499062	PCS:D	S		RCS	AP, Berman	Delete everything after	04/20 03:07 PM

Tab 5	**CS/SB 262** by **MS, Harrell**; (Similar to H 00029) Dispensing Medicinal Drugs

Tab 6	**CS/SB 352** by **HP, Rodriguez**; (Similar to H 00245) Massage Therapy

Tab 7	**CS/SB 402** by **JU, Rodrigues**; (Compare to CS/H 00035) Legal Notices

933750	PCS	S		RCS	AP, ACJ		04/20 03:21 PM
443070	PCS:D	S	L	RCS	AP, Rodrigues	Delete everything after	04/20 03:21 PM
490496	PCS:AA	S	L	RCS	AP, Rodrigues	Delete L.37 - 82:	04/20 03:21 PM

Tab 8	**CS/SB 404** by **HP, Rouson**; (Similar to CS/H 00183) Office of Minority Health and Health Equity

Tab 9	**CS/SB 406** by **EN, Rodrigues**; (Similar to CS/CS/H 00209) Big Cypress Basin

244934	PCS	S			AP, AEG		04/09 05:08 PM

Tab 10	**CS/SB 486** by **ED, Bradley**; (Identical to CS/H 00723) Juvenile Justice Education Programs

Tab 11	**CS/SB 566** by **BI, Perry**; (Similar to CS/H 00365) Motor Vehicle Rentals

782632	A	S		RCS	AP, Perry	Delete L.80 - 223:	04/20 09:51 AM

Tab 12	**SB 590** by **Harrell**; (Compare to CS/CS/H 00383) Involuntary Examinations of Minors

359110	A	S		RS	AP, Harrell	Delete L.333 - 343:	04/20 10:07 AM
358862	SA	S	L	RCS	AP, Harrell	Delete L.333 - 343:	04/20 10:07 AM
~~832246~~	~~A~~	S	L	WD	AP, Harrell	Delete L.79 - 163:	04/20 10:07 AM
~~867556~~	~~A~~	S	L	WD	AP, Harrell	Delete L.121 - 196:	04/20 10:07 AM
733110	A	S	L	RCS	AP, Harrell	Delete L.79 - 196:	04/20 10:07 AM

Tab 13	**SB 606** by **Bean**; (Identical to H 01231) Domestic Violence

Tab 14	**CS/SB 676** by **TR, Baxley (CO-INTRODUCERS) Pizzo, Harrell, Stewart, Berman, Garcia**; (Compare to CS/H 00249) Special and Specialty License Plates

108614	PCS	S		RCS	AP, ATD		04/20 10:10 AM

Tab 15	**CS/SB 726** by **ED, Taddeo**; (Similar to CS/CS/H 00173) Individual Education Plan Requirements for Students with Disabilities						
629046	PCS	S		RCS	AP, AED		04/20 10:12 AM
366332	PCS:D	S		RCS	AP, Taddeo	Delete everything after	04/20 10:12 AM
Tab 16	**CS/SB 754** by **TR, Diaz**; (Similar to CS/H 00139) Motor Vehicle and Vessel Registration Data						
Tab 17	**CS/CS/SB 764** by **CJ, MS, Burgess**; (Similar to CS/H 07023) Veterans Treatment Courts						
Tab 18	**SB 900** by **Rodriguez**; (Compare to CS/H 07039) Child Welfare						
Tab 19	**SB 918** by **Bradley (CO-INTRODUCERS) Jones**; (Identical to H 00827) Education						
Tab 20	**CS/SB 936** by **MS, Wright (CO-INTRODUCERS) Farmer**; (Similar to CS/CS/H 00221) Recovery of Spaceflight Assets						
Tab 21	**CS/SB 976** by **EN, Brodeur**; (Compare to CS/CS/CS/H 00727) Study of the Little Wekiva River						
380062	D	S		RCS	AP, Brodeur	Delete everything after	04/20 10:21 AM
785526	AA	S	L	RCS	AP, Brodeur	Delete L.130 - 134:	04/20 10:21 AM
Tab 22	**SB 1002** by **Stewart**; (Similar to CS/CS/H 00673) DNA Evidence Collected in Sexual Offense Investigations						
622452	PCS	S		RCS	AP, ACJ		04/20 02:25 PM
Tab 23	**CS/SB 1028** by **ED, Hutson (CO-INTRODUCERS) Diaz**; (Compare to CS/CS/H 00051) Charter Schools						
479284	PCS	S		RCS	AP, AED		04/20 04:06 PM
608684	PCS:D	S		RCS	AP, Hutson	Delete everything after	04/20 04:06 PM
672026	PCS:AA	S	L	RCS	AP, Hutson	Delete L.604 - 605:	04/20 04:06 PM
~~408536~~	PCS:AA	S	L	WD	AP, Hutson	Delete L.1147 - 1150.	04/20 04:06 PM
933456	PCS:AA	S	L	RCS	AP, Hutson	Delete L.1262:	04/20 04:06 PM
781700	PCS:AA	S	L	RCS	AP, Hutson	Delete L.1450 - 1458:	04/20 04:06 PM
Tab 24	**CS/SB 1094** by **ED, Bean**; (Identical to CS/H 00519) Required Health Education Instruction						
Tab 25	**CS/SB 1108** by **JU, Diaz**; (Similar to CS/H 00507) Education						
~~732008~~	A	S		WD	AP, Diaz	btw L.70 - 71:	04/19 04:48 PM
886910	A	S	L	RCS	AP, Diaz	btw L.70 - 71:	04/20 10:38 AM
Tab 26	**CS/SB 1132** by **HP, Bean**; (Similar to CS/CS/H 00485) Personal Care Attendants						
834122	A	S		RCS	AP, Bean	Delete L.36 - 78:	04/20 10:42 AM
~~816546~~	A	S		WD	AP, Gibson	Delete L.37 - 61:	04/16 03:17 PM
Tab 27	**CS/SB 1242** by **HP, Book**; (Similar to CS/H 00905) Program of All-Inclusive Care for the Elderly						
246400	PCS	S		RCS	AP, AHS		04/20 02:08 PM
Tab 28	**CS/SB 1292** by **HP, Bean**; (Identical to CS/H 01057) Medicaid						

Tab 29	**CS/SB 1344** by **CJ, Burgess**; (Similar to CS/1ST ENG/H 01041) Protection of Elderly Persons and Disabled Adults

693350	A	S		RCS	AP, Burgess	Delete L.102 - 223: 04/20 03:25 PM

Tab 30	**SB 1436** by **Gruters**; (Similar to CS/H 00847) Florida Postsecondary Academic Library Network

298982	PCS	S		RCS	AP, AED	04/20 10:45 AM
907384	A	S		RCS	AP, Gruters	Delete L.247 - 257: 04/20 10:45 AM

Tab 31	**CS/CS/SB 1532** by **JU, CF, Book**; (Similar to CS/H 01089) Child Support

Tab 32	**CS/SB 1560** by **CM, Ausley**; (Compare to CS/H 00753) Broadband Internet Service

419562	PCS	S		RCS	AP, ATD	04/20 03:31 PM
703658	PCS:D	S		RCS	AP, Ausley	Delete everything after 04/20 03:31 PM

Tab 33	**CS/SB 1574** by **BI, Brandes**; Citizens Property Insurance Corporation

274232	PCS	S		RCS	AP, AEG	04/20 02:17 PM

Tab 34	**CS/SB 1592** by **FT, Burgess (CO-INTRODUCERS) Diaz, Albritton**; (Compare to CS/CS/H 01239) Broadband Internet Infrastructure

~~509904~~	A	S		WD	AP, Burgess	Delete L.132 - 311: 04/19 08:15 AM
430276	D	S	L	RCS	AP, Burgess	Delete everything after 04/20 03:35 PM

Tab 35	**CS/SB 1606** by **GO, Rodriguez (CO-INTRODUCERS) Garcia, Hutson, Rodrigues**; (Compare to H 00005) Victims of Communism

Tab 36	**CS/SB 1616** by **GO, Brodeur**; (Similar to CS/CS/1ST ENG/H 01079) Agency Contracts for Commodities and Contractual Services

479650	PCS	S		RCS	AP, AEG	04/20 04:03 PM
519034	A	S		RCS	AP, Brodeur	Delete L.183 - 378: 04/20 04:03 PM
~~305408~~	A	S	L	WD	AP, Brandes	btw L.822 - 823: 04/20 04:03 PM
902520	A	S	L	RCS	AP, Brandes	btw L.822 - 823: 04/20 04:03 PM

Tab 37	**SB 1624** by **Albritton**; (Similar to CS/CS/CS/H 01103) Special District Accountability

Tab 38	**CS/SB 1672** by **ED, Diaz**; (Compare to CS/3RD ENG/H 01261) State University Free Seat Program

Tab 39	**CS/SB 1786** by **HP, Burgess (CO-INTRODUCERS) Book**; (Compare to CS/CS/H 01165) Payments for Birth-related Neurological Injuries

754030	D	S		RCS	AP, Burgess	Delete everything after 04/20 11:07 AM
140544	AA	S		RCS	AP, Book	Delete L.5 - 190: 04/20 11:07 AM
~~790104~~	AA	S		WD	AP, Farmer	Delete L.114 - 292: 04/20 11:07 AM
601382	AA	S	L	UNFAV	AP, Farmer	Delete L.114 - 292: 04/20 11:07 AM
559616	A	S		OO	AP, Book	Before L.14: 04/20 11:07 AM

Tab 40	**SB 1798** by **Perry (CO-INTRODUCERS) Diaz**; (Compare to CS/3RD ENG/H 01261) Higher Education

Tab 41	**SB 1816** by **Rouson**; (Similar to H 07033) Task Force on Closing the Achievement Gap for Boys

Tab 42	**CS/SB 1900** by **GO, Boyd**; (Similar to CS/CS/H 01297) Cybersecurity						
410182	PCS	S		RCS	AP, AEG		04/20 02:22 PM
Tab 43	**CS/SB 1920** by **CF, Book**; Child Welfare						
771334	PCS	S			AP, ACJ		04/12 11:26 AM
879448	A	S			AP, Book	Delete L.450 - 631:	04/16 10:24 AM
Tab 44	**SB 1944** by **Albritton**; (Similar to CS/H 01567) Utility and Communications Poles						
529128	D	S		RS	AP, Albritton	Delete everything after	04/20 11:12 AM
820550	SD	S	L	RCS	AP, Albritton	Delete everything after	04/20 11:12 AM
Tab 45	**SB 7068** by **FT**; (Similar to CS/H 01241) Tax Administration						
143252	D	S		RCS	AP, Rodriguez	Delete everything after	04/20 04:07 PM
Tab 46	**SB 7072** by **GO (CO-INTRODUCERS) Rodriguez**; (Similar to H 07013) Social Media Platforms						
Tab 47	**SB 7074** by **GO**; (Similar to CS/H 07015) Public Records/Social Media Platform Activities						
Tab 48	**SB 7082** by **FT**; (Compare to H 07059) Corporate Income Tax						
763370	D	S		RCS	AP, Rodriguez	Delete everything after	04/20 11:25 AM
Tab 49	**SB 98** by **Albritton**; (Compare to CS/CS/CS/1ST ENG/H 01507) Workforce Related Programs and Services						
151258	D	S		RCS	AP, Albritton	Delete everything after	04/16 01:56 PM
960408	AA	S		RCS	AP, Albritton	Delete L.1391 - 1393:	04/16 01:56 PM
Tab 50	**CS/SB 102** by **CA, Burgess**; (Compare to CS/H 01053) Matters of Great Governmental Concern						
Tab 51	**CS/SB 130** by **CF, Rouson (CO-INTRODUCERS) Harrell, Hooper, Book**; (Similar to H 00083) Mental Health and Substance Use Disorders						
154204	PCS	S		RCS	AP, AHS		04/16 02:29 PM
~~556044~~	A	S		WD	AP, Rouson	btw L.102 - 103:	04/16 02:29 PM
Tab 52	**CS/SB 168** by **BI, Hooper**; (Identical to CS/H 00423) Hurricane Loss Mitigation Program						
Tab 53	**CS/SB 184** by **TR, Berman**; (Similar to CS/CS/H 00079) Purple Alert						
954168	A	S		RCS	AP, Berman	Delete L.117 - 252:	04/16 02:42 PM
Tab 54	**SB 260** by **Harrell (CO-INTRODUCERS) Wright, Rodriguez, Cruz, Stewart, Burgess, Perry**; (Similar to H 00231) Services for Veterans and Their Families						
491526	A	S		RCS	AP, Harrell	Delete L.25 - 118:	04/16 02:43 PM
Tab 55	**CS/SB 366** by **ED, Hutson (CO-INTRODUCERS) Brodeur, Diaz**; (Compare to CS/H 00791) Educational Opportunities Leading to Employment						
441292	PCS	S		RCS	AP, AED		04/16 03:06 PM
217338	A	S	L	RCS	AP, Hutson	Delete L.55 - 65:	04/16 03:06 PM
Tab 56	**CS/SB 468** by **JU, Bracy**; (Compare to H 00189) Expunction of Criminal History Records Relating to Certain Cannabis Offenses						

Tab 57	**CS/SB 470** by **JU, Bracy**; (Similar to H 00191) Public Records/Expunged Criminal History Records

Tab 58	**CS/SB 506** by **GO, Garcia**; (Compare to CS/CS/H 00195) Transparency in Government Spending

Tab 59	**CS/SB 694** by **CA, Rodrigues (CO-INTRODUCERS) Perry**; (Compare to CS/H 00331) Waste Management

426204	A	S	RCS	AP, Rodrigues	Delete L.62 - 64:	04/16 03:21 PM
403980	A	S	RCS	AP, Rodrigues	btw L.64 - 65:	04/16 03:21 PM

Tab 60	**CS/SB 748** by **JU, Brandes**; (Similar to CS/H 01197) Courts

236698	PCS	S	RCS	AP, ACJ		04/16 03:24 PM

Tab 61	**CS/CS/SB 750** by **FT, CA, Gruters (CO-INTRODUCERS) Perry**; (Similar to CS/CS/CS/H 00337) Impact Fees

783100	A	S		RCS	AP, Gruters	Delete L.19 - 177:	04/16 03:35 PM
~~523368~~	AA	S	L	WD	AP, Hutson	Delete L.134:	04/16 03:35 PM
~~448154~~	AA	S	L	WD	AP, Hutson	Delete L.135:	04/16 03:35 PM
593970	AA	S	L	RCS	AP, Hutson	Delete L.143:	04/16 03:35 PM

Tab 62	**SB 770** by **Burgess**; (Similar to CS/H 00873) Military Affairs

Tab 63	**SB 794** by **Bean**; (Similar to CS/H 00427) Independent Living Services

Tab 64	**CS/SB 838** by **JU, Boyd (CO-INTRODUCERS) Bracy, Wright, Torres, Hooper**; (Similar to CS/H 00903) Clerks of the Circuit Court

412016	PCS	S	RCS	AP, ACJ		04/16 03:40 PM
187280	PCS:D	S	RS	AP, Hooper	Delete everything after	04/16 03:40 PM
212474	PCS:SD	S	RCS	AP, Hooper	Delete everything after	04/16 03:40 PM

Tab 65	**CS/SB 1024** by **BI, Brodeur (CO-INTRODUCERS) Rouson**; (Similar to CS/1ST ENG/H 00701) Increasing Access to Mental Health Care

716122	PCS	S	RCS	AP, AEG		04/16 03:45 PM

Tab 66	**CS/SB 1086** by **EN, Hutson**; (Similar to CS/CS/H 00639) Operation and Safety of Motor Vehicles and Vessels

518944	PCS	S	RCS	AP, AEG		04/16 03:50 PM
321860	A	S	RCS	AP, Hutson	Delete L.547 - 1205:	04/16 03:50 PM

Tab 67	**SB 1126** by **Harrell**; (Similar to H 01385) Department of Transportation

300690	PCS	S	RCS	AP, ATD		04/16 03:56 PM
~~199650~~	A	S	WD	AP, Harrell	btw L.224 - 225:	04/14 04:31 PM
~~403590~~	A	S	WD	AP, Brandes	btw L.401 - 402:	04/14 04:33 PM
~~971056~~	A	S	WD	AP, Brandes	Delete L.402:	04/14 04:35 PM
330308	A	S	RCS	AP, Harrell	Delete L.402:	04/16 03:56 PM

Tab 68	**CS/CS/SB 1146** by **AP, CA, Brodeur (CO-INTRODUCERS) Perry**; (Compare to CS/CS/H 00401) Florida Building Code

Tab 69	**CS/SB 1166** by **CJ, Brandes**; (Similar to CS/CS/H 00885) Juvenile Justice

891930	PCS	S	RCS	AP, ACJ		04/16 03:59 PM

Tab 70	**CS/CS/SB 1194** by **AP, TR, Hooper**; (Compare to CS/H 00057) Transportation

Tab 71	**SB 1324** by **Harrell**; (Similar to CS/1ST ENG/H 01313) Digital Driver Licenses and Identification Cards

Tab 72	**CS/SB 1326** by **TR, Harrell**; (Similar to CS/H 01315) Public Records/Department of Highway Safety and Motor Vehicles

Tab 73	**SB 1372** by **Burgess**; (Compare to CS/CS/H 00003) Literacy Improvement

409158	D	S		RS	AP, Burgess	Delete everything after	04/20 04:19 PM
741914	SD	S		RCS	AP, Burgess	Delete everything after	04/20 04:19 PM

Tab 74	**CS/CS/SB 1382** by **GO, CA, Perry**; (Similar to CS/CS/H 00667) Building Inspections

860116	A	S		RCS	AP, Perry	Delete L.119:	04/16 04:15 PM
248302	A	S	L	RCS	AP, Perry	Delete L.113:	04/16 04:15 PM

Tab 75	**SB 1404** by **Hooper**; (Similar to CS/H 00909) Cultural and Historical Programs

817458	PCS	S		RCS	AP, ATD	04/16 04:18 PM

Tab 76	**CS/SB 1408** by **BI, Burgess**; (Compare to CS/CS/H 00415) Department of Financial Services

Tab 77	**CS/SB 1448** by **GO, Jones**; (Similar to CS/CS/H 01137) Information Technology Procurement

567488	A	S		RCS	AP, Jones	Delete L.173 - 177:	04/16 04:23 PM

Tab 78	**SB 1450** by **Rodriguez**; (Identical to H 00005) Civic Education Curriculum

Tab 79	**SB 1470** by **Boyd**; (Similar to H 00797) Florida Life and Health Insurance Guaranty Association

Tab 80	**CS/SB 1526** by **CF, Garcia**; (Identical to CS/H 01071) Medicaid Coverage for Former Foster Youth

Tab 81	**CS/SB 1540** by **HP, Gibson**; (Identical to CS/H 01381) Maternal Health Outcomes

Tab 82	**CS/SB 1568** by **HP, Rodriguez**; (Compare to CS/CS/H 01565) Department of Health

~~165628~~	A	S		WD	AP, Rodriguez	btw L.131 - 132:	04/17 03:28 PM
715880	A	S		RCS	AP, Rodriguez	btw L.232 - 233:	04/17 03:28 PM
328528	A	S		RCS	AP, Rodriguez	btw L.232 - 233:	04/17 03:28 PM
649510	A	S		RCS	AP, Rodriguez	btw L.311 - 312:	04/17 03:28 PM
625826	A	S		RCS	AP, Rodriguez	btw L.323 - 324:	04/17 03:28 PM
847040	A	S	L	RCS	AP, Rodriguez	btw L.232 - 233:	04/17 03:28 PM

Tab 83	**CS/SB 1570** by **GO, Rodriguez**; (Similar to CS/CS/H 01083) Quasi-public Entities

229772	A	S		RS	AP, Rodriguez	Delete L.50 - 165:	04/17 03:55 PM
874262	SA	S		RCS	AP, Rodriguez	Delete L.50 - 165:	04/17 03:55 PM
891770	ASA	S	L	RCS	AP, Broxson	Delete L.20 - 23:	04/17 03:55 PM

Tab 84	**CS/SB 1598** by **BI, Gruters**; (Similar to CS/H 00717) Consumer Protection					
146092	PCS	S	RCS	AP, AEG		04/17 03:58 PM
205350	A	S	RCS	AP, Gruters	Delete L.303 - 691:	04/17 03:58 PM
Tab 85	**CS/SB 1728** by **ED, Baxley (CO-INTRODUCERS) Garcia**; (Compare to CS/CS/H 01273) Out-of-state Fee Waiver for Nonresident Students					
Tab 86	**SB 1864** by **Perry (CO-INTRODUCERS) Diaz**; (Compare to CS/CS/H 00131) Education					
919762	D	S	RCS	AP, Perry	Delete everything after	04/17 04:01 PM
Tab 87	**SB 1898** by **Rodriguez (CO-INTRODUCERS) Harrell**; (Similar to CS/1ST ENG/H 07011) Student Literacy					
Tab 88	**CS/SB 1906** by **CM, Brodeur (CO-INTRODUCERS) Taddeo, Stewart, Garcia, Gruters**; (Compare to H 00207) Reemployment Assistance					
636278	A	S	RCS	AP, Farmer	Delete L.17 - 172:	04/17 04:05 PM
196634	A	S	RS	AP, Brodeur	Delete L.130 - 172:	04/17 04:05 PM
~~267314~~	AA	S	WD	AP, Brodeur	btw L.11 - 12:	04/14 08:07 PM
973418	SA	S L	RCS	AP, Brodeur, Pizzo, Pow	Delete L.130 - 172:	04/17 04:05 PM
609816	A	S	UNFAV	AP, Farmer	Delete L.137 - 152:	04/17 04:05 PM
Tab 89	**CS/CS/SB 1948** by **AP, CM, Bean (CO-INTRODUCERS) Bradley, Pizzo, Bracy**; (Similar to CS/CS/1ST ENG/H 01463) Department of Economic Opportunity					
Tab 90	**CS/CS/SB 1966** by **AP, RI, Diaz (CO-INTRODUCERS) Garcia**; (Similar to CS/CS/CS/H 01517) Department of Business and Professional Regulation					
Tab 91	**CS/SB 2004** by **CM, Burgess**; Broadband Internet					
547780	D	S		AP, Burgess	Delete everything after	04/13 04:40 PM
Tab 92	**CS/SB 2010** by **ED, Diaz**; (Similar to CS/1ST ENG/H 07017) Foreign Influence					
269026	D	S	RCS	AP, Diaz	Delete everything after	04/17 04:10 PM
Tab 93	**SB 7060** by **EN**; (Similar to H 01309) Biosolids					
574708	PCS	S	RCS	AP, AEG		04/16 09:04 PM
Tab 94	**SB 7062** by **EN**; Central Florida Water Initiative					
828060	A	S	RCS	AP, Brodeur	Delete L.43 - 133:	04/17 04:12 PM
Tab 95	**SB 7076** by **RI**; (Similar to H 07053) Gaming Enforcement					
309496	D	S	RCS	AP, Hutson	Delete everything after	04/17 04:14 PM
949352	AA	S	RCS	AP, Hutson	Delete L.203 - 224:	04/17 04:14 PM
Tab 96	**SB 7078** by **RI**; (Similar to H 07057) Public Records and Public Meetings Exemptions/Florida Gaming Control Commission					
679930	D	S	RCS	AP, Hutson	Delete everything after	04/17 04:15 PM

Tab 97	**SB 7080** by **RI**; (Similar to H 07055) Requirements for Pari-mutuel Permitholders to Conduct Live Racing or Games

527596	D	S		RCS	AP, Hutson	Delete everything after	04/17 04:21 PM
601528	AA	S		RCS	AP, Hutson	Delete L.189 - 295:	04/17 04:21 PM
480942	AA	S		RCS	AP, Hutson	btw L.836 - 837:	04/17 04:21 PM
455452	AA	S		RCS	AP, Hutson	Delete L.1021:	04/17 04:21 PM
208346	AA	S	L	RCS	AP, Hutson	Delete L.905 - 913:	04/17 04:21 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Stargel, Chair
Senator Bean, Vice Chair

MEETING DATE: Monday, April 19, 2021
TIME: 10:00 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Stargel, Chair; Senator Bean, Vice Chair; Senators Albritton, Book, Bracy, Brandes, Broxson, Diaz, Farmer, Gainer, Gibson, Hooper, Hutson, Mayfield, Passidomo, Perry, Pizzo, Powell, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION

PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301

A proposed committee substitute for the following bill (SB 92) is available:

1	**SB 92** Bean (Identical H 1417, Compare H 7039)	Department of Children and Families; Requiring the department to establish community alliances in each community-based care lead agency service area; requiring the department to treat caregivers in a specified manner; requiring, rather than authorizing, each community-based care lead agency to establish a kinship navigator program; requiring a board member or an officer of a managing entity to disclose specified activity that may reasonably be construed as a conflict of interest; revising a limitation on salaries of community-based care lead agency employees, etc. CF 02/16/2021 Favorable AHS 03/03/2021 Temporarily Postponed AHS 03/10/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 19 Nays 0

With subcommittee recommendation – Health and Human Services

2	**SB 122** Baxley (Similar CS/H 133)	Surrendered Newborn Infants; Authorizing the Department of Health to approve, and certain hospitals, emergency medical services stations, and fire stations to use, newborn infant safety devices to accept surrendered newborn infants under certain circumstances; requiring such hospitals, emergency medical services stations, or fire stations to physically check and test the devices at specified intervals; providing additional locations to which the prohibition on the initiation of criminal investigations based solely on the surrendering of a newborn infant applies, etc. HP 01/27/2021 Favorable AHS 02/09/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Health and Human Services		
3	**CS/SB 192** Education / Book (Similar CS/H 149)	Students with Disabilities in Public Schools; Requiring school districts to prohibit the use of seclusion on students with disabilities in public schools; requiring school districts to adopt approved behavioral interventions and restraint training, pursuant to State Board of Education rules; creating the Video Cameras in Public School Classrooms Pilot Program; requiring continuing education and inservice training for instructional personnel teaching students with emotional or behavioral disabilities, etc. ED 03/23/2021 Fav/CS AED 04/08/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 0
	With subcommittee recommendation - Education		
	A proposed committee substitute for the following bill (CS/SB 200) is available:		
4	**CS/SB 200** Education / Berman (Compare CS/H 1025)	Student Retention; Authorizing a parent to request that his or her student be retained in a grade level for a specified school year; requiring such a request to be submitted in a specified manner; requiring school district superintendents to grant such requests if they are timely received; requiring a retained student to remain in the grade in which he or she was retained in until the student qualifies for promotion at the end of the school year; requiring school districts to report certain data to the Department of Education by a specified date, etc. ED 02/03/2021 Fav/CS AED 03/10/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - Education		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 262** Military and Veterans Affairs, Space, and Domestic Security / Harrell (Similar H 29)	Dispensing Medicinal Drugs; Authorizing certain hospitals to dispense supplies of prescribed medicinal drugs in a specified amount to emergency department patients or inpatients upon discharge under certain circumstances; authorizing a greater specified supply of medicinal drugs to be prescribed and dispensed in areas in which a state of emergency has been declared and is in effect; authorizing a prescriber to provide a patient with a prescription for medicinal drugs beyond the initial prescription period under certain circumstances, etc. HP 03/10/2021 Favorable MS 03/23/2021 Fav/CS AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 1
6	**CS/SB 352** Health Policy / Rodriguez (Similar H 245)	Massage Therapy; Revising a short title; revising and defining terms, etc. HP 02/04/2021 Fav/CS CM 03/09/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 16 Nays 3
7	**CS/SB 402** Judiciary / Rodrigues (Compare CS/H 35)	Legal Notices; Revising requirements for newspapers that are qualified to publish legal notices; authorizing the Internet publication of legal notices on certain websites in lieu of print publication in a newspaper; requiring the Florida Press Association to consult with the Black Press Association of Florida for a specified purpose; authorizing a governmental agency to opt for Internet-only publication of legal notices with any newspaper of general circulation within the state if certain conditions are met; authorizing a newspaper to charge for Internet-only publication, subject to specified limitations, etc. JU 01/25/2021 Temporarily Postponed JU 02/15/2021 Temporarily Postponed JU 03/22/2021 Fav/CS ACJ 04/08/2021 Temporarily Postponed ACJ 04/13/2021 ACJ 04/16/2021 Fav/CS AP 04/19/2021 Fav/CS With subcommittee recommendation – Criminal and Civil Justice	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 404** Health Policy / Rouson (Similar CS/H 183)	Office of Minority Health and Health Equity; Requiring the Office of Minority Health and Health Equity to develop and promote the statewide implementation of certain policies, programs, and practices; requiring one representative from each county health department to serve as a minority health liaison for a specified purpose; requiring the Department of Health to maintain specified information on its website; requiring the office to serve as a liaison to and assist certain federal offices, etc. HP 03/03/2021 Fav/CS AHS 03/17/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 406) is available:

9	**CS/SB 406** Environment and Natural Resources / Rodrigues (Similar CS/CS/H 209)	Big Cypress Basin; Revising the membership of the Big Cypress Basin governing board; requiring the South Florida Water Management District to revise the boundaries of the Big Cypress Basin based on a specified study at a specified time; requiring the South Florida Water Management District to ensure that the distribution of basin ad valorem taxes collected within the Big Cypress Basin be used for projects and flood control operations and maintenance within the counties in which they were collected, etc. EN 02/15/2021 Fav/CS AEG 04/08/2021 Fav/CS AP 04/19/2021 Temporarily Postponed	Temporarily Postponed

With subcommittee recommendation - Agriculture, Environment, and General Government

10	**CS/SB 486** Education / Bradley (Identical CS/H 723)	Juvenile Justice Education Programs; Increasing the percentage of certain funds that must be spent on specified costs; requiring that contracts between district school boards and juvenile justice education programs be in writing; requiring the Department of Education to provide mediation services for certain disputes; prohibiting school boards from delaying certain payments pending receipt of local funds, etc. ED 03/02/2021 Fav/CS AED 03/23/2021 Temporarily Postponed AED 03/24/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 0

With subcommittee recommendation - Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 566** Banking and Insurance / Perry (Similar CS/H 365, Compare H 785, S 708)	Motor Vehicle Rentals; Specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying applicability of the surcharge; specifying motor vehicle insurance requirements for peer-to-peer car-sharing programs; providing exemptions from vicarious liabilities for peer-to-peer car-sharing programs and shared vehicle owners, etc. BI 03/16/2021 Temporarily Postponed BI 03/24/2021 Fav/CS TR 03/30/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 13 Nays 7
12	**SB 590** Harrell (Compare CS/CS/H 383)	Involuntary Examinations of Minors; Revising parent, guardian, or caregiver notification requirements that must be met before an involuntary examination of a minor; revising parent and guardian notification requirements that must be met before conducting an involuntary examination of a minor who is removed from school, school transportation, or a school-sponsored activity; creating reporting requirements for schools relating to involuntary examinations of minors; requiring that certain plans include procedures to assist certain mental and behavioral health providers in attempts to verbally deescalate certain crisis situations before initiating an involuntary examination, etc. CF 02/16/2021 Favorable ED 03/30/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 18 Nays 0
13	**SB 606** Bean (Identical H 1231, Linked S 608)	Domestic Violence; Adding nonresidential outreach services to the list of services certified domestic violence centers must provide; revising the program content requirements for batterers' intervention programs; requiring the Department of Children and Families to certify and monitor batterers' intervention programs, etc. CF 03/16/2021 Favorable AHS 04/08/2021 Favorable AP 04/19/2021 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 20 Nays 0

A proposed committee substitute for the following bill (CS/SB 676) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**CS/SB 676** Transportation / Baxley (Compare CS/H 249, CS/H 451, H 501, H 533, H 599, S 292, S 612, S 860, S 940, S 958, S 1168, S 1200, S 1322)	Special and Specialty License Plates; Providing an exception to the requirement that specialty license plate annual use fees and interest earned from those fees be expended only in this state; revising distribution and application of annual fees from the sale of Florida Indian River Lagoon license plates; revising distribution of annual use fees from the sale of Divine Nine license plates; authorizing such plates to be personalized and to be displayed on certain vehicles; revising requirements for the issuance of certain special license plates, etc. TR 03/16/2021 Fav/CS ATD 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

A proposed committee substitute for the following bill (CS/SB 726) is available:

15	**CS/SB 726** Education / Taddeo (Similar CS/CS/H 173)	Individual Education Plan Requirements for Students with Disabilities; Revising the timeline for the development and implementation of an individual education plan (IEP) for a student with disabilities to transition to postsecondary education and career opportunities; revising the requirements for an IEP for the transitions to a postsecondary education or career opportunities; requiring the Department of Education to conduct a review of specified services and programs, etc. ED 03/09/2021 Fav/CS AED 03/17/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation - Education

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 754** Transportation / Diaz (Similar CS/H 139)	Motor Vehicle and Vessel Registration Data; Requiring tax collectors, third parties contracted with tax collectors, and license tag agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles and make certain determinations regarding registration applicants; requiring the department to ensure that certain technology used by tax collectors protects customer privacy and data; authorizing the department to provide certain technology to tax collectors, upon request, in order to provide data access and uniform interface functionalities for registration renewal transactions; authorizing the department to provide certain technology to tax collectors, upon request, in order to provide data access and uniform interface functionalities for registration renewal transactions, etc. TR 03/24/2021 Fav/CS ATD 04/08/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
17	**CS/CS/SB 764** Criminal Justice / Military and Veterans Affairs, Space, and Domestic Security / Burgess (Similar CS/H 7023)	Veterans Treatment Courts; Authorizing certain courts to create and administer veterans treatment courts for specified purposes; providing standards for admission to a veterans treatment court program; specifying eligibility requirements for participation in the program; revising eligibility for certain pretrial programs to include certain individuals eligible to participate in a veterans treatment court program; specifying applicability of the act to participants in certain court programs in existence as of a specified date, etc. MS 03/16/2021 Fav/CS CJ 03/23/2021 Fav/CS AP 04/19/2021 Favorable	Favorable Yeas 20 Nays 0
18	**SB 900** Rodriguez (Compare H 7039)	Child Welfare; Expanding the list of entities that have access to child abuse records; revising the authority of the Department of Children and Families to review reports for the purpose of employment screening; providing that licensed foster homes are the preferred supervised living arrangements for young adults; requiring assessments to be completed if the total number of children in a family foster home will exceed six, excluding the family's own children, before placement of a child in a family foster home, etc. CF 03/16/2021 Favorable AHS 04/08/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Health and Human Services		
19	**SB 918** Bradley (Identical H 827)	Education; Requiring school districts to allocate a certain amount of specified funds to certain programs that prepare prospective students to enroll in Advanced International Certificate of Education courses; requiring such funds to be spent on specified costs; requiring school districts to distribute specified bonuses to certain classroom teachers providing International General Certificate of Secondary Education instruction, etc. ED 03/02/2021 Favorable AED 04/08/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 0
	With subcommittee recommendation - Education		
20	**CS/SB 936** Military and Veterans Affairs, Space, and Domestic Security / Wright (Similar CS/CS/H 221)	Recovery of Spaceflight Assets; Providing that a spaceflight entity retains ownership of a spaceflight asset after launch or upon reentry; requiring a person who finds an item reasonably identifiable as a spaceflight asset to report the description and location of the asset to law enforcement; authorizing the owner of a spaceflight asset to enter private property under specified circumstances; prohibiting a person from appropriating a spaceflight asset to his or her own use or refusing to surrender a spaceflight asset to law enforcement or the owner, etc. MS 03/01/2021 Fav/CS CJ 03/16/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 12 Nays 7
21	**CS/SB 976** Environment and Natural Resources / Brodeur (Compare CS/CS/CS/H 727)	Study of the Little Wekiva River; Requiring the Department of Environmental Protection, in consultation with the St. Johns River Water Management District, Seminole County, the Fish and Wildlife Conservation Commission, and the Department of Transportation, to conduct a study and issue a report on sediment accumulation and water quality in the Little Wekiva River by a specified date; requiring the department and the water management district to review certain permits along the Little Wekiva River, etc. EN 03/02/2021 Fav/CS AEG 03/24/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 19 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION

A proposed committee substitute for the following bill (SB 1002) is available:

22	**SB 1002** Stewart (Similar CS/CS/H 673)	DNA Evidence Collected in Sexual Offense Investigations; Citing this act as "Gail's Law"; requiring the Department of Law Enforcement, by a specified date and subject to legislative appropriation, to create and maintain a statewide database for tracking sexual offense evidence kits; providing database requirements; requiring the department to ensure that alleged sexual offense victims and certain other persons receive specified notice and instructions and be informed that they are entitled to access information regarding such kits and evidence, etc. CJ 03/02/2021 Favorable ACJ 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

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A proposed committee substitute for the following bill (CS/SB 1028) is available:

23	**CS/SB 1028** Education / Hutson (Compare CS/CS/H 51, CS/H 1031, CS/H 1061, S 1468, S 1622)	Charter Schools; Providing that a hope operator that has not been notified that a financial audit for a fiscal year will be performed by the Auditor General must retain an independent certified public accountant to complete, within 9 months after the end of its fiscal year, an annual financial audit of its accounts, which must be paid from its public funds; authorizing state universities and Florida College System institutions to solicit applications and sponsor charter schools under certain circumstances; revising the definition of the term “persistently low-performing school”, etc. ED 03/23/2021 Fav/CS AED 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 10 Nays 7

With subcommittee recommendation - Education

24	**CS/SB 1094** Education / Bean (Identical CS/H 519, Compare H 1303, S 554)	Required Health Education Instruction; Providing additional requirements for health education; revising the grade levels when students receive certain health education instruction; requiring such education to include an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy, etc. ED 03/23/2021 Fav/CS AP 04/19/2021 Favorable	Favorable Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/SB 1108** Judiciary / Diaz (Similar CS/H 507)	Education; Authorizing the Department of Education to hold patents, copyrights, trademarks, and service marks; requiring certain students to take a specified assessment relating to civic literacy; requiring certain postsecondary students to complete a civic literacy course and pass a specified assessment to demonstrate competency in civic literacy; requiring school districts to provide the SAT or ACT to grade 11 students beginning in a specified school year; revising the tests that are included under test administration and security rules, etc. JU 03/22/2021 Fav/CS ED 03/30/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
26	**CS/SB 1132** Health Policy / Bean (Similar CS/CS/H 485)	Personal Care Attendants; Authorizing nursing home facilities to employ personal care attendants if they are participating in a certain training program developed by the Agency for Health Care Administration, in consultation with the Board of Nursing; providing limitations on such personal care attendants' practice; requiring the agency to notify the Division of Law Revision of the date certain rules take effect; authorizing certain persons to be employed by a nursing home facility as personal care attendants for a specified period if a certain training requirement is met, etc. HP 03/17/2021 Fav/CS CF 03/23/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 17 Nays 2

A proposed committee substitute for the following bill (CS/SB 1242) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**CS/SB 1242** Health Policy / Book (Similar CS/H 905)	Program of All-Inclusive Care for the Elderly; Authorizing the Agency for Health Care Administration, in consultation with the Department of Elderly Affairs, to approve entities applying to deliver PACE services in the state; requiring notice of applications to be published in the Florida Administrative Register; requiring existing PACE organizations to meet specified requirements under certain circumstances; requiring the agency to oversee and monitor the PACE program and organizations, etc. HP 03/24/2021 Fav/CS AHS 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Health and Human Services

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/SB 1292** Health Policy / Bean (Identical CS/H 1057)	Medicaid; Deleting a requirement for the Agency for Health Care Administration to submit an annual report to the Legislature on the operation of the pharmaceutical expense assistance program; revising the method for determining prescribed drug provider reimbursements; requiring the agency to establish certain procedures related to prior authorization requests rather than prior consultation requests; revising the definitions of the terms “medical necessity” and “medically necessary” to provide an exception for behavior analysis services determinations, etc. HP 03/24/2021 Fav/CS AHS 04/08/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 20 Nays 0
	With subcommittee recommendation – Health and Human Services		
29	**CS/SB 1344** Criminal Justice / Burgess (Similar CS/H 1041)	Protection of Elderly Persons and Disabled Adults; Adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult, etc. CF 03/09/2021 Favorable CJ 03/23/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
	A proposed committee substitute for the following bill (SB 1436) is available:		
30	**SB 1436** Gruters (Similar CS/H 847, Compare H 5601, S 2502)	Florida Postsecondary Academic Library Network; Revising provisions relating to the awareness of certain postsecondary education programs and initiatives; deleting provisions relating to the Florida Academic Library Services Cooperative; providing that the Board of Governors and the Department of Education will oversee a host entity chosen to deliver certain services; transferring responsibility for certain statewide online student advising services to the host entity; requiring the chancellors of the State University System and the Florida College System to provide a certain report, etc. ED 03/02/2021 Favorable AED 03/10/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Education		
31	**CS/CS/SB 1532** Judiciary / Children, Families, and Elder Affairs / Book (Similar CS/H 1089)	Child Support; Revising requirements for child support depositories in Title IV-D cases; requiring the depositories to transmit case data through and set up appropriate payment accounts in the Clerk of the Court Child Support Enforcement Collection System upon certain notice from the Department of Revenue; prohibiting the treatment of incarceration as voluntary unemployment for purposes of establishing or modifying child support orders, with exceptions; authorizing the department to include confidential and exempt information in unencrypted electronic mail communications with parents, caregivers, or other authorized persons under certain circumstances, with exceptions, etc. CF 03/09/2021 Fav/CS JU 03/22/2021 Fav/CS AP 04/19/2021 Favorable	Favorable Yeas 18 Nays 0
	A proposed committee substitute for the following bill (CS/SB 1560) is available:		
32	**CS/SB 1560** Commerce and Tourism / Ausley (Compare CS/H 753, H 1339)	Broadband Internet Service; Revising the duties of the Florida Office of Broadband within the Department of Economic Opportunity; requiring the office to develop geographic information system maps in collaboration with specified entities and consistent with certain federal reporting standards by a specified date; establishing the Broadband Deployment Task Force within the office for a specified purpose; requiring the office to publish certain information related to grant applications and grant awards on its website; requiring the office to establish a process to identify eligible households to receive federal Emergency Broadband Benefit Program funds under certain circumstances, etc. CM 03/15/2021 Fav/CS ATD 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
	A proposed committee substitute for the following bill (CS/SB 1574) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**CS/SB 1574** Banking and Insurance / Brandes	Citizens Property Insurance Corporation; Revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; specifying a limit for agent commission rates; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; authorizing information from underwriting files and confidential claims files to be released by the corporation to specified entities considering writing or underwriting risks insured by the corporation under certain circumstances, etc. BI 03/16/2021 Fav/CS AEG 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS With subcommittee recommendation - Agriculture, Environment, and General Government	Fav/CS Yeas 12 Nays 5
34	**CS/SB 1592** Finance and Tax / Burgess (Compare CS/H 1239)	Broadband Internet Infrastructure; Citing this act as the "Florida Broadband Deployment Act of 2021"; exempting the purchase or lease of certain equipment by a provider of communications services or a provider of Internet access services in this state from the sales and use tax; requiring municipal electric utilities to ensure that their broadband provider rates and fees meet certain requirements, make certain records available to broadband providers, provide access to its utility poles, and establish just and reasonable terms and conditions for broadband provider attachments; prohibiting municipal electric utilities from prohibiting a broadband provider from using certain techniques and equipment if used in accordance with certain safety standards; authorizing a broadband provider seeking a new pole attachment to invoke the Florida one-touch, make-ready process, etc. RI 03/09/2021 Favorable FT 03/31/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
35	**CS/SB 1606** Governmental Oversight and Accountability / Rodriguez (Compare H 5, CS/H 1553, S 1450)	Victims of Communism; Establishing November 7 as the Victims of Communism legal holiday; requiring the Legislature to annually observe a moment of silence in observance of the victims of communism; requiring high school students in a United States Government course to receive certain instruction on “Victims of Communism Day”, etc. CA 03/16/2021 Favorable GO 03/24/2021 Fav/CS AP 04/19/2021 Favorable	Favorable Yeas 17 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (CS/SB 1616) is available:		
36	**CS/SB 1616** Governmental Oversight and Accountability / Brodeur (Similar CS/CS/H 1079, Compare H 1585, S 788)	Agency Contracts for Commodities and Contractual Services; Abrogating the scheduled expiration of provisions relating to certain public agency contracts for services; providing that an agency must issue a request for quote to certain approved vendors when it issues certain requests for quote for contractual services; revising the maximum value of certain contracts that may not be renewed or amended by state agency before submitting a written report to the Governor and the Legislature; prohibiting certain vendors from submitting bids, proposals, or replies to, or entering into or renewing any contract with, an agency, etc. GO 03/24/2021 Fav/CS AEG 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
	With subcommittee recommendation - Agriculture, Environment, and General Government		
37	**SB 1624** Albritton (Similar CS/CS/CS/H 1103)	Special District Accountability; Requiring certain independent special districts to contract with an independent entity to conduct performance audits; requiring the Office of Program Policy Analysis and Government Accountability to conduct performance audits of certain classifications of independent special districts; requiring the performance audits to be reported by a time certain; requiring that certain data be included in financial audits of special districts, etc. CA 03/16/2021 Favorable GO 03/31/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 20 Nays 0
38	**CS/SB 1672** Education / Diaz (Identical CS/H 845)	State University Free Seat Program; Creating the State University Free Seat Program; providing an exemption from tuition and fees, including lab fees, for one online course at a state university for certain resident students; prohibiting a state university from charging such students more than a specified percentage of the tuition rate and the tuition differential under certain circumstances; providing a limitation on the application of such tuition discount, etc. ED 03/23/2021 Fav/CS AED 04/08/2021 Temporarily Postponed AED 04/13/2021 Favorable AP 04/19/2021 Favorable	Favorable Yeas 19 Nays 0
	With subcommittee recommendation - Education		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
39	**CS/SB 1786** Health Policy / Burgess (Similar CS/H 1165)	Payments for Birth-related Neurological Injuries; Increasing the amount that may be awarded to the parents or legal guardians of an infant found to have sustained a birth-related neurological injury; requiring that such amount be revised annually; increasing the amount of the death benefit that may be awarded; providing for retroactive application, etc. BI 03/16/2021 Favorable HP 03/24/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0
40	**SB 1798** Perry (Compare CS/H 1261)	Higher Education; Requiring a state university to waive the tuition and fees for certain courses in which certain resident students are enrolled; prohibiting the reporting of tuition and fees waived for state funding purposes; providing that a state university is ineligible for a specified performance-based incentive for failure to comply, etc. ED 03/30/2021 Favorable AED 04/08/2021 Favorable AP 04/19/2021 Favorable With subcommittee recommendation - Education	Favorable Yeas 17 Nays 3
41	**SB 1816** Rouson (Similar H 7033)	Task Force on Closing the Achievement Gap for Boys; Creating the Task Force on Closing the Achievement Gap for Boys within the Department of Education; providing for membership and meetings of the task force; requiring the department to provide staff, administrative support, and necessary data and other relevant information to assist the task force; requiring that the task force submit a report to the Governor and Legislature by a specified date, etc. ED 03/30/2021 Favorable AED 04/08/2021 Favorable AP 04/19/2021 Favorable With subcommittee recommendation - Education	Favorable Yeas 20 Nays 0

A proposed committee substitute for the following bill (CS/SB 1900) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
42	**CS/SB 1900** Governmental Oversight and Accountability / Boyd (Similar CS/CS/H 1297)	Cybersecurity; Requiring certain audit plans of an inspector general to include certain information; providing that the Department of Management Services, acting through the Florida Digital Service, is the lead entity for the purpose of certain responsibilities; requiring the department, through the Florida Digital Service, to track the implementation by state agencies of certain plans; creating the Florida Cybersecurity Advisory Council within the Department of Management Services; requiring the council to provide certain assistance to the Florida Digital Service; providing for the membership of the council, etc. GO 03/31/2021 Fav/CS AEG 04/08/2021 Fav/CS AP 04/19/2021 Fav/CS	Fav/CS Yeas 20 Nays 0

With subcommittee recommendation - Agriculture, Environment, and General Government

A proposed committee substitute for the following bill (CS/SB 1920) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
43	**CS/SB 1920** Children, Families, and Elder Affairs / Book	Child Welfare; Specifying circumstances under which a court is required, on or after a specified date, to appoint a guardian ad litem; renaming the Guardian Ad Litem Qualifications Committee as the Child Well-Being Qualifications Committee; specifying that the executive director of the Statewide Guardian Ad Litem Office may be reappointed; creating the Statewide Office of Child Representation within the Justice Administration Commission; specifying when the court is authorized or required to appoint an attorney for the child; requiring the court to appoint the Statewide Office of Child Representation, etc. CF 03/16/2021 Temporarily Postponed CF 03/23/2021 Fav/CS ACJ 04/08/2021 Fav/CS AP 04/19/2021 Temporarily Postponed	Temporarily Postponed

With subcommittee recommendation – Criminal and Civil Justice

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
44	**SB 1944** Albritton (Similar CS/H 1567)	Utility and Communications Poles; Requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; authorizing the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of a written notice from the pole owner, etc. RI 03/16/2021 Favorable CA 03/30/2021 Favorable AP 04/19/2021 Fav/CS	Fav/CS Yeas 15 Nays 4
45	**SB 7068** Finance and Tax (Similar CS/H 1241, Compare H 7061)	Tax Administration; Requiring, rather than authorizing, tax collectors to accept late payments of prepaid property taxes within a certain timeframe; revising a condition for a sales tax exception for tangible personal property imported, produced, or manufactured in this state for export; providing that stolen sales tax revenue may be aggregated for the purposes of determining the grade of certain criminal offenses, etc. AP 04/19/2021 Fav/CS	Fav/CS Yeas 19 Nays 0
46	**SB 7072** Governmental Oversight and Accountability (Similar H 7013, Compare CS/H 7015, S 520, Linked S 7074)	Social Media Platforms; Prohibiting a social media platform from knowingly deplatforming a candidate; providing requirements for public contracts and economic incentives related to entities that have been convicted or held civilly liable for antitrust violations; providing that social media platforms that fail to comply with specified requirements and prohibitions commit an unfair or deceptive act or practice; authorizing the Department of Legal Affairs to investigate suspected violations under the Deceptive and Unfair Trade Practices Act and bring specified actions for such violations, etc. AP 04/19/2021 Favorable	Favorable Yeas 10 Nays 9

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
47	**SB 7074** Governmental Oversight and Accountability (Similar CS/H 7015, S 1914, Linked S 7072)	Public Records/Social Media Platform Activities; Providing a public records exemption for information received by the Attorney General pursuant to an investigation by the Attorney General or a law enforcement agency into certain social media platform activities; providing a public records exemption for information received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency into violations by certain social media platforms; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. AP 04/19/2021 Favorable	Favorable Yeas 11 Nays 9
48	**SB 7082** Finance and Tax (Compare H 7059)	Corporate Income Tax; Adopting the 2021 version of the Internal Revenue Code and other federal statutes relating to federal income taxes for purposes of the state corporate income tax code; providing for retroactive operation; requiring the addition to adjusted federal income of certain amounts of business interest expense deductible in certain taxable years, etc. AP 04/19/2021 Fav/CS	Fav/CS Yeas 11 Nays 9
49	**SB 98** Albritton (Compare CS/CS/CS/H 1507, CS/CS/S 366, S 1042)	Workforce Related Programs and Services; Renaming the Workforce Estimating Conference as the Labor Market Estimating Conference; removing authority for a local board to review a decision by the department to deny a contract; requiring certain standards and policies established by the Department of Education to include a specified requirement for training providers; requiring that middle grades career and professional academies and career-themed courses lead to careers in occupations aligned with the CAPE Industry Certification Funding List, etc. CM 03/09/2021 Favorable ED 03/23/2021 Favorable AP 04/15/2021 Fav/CS AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
50	**CS/SB 102** Community Affairs / Burgess (Compare CS/H 1053, S 1874)	Matters of Great Governmental Concern; Authorizing the Legislature to declare, by concurrent resolution, that a circumstance or conduct that has caused substantial economic loss or other similar harm to governmental entities in at least a specified number of counties is a matter of great governmental concern; providing that the Attorney General has the sole authority to file certain civil proceedings; authorizing the Attorney General to take certain actions in certain civil proceedings; providing that any award, excluding attorney fees, are subject to full appropriation by the Legislature, etc. CA 03/30/2021 Fav/CS AP 04/15/2021 Temporarily Postponed AP 04/19/2021 Temporarily Postponed RC	Temporarily Postponed

A proposed committee substitute for the following bill (CS/SB 130) is available:

51	**CS/SB 130** Children, Families, and Elder Affairs / Rouson (Similar H 83)	Mental Health and Substance Use Disorders; Providing that the use of peer specialists is an essential element of a coordinated system of care in recovery from a substance use disorder or mental illness; requiring the department to certify peer specialists, either directly or by approving a third-party credentialing entity; requiring that a person providing recovery support services be certified or be supervised by a licensed behavioral health care professional or a certified peer specialist; requiring peer specialists and certain persons to meet the requirements of a background screening as a condition of employment and continued employment, etc. CF 03/02/2021 Fav/CS AHS 03/17/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

With subcommittee recommendation – Health and Human Services

52	**CS/SB 168** Banking and Insurance / Hooper (Identical CS/H 423)	Hurricane Loss Mitigation Program; Deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program, etc. BI 02/02/2021 Fav/CS CA 03/10/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
53	**CS/SB 184** Transportation / Berman (Similar CS/CS/H 79)	Purple Alert; Requiring the Department of Law Enforcement, in cooperation with the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, to establish and implement the Purple Alert; requiring the local law enforcement agency having jurisdiction to notify media and alert subscribers if a Purple Alert is determined to be necessary and appropriate; providing that the Department of Law Enforcement, as the Purple Alert coordinator, and certain agencies, employees, individuals, and entities are immune from civil liability for damages when performing certain actions in good faith, etc. TR 02/02/2021 Fav/CS CF 02/16/2021 Favorable AP 04/15/2021 Fav/CS AP 04/19/2021	
54	**SB 260** Harrell (Similar H 231)	Services for Veterans and Their Families; Requiring the Department of Veterans' Affairs to establish the Florida Veterans' Care Coordination Program to provide behavioral health care referral and care coordination services for veterans and their families; requiring the department to contract with a certain nonprofit entity to enter into agreements with Florida 211 Network participants to provide such services; requiring Florida 211 Network participants to collect program implementation data and to submit such data to the department; requiring the department to submit a report to the Governor and the Legislature by a specified date, etc. MS 02/02/2021 Favorable CF 03/02/2021 Favorable AP 04/15/2021 Fav/CS AP 04/19/2021	

A proposed committee substitute for the following bill (CS/SB 366) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
55	**CS/SB 366** Education / Hutson (Similar S 1042, Compare CS/H 791, CS/H 1505, CS/CS/CS/H 1507, S 98)	Educational Opportunities Leading to Employment; Revising the general duties of the Department of Education with regard to apprenticeship and preapprenticeship programs; revising the membership of the State Apprenticeship Advisory Council; providing that apprenticeship or preapprenticeship program sponsors are responsible for the selection and training of certain personnel, as approved by the department; encouraging specified entities to cooperate in developing and establishing apprenticeship and preapprenticeship programs that include career instruction, etc. ED 03/02/2021 Fav/CS AED 04/08/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 With subcommittee recommendation - Education	
56	**CS/SB 468** Judiciary / Bracy (Compare H 189, H 191, H 343, H 1597, S 710, S 1916, Linked CS/S 470)	Expunction of Criminal History Records Relating to Certain Cannabis Offenses; Requiring a petitioner to obtain a certificate of eligibility from the Department of Law Enforcement; providing application requirements and contents of a certificate of eligibility for expunction; requiring the department to issue a certificate of eligibility for expunction if a person meets specified criteria; providing court procedures for expungement, etc. JU 03/15/2021 Fav/CS CJ 03/30/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	
57	**CS/SB 470** Judiciary / Bracy (Similar H 191, Compare H 189, Linked CS/S 468)	Public Records/Expunged Criminal History Records; Providing an exemption from public records requirements for specified expunged criminal history records; providing exceptions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 03/15/2021 Fav/CS CJ 03/30/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
58	**CS/SB 506** Governmental Oversight and Accountability / Garcia (Compare CS/CS/H 195)	Transparency in Government Spending; Requiring nongovernmental entities that have received a specified amount of state funds to submit an annual report detailing certain compensation data to the Department of Management Services; requiring such reports to be verified under penalty of perjury; requiring the department to post the information received through such reports on a specified website; requiring a nongovernmental entity to post the reported compensation information on its website; prohibiting a governmental entity from expending, transferring, or distributing funds to a nongovernmental entity if compliance with reporting requirements is not met, etc. GO 03/17/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC	
59	**CS/SB 694** Community Affairs / Rodrigues (Compare CS/H 331)	Waste Management; Requiring the Department of Environmental Protection to review and update its report on retail bags and submit the updated report to the Legislature by a specified date; requiring a local government to pay a specified amount of compensation to a displaced private waste company at the end of a specified notice period; removing a provision authorizing a local government to pay a specified amount of compensation to a private waste company as an alternative to delaying displacement for a specified period; removing a provision authorizing a local government and private waste company to negotiate such compensation and notice, etc. EN 02/15/2021 Favorable CA 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

A proposed committee substitute for the following bill (CS/SB 748) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
60	**CS/SB 748** Judiciary / Brandes (Similar CS/H 1197)	Courts; Deleting the requirement that the Clerk of the Supreme Court physically keep books, records, and other materials in the clerk's office; requiring the clerks of the circuit courts, with specified entities, to prepare a plan to procure or develop a statewide electronic solution to accurately identify all assessments mandated by statute; providing for the periodic inflationary adjustment of the monetary jurisdictional limit applicable to all actions at law in county courts filed on or after a specified date, beginning in 2030; requiring the clerk of a district court of appeal to have an office at the headquarters of the court, etc. JU 03/02/2021 Fav/CS ACJ 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 With subcommittee recommendation – Criminal and Civil Justice	
61	**CS/CS/SB 750** Finance and Tax / Community Affairs / Gruters (Similar CS/CS/CS/H 337)	Impact Fees; Requiring local governments and special districts to credit against the collection of impact fees any contribution that relates to the improvement of public facilities or infrastructure; providing limitations on impact fee increases; providing for retroactive operation; requiring specified entities to submit an affidavit attesting that impact fees were appropriately collected and expended; requiring school districts to report specified information regarding impact fees, etc. CA 03/24/2021 Fav/CS FT 03/31/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
62	**SB 770** Burgess (Similar CS/H 873)	Military Affairs; Deleting a provision requiring that certain military personnel have the same salary and benefits as career service employees; modifying minimum qualifications and duties of the Adjutant General; specifying that a court-martial is an administrative procedure under the executive branch of state government; authorizing the Adjutant General, the Adjutant General's designee, or a military judge to issue and execute search authorizations under specified circumstances, etc. MS 03/09/2021 Favorable GO 03/24/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
63	**SB 794** Bean (Similar CS/H 427)	Independent Living Services; Removing a provision requiring the Florida Independent Living Council to assist the Division of Blind Services of the Department of Education; requiring the council to coordinate with centers for independent living; prohibiting the council from engaging in certain activities; requiring the council to comply with state and federal laws and regulations relating to lobbying; increasing the percentage of certain revenues used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program, etc. CF 03/16/2021 Favorable ED 03/30/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	

A proposed committee substitute for the following bill (CS/SB 838) is available:

64	**CS/SB 838** Judiciary / Boyd (Similar CS/H 903, Compare CS/H 557, S 356)	Clerks of the Circuit Court; Clarifying the responsibility of an individual released from incarceration regarding enrolling in a payment plan for any outstanding court obligations; modifying duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices; requiring the corporation to establish and manage a contingency reserve within the Clerks of the Court Trust Fund for specified purposes; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans, etc. JU 03/09/2021 Fav/CS ACJ 03/17/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

With subcommittee recommendation – Criminal and Civil Justice

A proposed committee substitute for the following bill (CS/SB 1024) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
65	**CS/SB 1024** Banking and Insurance / Brodeur (Similar CS/H 701)	Increasing Access to Mental Health Care; Requiring the Department of Financial Services to submit a specified report to the Governor and Legislature by a specified date; specifying the minimum information the report must contain; requiring the department to make certain information available on its website; requiring insurers and health maintenance organizations, respectively, to disclose specified information on their websites; requiring insurers and health maintenance organizations, respectively, to annually provide certain written notices to insureds or subscribers, etc. BI 03/10/2021 Fav/CS AEG 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

With subcommittee recommendation - Agriculture, Environment, and General Government

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A proposed committee substitute for the following bill (CS/SB 1086) is available:

66	**CS/SB 1086** Environment and Natural Resources / Hutson (Similar CS/CS/H 639, Compare CS/CS/H 1515, CS/CS/CS/S 1946)	Operation and Safety of Motor Vehicles and Vessels; Revising conditions under which a person's driving privilege is suspended and under which the person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances; providing circumstances under which a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway; designating Monroe County as an anchoring limitation area subject to certain requirements; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway, etc. EN 03/15/2021 Fav/CS AEG 04/08/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

With subcommittee recommendation - Agriculture, Environment, and General Government

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A proposed committee substitute for the following bill (SB 1126) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
67	**SB 1126** Harrell (Similar H 1385)	Department of Transportation; Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc. TR 03/10/2021 Favorable ATD 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
68	**CS/CS/SB 1146** Appropriations / Community Affairs / Brodeur (Compare CS/CS/H 401)	Florida Building Code; Authorizing fee owners or fee owners' contractors to select private providers to provide inspection services for onsite sewage treatment and disposal systems if certain requirements are met; prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit; requiring local jurisdictions to reduce permit fees under certain circumstances, etc. CA 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 RC	

A proposed committee substitute for the following bill (CS/SB 1166) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
69	**CS/SB 1166** Criminal Justice / Brandes (Similar CS/CS/H 885, Compare S 164)	Juvenile Justice; Creating the Accountability and Program Support Program within the Department of Juvenile Justice and revising the name of an existing program; authorizing a court to order that a child be taken into custody for failure to appear; repealing a provision relating to the shared county and state financial support responsibility for juvenile detention; requiring the Department of Juvenile Justice to calculate annually by a certain date and provide to each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles its annual percentage share of detention costs, etc. CJ 03/09/2021 Fav/CS ACJ 03/17/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 With subcommittee recommendation – Criminal and Civil Justice	
70	**CS/CS/SB 1194** Appropriations / Transportation / Hooper (Compare CS/H 57, H 6015, S 376, CS/S 1500, CS/S 1670)	Transportation; Authorizing governing bodies of municipalities and counties to abandon and convey their interests in certain roads and rights-of-way dedicated in a recorded residential subdivision plat to community development districts under specified conditions; providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; requiring contractors wishing to bid on certain contracts to first be certified by the department as qualified; repealing part III of ch. 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority, etc. TR 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
71	**SB 1324** Harrell (Similar CS/H 1313, Compare CS/H 1315, Linked CS/S 1326)	Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc. TR 03/10/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021 RC	
72	**CS/SB 1326** Transportation / Harrell (Similar CS/H 1315, Compare CS/H 1313, Linked S 1324)	Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. TR 03/10/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC	
73	**SB 1372** Burgess (Compare CS/CS/H 3)	Literacy Improvement; Establishing the New Worlds Reading Initiative under the Department of Education; requiring the administrator, in consultation with a specified entity, to develop a selection of books; requiring the administrator to coordinate monthly book distribution to certain students; requiring the administrator to assist with local implementation of the initiative; requiring that a certain notification include information about the initiative, etc. ED 03/16/2021 Favorable AED 03/23/2021 Temporarily Postponed AED 03/24/2021 Favorable AP 04/15/2021 Temporarily Postponed AP 04/19/2021 Fav/CS With subcommittee recommendation - Education	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
74	**CS/CS/SB 1382** Governmental Oversight and Accountability / Community Affairs / Perry (Similar CS/CS/H 667)	Building Inspections; Requiring that certain counties allow requests for inspections to be submitted electronically; requiring that local enforcement agencies allow requests for inspections to be submitted electronically; authorizing enforcement agencies to perform virtual inspections, etc. CA 03/10/2021 Fav/CS GO 03/31/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

A proposed committee substitute for the following bill (SB 1404) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
75	**SB 1404** Hooper (Similar CS/H 909)	Cultural and Historical Programs; Designating the Museum of Florida History as the official state history museum; providing that the Secretary of State shall be known as “Florida’s Chief Arts and Culture Officer”; transferring certain responsibilities from the Division of Cultural Affairs to the Division of Historical Resources; revising provisions relating to the Museum of Florida History museum store, the establishment and operation of a certain nonprofit organization or association, and the deposit of certain funds; removing the requirement that a museum inform a lender of certain provisions in certain circumstances, etc. GO 03/10/2021 Favorable ATD 03/23/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 With subcommittee recommendation – Transportation, Tourism, and Economic Development	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
76	**CS/SB 1408** Banking and Insurance / Burgess (Compare CS/CS/H 415, H 587, CS/H 717, CS/H 815, CS/H 823, CS/CS/CS/H 1209, CS/S 360, CS/S 742, S 998, S 1902)	Department of Financial Services; Specifying powers and duties of the Division of Public Assistance Fraud; specifying a condition that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept certain compensation, etc. BI 03/10/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC	
77	**CS/SB 1448** Governmental Oversight and Accountability / Jones (Similar CS/CS/H 1137)	Information Technology Procurement; Requiring the Department of Management Services, through the Florida Digital Service, to establish certain project management and oversight standards for state agency compliance; requiring the department to perform project oversight on information technology projects that have total project costs of a certain amount or more; authorizing the department to execute certain contracts if the Secretary of Management Services and the state chief information officer certify certain information in writing, etc. GO 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
78	**SB 1450** Rodriguez (Identical H 5, Compare CS/H 1553, CS/S 1606)	Civic Education Curriculum; Revising the social studies high school graduation credit requirement; requiring the Department of Education to develop or approve an integrated civic education curriculum that meets certain requirements; requiring the department to curate oral history resources to be used along with such curriculum; designating the "Portraits in Patriotism Act", etc. ED 03/09/2021 Favorable AED 03/17/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021 With subcommittee recommendation - Education	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
79	**SB 1470** Boyd (Similar H 797)	Florida Life and Health Insurance Guaranty Association; Defining the term "Moody's Corporate Bond Yield Average"; authorizing the association to assume or reissue covered policies of impaired insurers; granting the association the right to appear or intervene before a court or an agency in certain proceedings; revising the calculation of Class A assessments; specifying requirements for repayment of deferred assessments upon removal or rectification of the conditions causing a deferral, etc. BI 03/16/2021 Favorable AEG 03/24/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	
	With subcommittee recommendation - Agriculture, Environment, and General Government		
80	**CS/SB 1526** Children, Families, and Elder Affairs / Garcia (Identical CS/H 1071)	Medicaid Coverage for Former Foster Youth; Requiring the Department of Children and Families to develop a program to facilitate enrollment of certain young adults in Medicaid; authorizing the department to coordinate with a community-based care lead agency in implementing the program; revising eligibility for Medicaid coverage for certain young adults formerly eligible for foster care, etc. CF 03/09/2021 Fav/CS AHS 03/24/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	
	With subcommittee recommendation – Health and Human Services		
81	**CS/SB 1540** Health Policy / Gibson (Identical CS/H 1381, Compare H 1383, S 1556)	Maternal Health Outcomes; Revising the Department of Health's duties under the Closing the Gap grant program; requiring the department to establish telehealth minority maternity care pilot programs in Duval County and Orange County by a specified date; requiring the pilot programs to provide specified telehealth services, or coordinate with prenatal home visiting programs to provide specified services, to eligible pregnant women for a specified period; requiring the department's Division of Community Health Promotion and Office of Minority Health and Health Equity to apply for certain federal funding, etc. HP 03/31/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
82	**CS/SB 1568** Health Policy / Rodriguez (Compare CS/CS/H 1565, CS/S 818)	Department of Health; Revising the purpose of the department's targeted outreach program for certain pregnant women; requiring the department to provide, for a specified purpose, continued oversight of newborns exposed to HIV; revising provisions related to administrative fines for violations relating to onsite sewage treatment and disposal systems and septic tank contracting; exemption certain specialty hospitals from prohibitions relating to the employment of dentists and dental hygienists and the control of dental equipment and materials by nondentists; revising provisions relating to licensure by endorsement of midwives, etc. HP 03/31/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
83	**CS/SB 1570** Governmental Oversight and Accountability / Rodriguez (Similar CS/CS/H 1083)	Quasi-public Entities; Requiring the Governor to specify affiliated departments for certain quasi-public entities by a certain date; providing requirements for the affiliated departments; requiring a quasi-public entity to maintain a website that includes certain information; prohibiting a quasi-public entity from using public funds to retain a lobbyist; requiring a quasi-public entity to post and update certain information on the secure contract tracking system established and maintained by the Chief Financial Officer, etc. GO 03/17/2021 Temporarily Postponed GO 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

A proposed committee substitute for the following bill (CS/SB 1598) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
84	**CS/SB 1598** Banking and Insurance / Gruters (Similar CS/H 717, Compare H 471, CS/S 344)	Consumer Protection; Prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; authorizing the department to disapprove the use of insurance agency names containing the words “Medicare” or “Medicaid”; revising the timeframes in which an insured or a claimant may cancel a public adjuster’s contract to adjust a claim without penalty or obligation; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; providing that a communication made to or by an insurer’s representative, rather than to or by an insurer’s agent, constitutes communication to or by the insurer; revising information contained in the Homeowner Claims Bill of Rights, etc. BI 03/16/2021 Fav/CS AEG 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
	With subcommittee recommendation - Agriculture, Environment, and General Government		
85	**CS/SB 1728** Education / Baxley (Compare CS/H 1273)	Out-of-state Fee Waiver for Nonresident Students; Requiring a state university to waive the out-of-state fee for a nonresident student who meets certain requirements; requiring each state university to report specified information regarding such out-of-state fee waivers to the Board of Governors annually; enacting the Grandchild Out-of-State Fees Waiver Compact; requiring postsecondary educational institutions located within member states to waive out-of-state fees for students who meet specified criteria, etc. ED 03/23/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021	
86	**SB 1864** Perry (Compare CS/CS/H 131)	Education; Requiring the Department of Education to maintain a disqualification list that includes the identities of certain persons; requiring district school boards to investigate certain complaints and report certain results of such investigations to the department; prohibiting an individual who is on the disqualification list from being employed by a charter school or serving as a member of a charter school governing board; requiring certain private schools to adopt policies establishing standards of ethical conduct for certain employees; expanding the list of entities that law enforcement agencies must notify of certain charges, etc. ED 03/30/2021 Favorable AED 04/08/2021 Favorable AP 04/15/2021 Fav/CS AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation - Education		
87	**SB 1898** Rodriguez (Similar CS/H 7011, Compare CS/CS/H 419, CS/H 1159, CS/S 934, S 1282)	Student Literacy; Revising and providing duties for the Just Read, Florida! Office within the Department of Education; requiring the Department of Education, in consultation with the Office of Early Learning, to implement a coordinated screening and progress monitoring system for students in the Voluntary Prekindergarten Education Program through grade 8; requiring certain students to participate in a certain coordinated screening and progress monitoring system; creating the “Reading Achievement Initiative for Scholastic Excellence Act”, etc. ED 03/16/2021 Favorable AED 03/23/2021 Temporarily Postponed AED 03/24/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021	
	With subcommittee recommendation - Education		
88	**CS/SB 1906** Commerce and Tourism / Brodeur (Compare H 207, CS/CS/H 1463, H 1617, S 466, S 592, S 644, S 910, CS/CS/S 1948, S 1996)	Reemployment Assistance; Revising requirements for reemployment assistance benefits eligibility; increasing the weekly benefit amounts an individual may receive; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year, etc. CM 03/29/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
89	**CS/CS/SB 1948** Appropriations / Commerce and Tourism / Bean (Similar CS/CS/H 1463, Compare H 1291, S 1640, CS/CS/S 1906)	Department of Economic Opportunity; Renaming the executive director of the Department of Economic Opportunity as the Secretary of Economic Opportunity; revising the application process and funding for development grants awarded by the department to local governments; requiring the department to implement an integrated, modular system hosted in a cloud service, rather than an integrated Internet-based system, for the reemployment assistance program; revising the timeline for employers’ responses to notices of benefits claims sent by the department, etc. CM 03/15/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
90	**CS/CS/SB 1966** Appropriations / Regulated Industries / Diaz (Similar CS/CS/CS/H 1517, Compare CS/CS/H 867, CS/CS/S 630)	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing that specified records relating to tobacco products may be kept in an electronic or paper format; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; deleting requirements relating to certain fees collected by the department for electrical and alarm system contracting, etc. RI 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	
91	**CS/SB 2004** Commerce and Tourism / Burgess	Broadband Internet; Requiring the Florida Office of Broadband's strategic plan to include short-term and long-term goals for increasing the availability of and access to broadband Internet service in this state; requiring the updated plan to be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislature by a specified date; requiring the office to provide technical and planning assistance related to broadband infrastructure to rural communities, etc. CM 03/15/2021 Fav/CS ATD 04/08/2021 Favorable AP 04/15/2021 Temporarily Postponed AP 04/19/2021 Temporarily Postponed	Temporarily Postponed
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
92	**CS/SB 2010** Education / Diaz (Similar CS/H 7017)	Foreign Influence; Requiring any state agency or political subdivision to disclose certain gifts or grants received from any foreign source to the Department of Financial Services within a specified timeframe; requiring any entity that applies for a certain grant or proposes a certain contract to disclose to a state agency or political subdivision any current or prior interest of, contract with, or grant or gift received from a foreign country of concern under certain circumstances; requiring the Department of Management Services to screen certain vendors periodically; requiring the Department of Financial Services to establish and maintain an Internet website to publish the disclosures, etc. ED 03/23/2021 Temporarily Postponed ED 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

A proposed committee substitute for the following bill (SB 7060) is available:

93	**SB 7060** Environment and Natural Resources (Similar H 1309)	Biosolids; Ratifying specified rules relating to biosolids management for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; exempting the rules from certain review and approval by the Environmental Regulation Commission, etc. AEG 04/08/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	

With subcommittee recommendation - Agriculture, Environment, and General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
94	**SB 7062** Environment and Natural Resources	Central Florida Water Initiative; Ratifying specified rules relating to the Central Florida Water Initiative, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; requiring the Department of Environmental Protection to provide reports relating to implementation of the requirements of the Central Florida Water Initiative rules to the Legislature by specified dates; requiring the department, in consultation with specified water management districts, to adopt rules that include an annual supplemental irrigation requirement allocation for agricultural uses and a process for examining an agriculture user's average annual supplemental irrigation needs, etc. AP 04/15/2021 Fav/CS AP 04/19/2021	
95	**SB 7076** Regulated Industries (Similar H 7053, Compare H 7055, H 7057, Linked S 7078)	Gaming Enforcement; Creating the Florida Gaming Control Commission within the Office of the Attorney General; providing for membership of the commission; requiring the Commission on Ethics to accept and investigate any alleged violations of the standards of conduct for commissioners; designating the Florida Gaming Control Commission as the state compliance agency having authority to carry out certain responsibilities; transferring all powers, duties, functions, records, offices, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, trust funds, and unexpended balances of appropriations, allocations, and other funds of the Department of Business and Professional Regulation to the commission by a type two transfer, etc. AP 04/15/2021 Fav/CS AP 04/19/2021	
96	**SB 7078** Regulated Industries (Similar H 7057, Compare H 7053, Linked CS/S 7076)	Public Records and Public Meetings Exemptions/Florida Gaming Control Commission; Specifying that any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission retains its exempt or confidential and exempt status; providing an exemption from public meetings requirements for portions of meetings of the commission wherein confidential or exempt information is discussed; providing for future review and repeal; providing a statement of public necessity, etc. AP 04/15/2021 Fav/CS AP 04/19/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
97	**SB 7080** Regulated Industries (Similar H 7055, Compare H 7053)	Requirements for Pari-mutuel Permitholders to Conduct Live Racing or Games; Revising the application requirements for an operating license to conduct pari-mutuel wagering for a pari-mutuel facility; prohibiting greyhound permitholders from conducting live racing; authorizing jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to elect not to conduct live racing or games; specifying that certain permitholders that do not conduct live racing or games retain their permit and remain pari-mutuel facilities, etc. AP 04/15/2021 Fav/CS AP 04/19/2021	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 92 (519024)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Bean
SUBJECT:	Department of Children and Families
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Favorable**
2.	Sneed	Kidd	AHS	**Recommend: Fav/CS**
3.	Sneed	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 92 makes a number of changes to various provisions related the Department of Children and Families (DCF) and entities under contract with the DCF, including community-based care lead agencies (lead agency) and managing entities (ME), who operate and provide services in the child welfare and behavioral health systems in accordance with chapters 394 and 409, Florida Statutes, respectively.

The bill specifically makes the following changes:

- Requires, rather than authorizes, the DCF, contracted sheriffs' offices, and lead agencies to develop a formal family-finding program. The program must be implemented as soon as a child is taken into custody.
- Requires, rather than authorizes, each lead agency to establish a kinship navigator program.
- Removes the limitations for the family-finding and kinship navigator programs that tie the development of such programs to available resources.
- Requires the DCF to treat foster parents and other caregivers with dignity, respect, and trust while ensuring delivery of services is focused on the best interest of the child.
- Requires the DCF, rather than encourages, to provide information, training, and support to foster parents and caregivers except as otherwise provided by state or federal law.
- Amends the DCF's duties to collect and post information regarding the managing entities and lead agencies' compensation and findings of the multi-year review of their financial position.

- Removes requirement that the lead agencies post their current budgets on their websites and relocating it to the above-mentioned provision.
- Requires through their contracts with the DCF that the lead agencies demonstrate the ability to adhere to best child welfare practices enumerated in chapters 39 and 409, Florida Statutes, and provide information on their adherence to such best practices.
- Requires board members or officers of a managing entity or lead agency to disclose specified activity that may reasonably be construed as a conflict of interest. The bill provides procedures to follow to address the potential conflict of interest.
- Requires the DCF to create a community alliance in each service area of the lead agency, rather than in each county, to align with the current service model in Florida.
- Modifies the membership of the community alliances by allowing the number of representative members to be increased from 20 to up to 30 members to provide for adequate representation of the diverse population within the service area.
- Directs the DCF to work in collaboration with the local community alliances to achieve community-focused delivery of child welfare services. Provides for an alternative plan that establishes an innovative consortium of partners in communities where conditions make it infeasible to competitively contract with a lead agency.
- Creates a program that allows Florida to partner with national experts to implement a new child and family well-being system and requires the Florida Institute of Child Welfare to submit an annual report beginning each October 1 to the Governor, President of the Senate, and the Speaker of the House of Representatives regarding program compliance and outcomes of the children served by the program.

The DCF estimates that there will be a potential fiscal impact to local government of $513,189, state government of $4,713,147, and the private sector of $11,088,360 resulting from the implementation of the family-finding and kinship navigator programs required under the bill. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

II. Present Situation:

The DCF was created to support and promote stable and safe families.[1] The DCF is required to work with local partners to provide services by contract through private providers to the extent allowed by law and within specified appropriations.[2] The DCF is responsible for providing services relating, amongst other services, to:

- Child care regulation;
- Child welfare;
- Domestic violence;
- Economic self-sufficiency;
- Homelessness;
- Mental health and substance abuse;
- Refugee services; and

[1] *See* s. 20.19, F.S.
[2] Section 20.19(1)(c), F.S.

- Human trafficking.[3]

Some of these services, which are affected by the bill, are explained in more detail below.

Community-based Care Lead Agency

The DCF operates a community-based care child welfare system that outsources foster care and related services to agencies with an increased local community ownership to enhance accountability, resource development, and system performance.[4] The DCF contracts with community-based care lead agencies (lead agency) to provide direct or indirect child welfare services.[5]

The DCF Duties

Notwithstanding that services are contracted with local lead agencies, the DCF remains responsible for providing child welfare and support services in accordance with federal and state law.[6] The Legislature has articulated several duties with which DCF must comply, including, in part, all of the following:

- Ensuring the DCF's contracts with the lead agencies contain specified terms, including to:
  - Provide for the services which must be provided as required under s. 409.988, F.S., and provide relevant information to the DCF related to the quality assurance program and the child welfare results-oriented accountability system;
  - Provide for tiered interventions and graduated penalties for failure to comply with the contract or performance deficiencies;
  - Require the lead agencies to provide current and accurate information of its activities related to case records in the statewide automated child welfare information system; and
  - Specify the procedures to resolve differences in interpreting the contract or to resolve a disagreement amongst the parties regarding compliance with the contract.
- Developing and maintaining written policies and procedures for monitoring compliance with the services that must be provided by lead agencies under their contracts and posted on the DCF website.
- Developing and implementing statewide and local interagency agreements to coordinate services that need to be provided to children and parents.
- Establishing a quality assurance program for contracted services to dependent children; and
- Evaluating lead agencies under contract at least once annually.[7]

Contracted Lead Agencies

A lead agency is a single entity with which the DCF has a contract for the provision of care in the child protection and welfare system.[8] The DCF enters into 5-year contracts with lead

[3] Section 20.19(4), F.S.
[4] The DCF, *Community-Based Care*, available at https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml (last visited Feb. 16, 2021).
[5] *Id.*
[6] Section 409.996, F.S.
[7] *Id.*
[8] Section 409.986(3)(d), F.S.

agencies for the procurement of services.[9] There are minimum requirements with which lead agencies must comply to be eligible to contract with the DCF, including, but not limited to:

- The lead agency must be organized as a Florida corporation or a governmental entity;[10]
- The board of directors or board committee must have the authority to approve the lead agency's budget and to hire the lead agency's executive director;[11] and
- The lead agency must also demonstrate financial responsibility by having a plan for regular fiscal audits and securing a performance bond.[12]

The lead agencies are obligated to perform several duties including, in part, to:

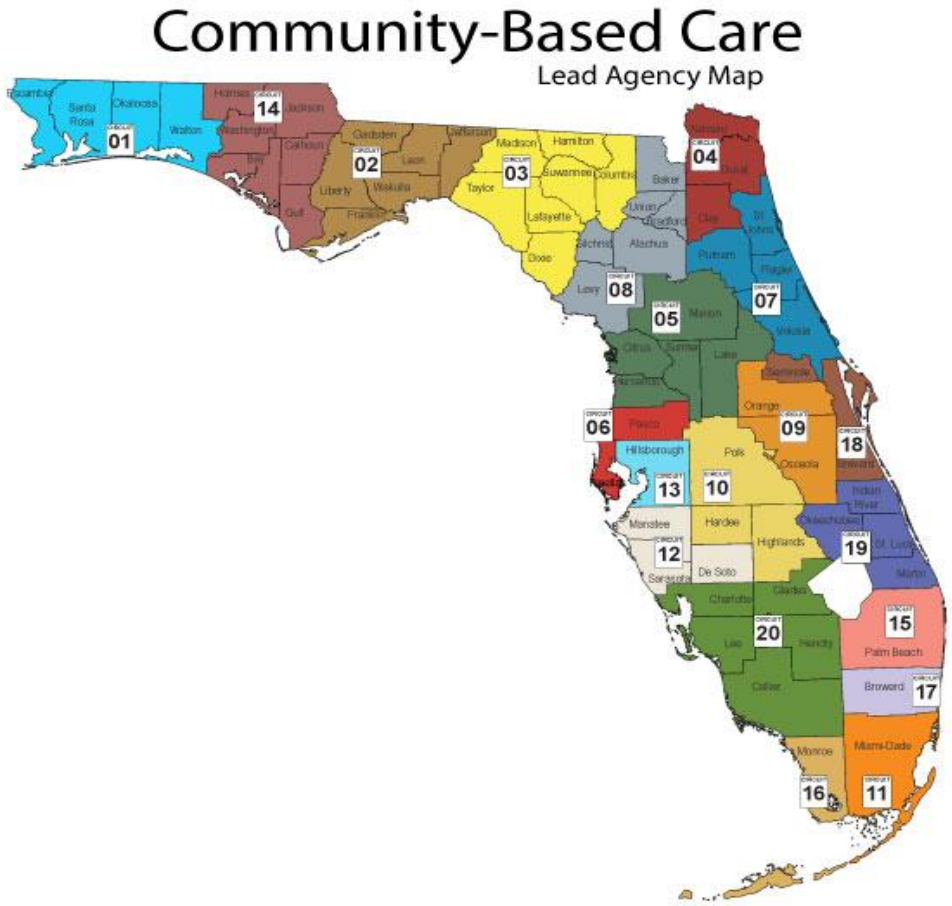
- Serve the children who are referred as a result of abuse, abandonment, or neglect reports;
- Provide accurate and timely information to the DCF, as specified in s. 409.997, F.S.;
- Follow financial guidelines developed by the DCF and provide for a regular independent audits;
- Post its current budget, including the salaries, bonuses and other compensation paid to the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents, on the lead agency's website;
- Prepare and file all necessary court documents, and attend dependency court proceedings to give evidence;
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements;
- Maintain eligibility to receive all available federal child welfare funds;
- Maintain written agreements with Health Families Florida lead entities;
- Comply with federal and state statutory requirements and agency rules in the provision of contractual rules;
- Use authority to subcontract for the provision of services provided the lead agency contribute to services and meet specified criteria; and
- Post information regarding case management services on its website by a specified date.[13]

The DCF contracts with the following lead agencies as illustrated in the table and map below:[14]

Lead Agency	**Circuit(s)**
Lakeview Center, Families First Network	1
Big Bend Community Based Care, Inc.	2 & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida, Inc.	4 (Duval and Nassau)
Kids First of Florida, Inc.	4 (Clay)

[9] Section 409.987(3), F.S.
[10] Section 409.987(4)(a), F.S.
[11] Section 409.987(4)(b), F.S.
[12] Section 409.987(4)(c), F.S.
[13] Section 409.988(1), F.S. Further, s. 409.988(1)(k), F.S., provides that lead agencies and subcontracted case management providers must disclose the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.
[14] The DCF, *Lead Agency Map, Community-Based Care*, available at: https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml (last visited March 11, 2021).

Lead Agency	Circuit(s)
Kids Central, Inc.	5
Eckerd Community Alternatives	6 and 13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children, Inc.	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children's Network of SW Florida	20



Funding

Section 409.990, F.S., requires that a contract between the DCF and a lead agency be funded through General Revenue, or other applicable state or federal funding sources.[15] Lead agencies must allocate their funding as provided under Florida law based on a proportion of child population, child abuse hotline workload, and children in care.[16]

Quality Assurance

The DCF shares responsibility with lead agencies and subcontractors to maintain a results-oriented accountability program that monitors and measures the use of resources, services provided, and outcomes achieved.[17] Reports must be produced quarterly, at a minimum, and published on the DCF's website.[18] The DCF reports the results in a quarterly scorecard which summarizes key issues, namely safety, permanency, and well-being metrics.[19]

Community Alliances

The DCF is required to establish community alliances[20] which shall be made up of local stakeholders and representatives in each county to encourage and maintain community participation, and governance of community based services.[21] Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.[22] Community alliances have a duty, amongst other obligations, to serve as a catalyst for community resource development and promote prevention and early intervention.[23]

Community alliances are composed of a representative from the DCF, the county government, the school district, the county United Way, the county sheriff's office, the circuit court corresponding to the county, the county children's board, if one exists, and a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoptions.[24] The community alliances must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity of the population.[25]

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[15] Section 409.990, F.S.
[16] Section 409.991(2), F.S., provides that core services funds are calculated based on the proportion of the (a) child population weighted as 5 percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-2016 fiscal year, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) seventy percent of new funding amongst all lead agencies and (b) thirty percent of new funding to lead agencies that are funded below their equitable share.
[17] Section 409.997(2), F.S.
[18] Section 409.997(2)(g), F.S.
[19] The DCF, *CBC Scorecard*, available at https://www.myflfamilies.com/programs/childwelfare/dashboard/cbc-scorecard.shtml (last visited March 11, 2021).
[20] Section 409.986(2)(c), FS., defines "community alliance" to mean the group of stakeholders, community leaders, client representatives, and funders of human services established pursuant to s. 20.19(5), F.S., to provide a focal point for community participation and oversight of community-based services.
[21] Section 20.19(5)(a), F.S.
[22] *Id.*
[23] Section 20.19(5)(b), F.S.
[24] Section 20.19(5)(d), F.S.
[25] Section 20.19 (5)(e), F.S.

The additional members may include states attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based service issues.[26]

Prior to 2014, s. 409.1671(1)(d), F.S., in part, provided that the DCF could develop an alternative plan to outsource services in an area if it was impossible or not feasible to competitively contract with a lead agency.[27] The DCF was required to develop a plan in collaboration with the local community alliance.[28] It was required to detail how the community would implement community-based care through local providers, and to ensure control over management and administration of services.[29] A plan developed under this former provision had to include best business practices, including some form of public and private partnerships.[30]

Managing Entities (ME)

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[31]

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[32] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[33] Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a managing entity.[34]

The DCF Duties

The DCF must also comply with duties with respect to the MEs, including, in part, to:
- Contract and conduct readiness reviews;
- Specify data reporting requirements and use of shared data systems;
- Define the priority populations that will receive care coordination;
- Support the development and implementation of a coordinated system of care;

[26] *Id.*
[27] Chapter 2014-224, s. 46, Laws of Fla.
[28] *Id.*
[29] *Id.*
[30] Chapter 2014-224, s. 46 Laws of Fla.
[31] *See* chs. 394 and 397, F.S.
[32] Chapter 2001-191, Laws of Fla.
[33] Chapter 2008-243, Laws of Fla.
[34] Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4 (March 2015) available at https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model (last visited March 11, 2021).

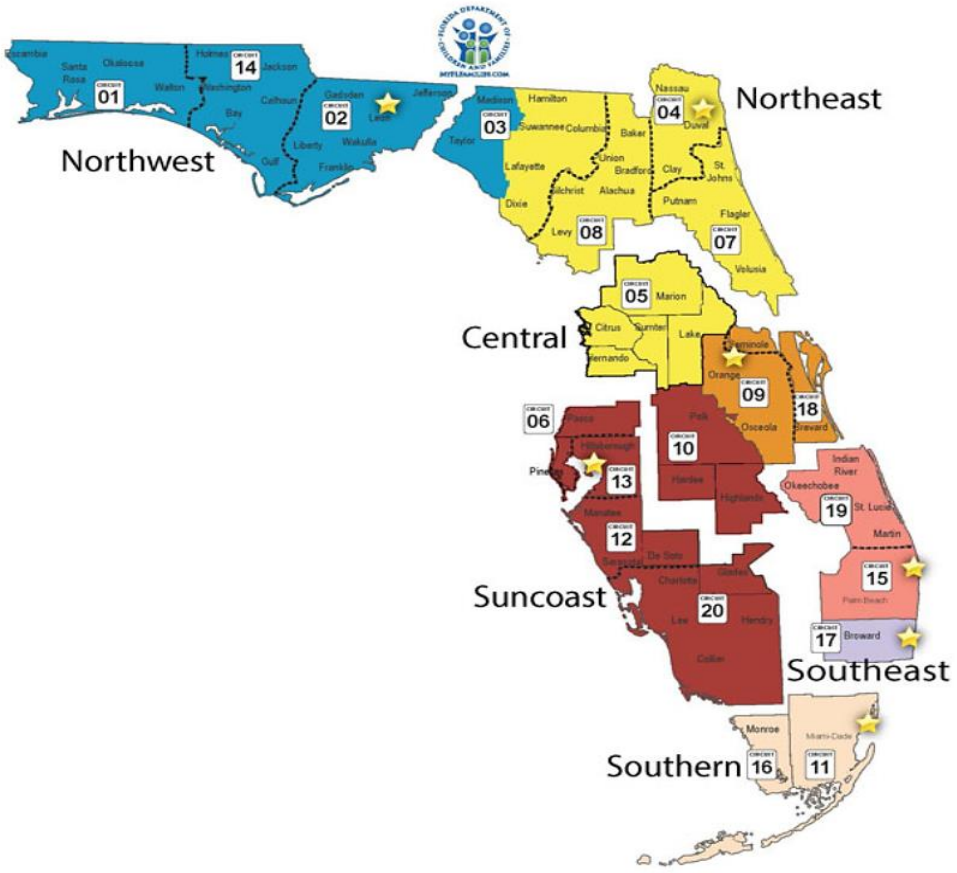
- Contract to support efficient and effective administration and ensure accountability for performance; and[35]
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.[36]

Contracted MEs

The MEs are required to comply with various statutory duties, including, in part, to:
- Maintain a governing board;
- Promote and support care coordination;[37]
- Develop a comprehensive list of qualified providers;
- Monitor network providers' performances;
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements; and
- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.[38]

The DCF contracts with seven MEs as shown in the map below and summarized as follows:
- Big Bend Community Based Care (blue).
- Lutheran Services Florida (yellow).
- Central Florida Cares Health System (orange).
- Central Florida Behavioral Health Network, Inc. (red).
- Southeast Florida Behavioral Health (pink).
- Broward Behavioral Health Network, Inc. (purple).
- South Florida Behavioral Health Network, Inc. (beige).[39]

[35] Section 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.
[36] Section 394.9082(3), F.S.
[37] Section 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.
[38] Section 394.9082(5), F.S.
[39] The DCF, *Managing Entities*, https://www.myflfamilies.com/service-programs/samh/managing-entities/ (last visited March 11, 2021).



The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.[40] In Fiscal Year 2018-2019, the network service providers under contract with the MEs served 339,093 individuals.[41]

Coordinated System of Care

MEs are required to promote the development and implementation of a coordinated system of care.[42] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a ME or by another method of community partnership or mutual agreement.[43] A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to MEs.[44] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or

[40] Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.
[41] The DCF, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year,* (Dec. 6, 2019) available at https://www.myflfamilies.com/service-programs/samh/publications/docs/SAMH%20Services%20Plan%202018%20Update.pdf (last visited Feb. 16, 2021).
[42] Section 394.9082(5)(d), F.S.
[43] Section 394.4573(1)(c), F.S.
[44] Section 394.4573(3), F.S. The Legislature has not funded system improvement grants.

to meet specific needs identified in DCF's assessment of behavioral health services in this state.[45] The DCF must use performance-based contracts to award grants.[46] There are several essential elements that make up a coordinated system of care, including all of the following:

- Community interventions.
- Case management.
- Care coordination.
- Outpatient services.
- Residential services.
- Hospital inpatient care.
- Aftercare and post-discharge services.
- Medication assisted treatment and medication management.
- Recovery support.[47]

A coordinated system of care must include, but is not limited to, the following array of services:

- Prevention services.
- Home-based services.
- School-based services.
- Family therapy.
- Family support.
- Respite services.
- Outpatient treatment.
- Crisis stabilization.
- Therapeutic foster care.
- Residential treatment.
- Inpatient hospitalization.
- Case management.
- Services for victims of sex offenses.
- Transitional services.
- Trauma-informed services for children who have suffered sexual exploitation.[48]

Current law requires the DCF to define the priority populations which would benefit from receiving care coordination, including considerations when defining such population.[49] Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

[45] *Id.*
[46] *Id.*
[47] Section 394.4573(2), F.S.
[48] Section 394.495(4), F.S.
[49] Section 394.9082(3)(c), F.S.

Funding and Expenses

Contracts with MEs are funded with General Revenue, other qualifying state funds, or applicable federal funding.[50] The MEs are required to develop and implement standards for collecting and reporting data related to crisis stabilization and detoxification and addictions receiving services.[51] The data is collected from entities who have received funds and operate under s. 394.875, F.S.[52] MEs are required to reconcile the data on a monthly basis, and submit the data to the DCF on a monthly and annual basis. The DCF is required to post data on its website regarding each ME's utilization of funds.[53]

Kinship Navigator Programs

Section 39.5086(2)(b), F.S., permits each lead agency to establish a kinship navigator program subject to available resources. A kinship navigator program is defined as a program designed to ensure that kinship caregivers are provided with the necessary resources for the preservation of the family.[54] The purpose of such program is to provide support and services to kinship caregivers, specifically to:

- Coordinate with other state and local agencies that promote service coordination or provide information and referral services;
- Plan and operate in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant governmental agencies, and relevant community-based or faith-based organizations;
- Provide toll-free telephone hotline services with information to link kinship caregivers, kinship support facilitators, and kinship service providers;
- Provide outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials; and
- Promote partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant governmental agencies, to increase their knowledge of the needs of kinship care families to promote better services for those families.[55]

Several provisions of law provide for financial support to relative and non-relative caregivers of children who are in out-of-home care who meet specified criteria, including the:

- Guardianship Assistance Program;[56]
- Level I family foster care homes licensure if qualifications are met;[57]
- Relative Caregiver Program (RCP);[58] and
- Temporary Cash Assistance (TCA) Program.[59]

[50] Section 394.9082(9), F.S.
[51] Section 394.9082(10), F.S.
[52] *Id.*
[53] Section 394.9082(10)(e) and (f), F.S.
[54] Section 39.5086(1)(c), F.S.
[55] Section 39.5086(2)(b), F.S.
[56] Section 39.6225, F.S.
[57] Section 409.175, F.S.
[58] Section 39.5085, F.S.
[59] RCP and TCA are funded by Temporary Assistance for Needy Families. State funds are also available for children who were placed in foster care and change placement to a nonrelative in a permanent guardianship. *See* The DCF, *Temporary*

The DCF operating procedures require case workers to provide information to relative caregivers about the kinship navigation program, including referrals, and guidelines about the program.[60] All lead agencies except for one offer kinship services,[61] but the services provided do not meet the current statutory requirements for such a program.[62] The DCF reports that approximately 39 percent of lead agencies offer more than 31 of 41 best practice services. Fifty percent of lead agencies offer more than 65 percent of services for kinship caregivers and offer 85 percent of services for programmatic support.[63]

The Family First Prevention Act allows Title IV-E agencies to claim 50 percent of kinship navigator program costs if specified criteria are met.[64] The DCF has been working with the Children's Home Network to contribute to the evidence of their program.[65] The DCF received a one year grant and has been given the opportunity to continue receiving the Kinship grant to begin working with a second provider.[66] One of the DCF's objectives is to implement a plan with Kid's, Inc. to have one or more of its own models meet the eligibility requirements for federal reimbursement.[67]

Family-Finding Program

The DCF may establish a formal family-finding program, subject to available resources.[68] The family-finding program may begin as soon as the child is taken into custody and throughout the duration of the case, as necessary, locating and engaging as many family members as possible who may be candidates to assist with support and care of the child.[69] Florida law defines diligent

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Cash Assistance (TCA), available at https://www.myflfamilies.com/service-programs/access/temporary-cash-assistance.shtml (last visited Feb. 16, 2021).

[60] The DCF, *CFOP 170-10*, Chapter 8, p. 2, available at https://www.myflfamilies.com/admin/publications/policies.asp?path=CFOP%20170-xx%20Child%20Welfare/CFOP%20170-10%20%20Providing%20Services%20and%20Support%20for%20Children%20in%20Care%20and%20for%20Caregivers (last visited Feb. 16, 2021) (hereinafter referred to as "CFOP 170-10")

[61] The DCF, *Senate Bill 92 Fiscal Analysis*, p. 5 (Feb. 10, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DCF Analysis").

[62] *Id.*

[63] The DCF Analysis, p. 12.

[64] *Id.* The DCF Analysis explains that lead agencies must use evidenced-based kinship navigation program to be eligible for funds. Also, under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program is administered by the Children's Bureau, an agency within the U.S. Department of Health and Human Services. The DCF is Florida's Title IV-E agency. *See* Congressional Research Service, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, available at https://www.everycrsreport.com/reports/R42792.html; the DCF, CFOP 170-15, available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15,%20%20Chapter%2004,%20Title%20IV-E%20Foster%20Care.pdf (all sites last visited Feb. 16, 2021).

[65] *Id.*

[66] The DCF Analysis, p. 12.

[67] *Id.*

[68] Section 39.4015(3), F.S.

[69] Section 39.4015(3)(a), F.S.

search efforts to locate a parent or prospective parent,[70] but requires the DCF to make efforts beyond basic search tools by exploring alternative tools and methodology.[71]

The DCF has rule making authority to implement a family-finding program,[72] and must coordinate with the lead agencies to document strategies used to locate and engage the family to, in part:

- Attend visitation with the child;
- Assist with transportation of the child;
- Provide respite or child care services; or
- Provide actual kinship care.[73]

Between Fiscal Years 2001-02 and 2008-09, the DCF implemented or expanded family finding tools in all 67 counties to test the flexibility to use Title IV-E funding for expanded child welfare services and supports and to increase family connections in an effort to reduce the number of children in out-of-home care.[74] The six-step approach includes discovery, engagement, planning, decision making, evaluation, and follow-up support.[75] The overall conclusion was that the flexible use of Title IV-E funds for expanded services reduces the number of children in out-of-home care through reunification of the child and the caregiver.[76]

Child and Family Well-being Programs

Florida law does not presently provide for a child and family well-being system. There are, however, goals that the DCF in conjunction with lead agencies, community-based subcontractors, and the community alliance must aspire to achieve are to protect the best interest of the children including, in part, to:

- Protect children from abuse and neglect;
- Ensure that children remain safely in their home, if possible and appropriate;
- Preserve family relationships; and
- Provide services to families[77] and children to meet the children's needs, including their educational and mental health needs, and skills for independent living.[78]

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[70] Section 39.01(23), F.S., defines "diligent efforts of social service agency" to mean reasonable efforts were taken to provide social services or reunification services made by any social service agency that is a party to a case plan. Section 39.01(24), F.S., defines "diligent search" to mean the efforts of a social service agency to locate a parent, or prospective parent whose identity or location is unknown, is initiated as soon as the social service agency is made aware of the existence of such parent. When a parent's identity or location are unknown, s. 39.503, F.S., sets out efforts that must be made by the DCF to identify and locate him or her.

[71] Section 39.4015(3)(b), F.S.

[72] Section 39.4015(4), F.S.

[73] *Id.*

[74] Louis de la Parte, Florida Mental Health Institute, *Evaluation Brief 2, Florida's IV-E Waiver Demonstration Project*, pp. 1-2, 4 (Jan. 2010) available at https://www.myflfamilies.com/general-information/publications-forms/docs/APSR/S10-008463_Title%20IV-E%20Brief%202%20January2010.pdf (last visited Feb. 16, 2021).

[75] *Id.* at p. 4.

[76] *Id.* at p. 4-5.

[77] Section 39.001(47), F.S., defines "family support services" to mean services provided to children (and their families) who have been found to be safe and at high or very high risk of future maltreatment.

[78] Section 409.986, F.S.

There are innovative programs being developed throughout the United States which focus on family well-being and implementing creative preventative measures to keep families intact.[79] The U.S. Department of Health & Human Services Children's Bureau (Children's Bureau) provides information, training assistance, and grants focused on strengthening families, protecting children, and ensuring children have permanent families with a goal of improving safety, permanency, and well-being.[80]

Casey Family Programs (CFP) is an organization that focuses on these key objectives of child-well-being. CFP was founded in 1966 and operates in all 50 states.[81] The program provides consulting, research and analysis, and services free of charge to advance the goal of child well-being.[82]

Alia is another program that is transforming child welfare systems by conducting research, providing strategy sessions, leadership coaching, and other workshops and events.[83] Alia promotes building an "unsystem" with five phases for implementing change to shift the primary focus of child welfare systems to "prevention". The five stages consist of:

- Preparing to Lead Change: Co-creating your Vision.
- Building the Foundation: Workforce Resilience.
- Shifting Agency Mindset: *Why* Change is Needed.
- Aligning Practice with your *Why*.
- Reaching a Tipping Point Toward Primary Prevention.[84]

South Carolina adopted a child welfare system with similar goals and objectives as these programs and allocates resources with a primary focus on a preventative system.[85] Key elements of the system include, in part, all of the following:

- Partnering with nonprofit and community-based organizations.
- Removing the stigma parents receive when receiving assistance.
- Engaging parents.
- Establishing family resource centers in local communities.
- Providing more services to meet families in locations convenient to them.
- Fostering a greater understanding of trauma.[86]

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[79] Casey Family Programs, *Who We Are*, available at https://www.casey.org/who-we-are/; Children's Bureau Express, *Transforming South Carolina's Approach to Child Welfare*, available at https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=219&sectionid=2&articleid=5652; Alia, *Get to Know Us*, available at https://www.aliainnovations.org/who-we-are (all sites last visited February 16, 2021).
[80] Children's Bureau, *What We Do*, available at https://www.acf.hhs.gov/cb/about/what-we-do (last visited Feb. 16, 2021).
[81] Casey Family Programs, *Who We Are*, available at https://www.casey.org/who-we-are/ (last visited Feb. 16, 2021).
[82] *Id.*
[83] Alia, *Project Work*, available at https://www.aliainnovations.org/project-work (last visited Feb. 16, 2021).
[84] *Id.*
[85] Children's Bureau Express, *Transforming South Carolina's Approach to Child Welfare*, available at https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=219&sectionid=2&articleid=5652 (last visited Feb. 16, 2021).
[86] *Id.*

Out-of-Home Placement

Section 39.4087, F.S., establishes goals for the DCF to achieve and requirements to meet with respect to caregivers. Specifically, one goal of the DCF is to treat caregivers, including foster parents, with dignity, respect, and trust while ensuring services are aimed at achieving what is in the child's best interest.[87] Subject to available resources and any state or federal law to the contrary, the DCF is required to provide to caregivers an open exchange of information and supportive services.[88] For example, the DCF should:

- Provide training and support to the caregiver to help meet necessary requirements for the daily care and any special needs of the child; and
- Fully disclose all relevant information regarding the child and the background of his or her biological family, including, but not limited to:
  - Any delinquency or criminal record of the child; and
  - With parental consent to the extent required by law, any known health history and medical, psychological, or behavioral health issues or needs of the child.[89]

A caregiver must maintain the confidentiality of any information as required by law.[90]

Community-based care lead agencies are required to provide support for all licensed out-of-home caregivers,[91] including:

- Access to foster parent support groups;
- Service resources for children placed in the home;
- Foster parent mentors; and
- Service resources for caregivers.[92]

The community-based care lead agencies must also make contact with the licensed caregiver at least quarterly.[93] Several other rules address efforts required by the child protective investigator or case manager to assist or provide information to caregivers.[94] Licensure rules address a caregiver's obligation to maintain confidentiality.[95]

The DCF has also established operating procedures for providing services and support for children in care and for caregivers,[96] including supporting relatives who are caring for children

[87] Section 39.4087(1), F.S.
[88] *Id.*
[89] *Id.*
[90] Section 39.4087(1)(c), F.S.
[91] Fla. Admin. Code R. 65C-45.011.
[92] Fla. Admin. Code R. 65C-45.011(1).
[93] Fla. Admin. Code R. 65C-45.011(2).
[94] *See* Fla. Admin. Code R. 65C-35.004 (assisting the caregiver with attending appointments with a child if the caregiver is unavailable); Fla. Admin. Code R. 65C-35.011(10) (informing the caregiver about the importance of communicating regarding a child's psychotropic medication and recommending they exchange contact details); and Fla. Admin. Code R. 65C-28.005(4) (regarding services and information relating to the child upon a change of placement).
[95] *See* Fla. Admin. Code R. 65C-45.003 (requiring an assessment of how, amongst other things, the caregiver will maintain confidentiality as required by law).
[96] Chapter 8, CFOP 170-10.

placed in out-of-home care,[97] and nonrelative caregiver financial assistance.[98] Additional subsidies are available depending on the permanency status of the child.[99] The DCF procedures also list information with which the child welfare professional must provide to the relative caregiver for completing the home study.[100]

Conflicts of Interest

There are several Florida statutes which address transactions or other situations in which a conflict of interest exists or may exist,[101] and define the term "conflict of interest" in context of the statute with which it relates.[102]

Corporations

Florida laws on corporations define "director's conflict of interest transaction" as a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation's directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial interest or other material interest.[103] If a director's conflict of interest transaction is fair to the corporation at the time it is authorized, approved, effectuated, or ratified:

- Such transaction is not void or voidable; and
- The fact that the transaction is a director's conflict of interest transaction is not grounds for any equitable relief, an award, or other sanctions.[104]

If proceedings challenging the validity of a director's conflict of interest transaction or proceedings seeking equitable relief, damages, or other sanction are brought, the person challenging the director's conflict of interest transaction has the burden to prove the lack of fairness of the transaction in specified situations.[105]

Nonprofit Organizations

Chapter 617, F.S., governs corporations not for profit and does not define conflict of interest. It provides, however, that no contract or other transaction between a corporation and one of its directors or other corporation in which one or more directors have an interest shall be void or

[97] Chapter 8, CFOP 170-10, p. 2-5. Several programs exist to provide relative caregiver support, including, but not limited to, the kinship navigator program, medical insurance, "at-risk child care subsidy, local flexible funds, "child-only" temporary cash assistance, and relative caregiver program.
[98] Chapter 9, CFOP 170-10.
[99] *Id.*
[100] *Id.* at pp. 5-7.
[101] *See* ss. 112.312, 605.04092, 607.0832, and 617.0832, F.S.
[102] *See* ss. 112.312, and 605.0492, F.S.
[103] Section 607.0832, F.S.; *see also* s. 605.0492(1)(g), F.S., with respect to limited liability companies which defines "member's conflict of interest" as a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company's members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.
[104] Section 607.0832(2), F.S. This is the case when because of the relationship or interest, because such director is present at the meeting in which the transaction was authorized, or because his or her votes are counted for such purpose.
[105] Section 607.0832(3), F.S. The presence of or a vote cast by a director with an interest does not affect the validity of an action if specified conditions are met.

voidable because of the relationship or interest, or because the interested director is present at the meeting which authorizes or ratifies such contract if:

- The relationship is disclosed or known to the other directors which authorizes or ratifies the transaction by a vote which is sufficient to approve the transaction without the interested director's vote;[106]
- The relationship is known or disclosed and the members entitled to vote authorize or ratify it by vote or written consent;[107] or
- The contract or transaction is fair and reasonable to the operation at the time is it authorized by the board, a committee, or the members.[108]

The transactions are required to be approved by a majority vote of the members.[109]

Public Officer and Employee

Public officers and employees must comply with standards of conduct provided for in s. 112.313, F.S. Chapter 112, F.S., restricts the type of business transactions that public officers and employees of an agency may have with a business entity in which the officer, employee, or the officer's or employee's specified family has a material interest.[110] Public officers and employees of agencies are also prohibited from having conflicting employment or contractual relationships with any business entity or regulation.[111] Section 112.312(8), F.S., defines "conflict" or "conflict of interest" as a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

III. Effect of Proposed Changes:

Lead agencies and Managing Entities (MEs)

Duties

The bill amends s. 409.988, F.S., requiring the lead agencies to demonstrate the ability to adhere to all best child welfare practices under ss. 39.4087, 39.523, 409.1415, and 409.145, F.S. Further, the bill amends s. 409.996, F.S., to require the DCF to include a provision in its contracts with the lead agencies which requires them to provide information specifying how the lead agency will adhere to this requirement.

Salary Provisions

The bill amends s. 409.988, F.S., removing the requirement for the individual lead agency to post specified budget information on its website. Sections 394.9082 and 409.996, F.S., are amended to add a similar provision; however, the bill requires the DCF, rather than each entity, to collect and post on its website compensation benefits for employees of MEs and lead agencies. The term "employee" is defined as their Chief Executive Officer, Chief Financial Officer, Chief Operating

[106] Section 617.0832(1)(a), F.S. The presence of a vote cast by a director having a relationship or interest does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized or ratified in this paragraph.
[107] Section 617.0832(1)(b), F.S.
[108] Section 617.0832(1)(c), F.S.
[109] Section 617.0832(2) and (3), F.S.
[110] Section 112.313(3), F.S.
[111] Section 112.313(7), F.S.

Officer, or any other executive staff of the managing entity. The requirement to post this information in one centralized location will provide more consistency with the information posted for lead agencies statewide.

The bill also requires the DCF to post findings of a multi-year review of specified financial information, including revenues, expenditures, and financial position relating to the MEs and lead agencies. It must be conducted every 2 years relating to the MEs and lead agencies, and the agencies and entities must develop and maintain a plan to achieve financial viability. The review findings must be reported to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year.

Conflicts of Interest

The bill creates ss. 394.90825 and 409.987(7), F.S., establishing a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of a lead agency or ME. The bill defines the following terms:

- "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with the managing entity for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.[112]
- "Conflict of interest" means when a board member or an officer, or a relative of a board member or an officer, of the managing entity/lead agency does any of the following:
  - Enters into a contract or other transaction for goods or services with the managing entity/lead agency;
  - Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the managing entity/lead agency or proposes to enter into a contract or other transaction with the managing entity/lead agency; or[113]
  - Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the member or officer, with the managing entity/lead agency.[114]
- "Managing entity" has the same meaning as in s. 394.9082, F.S.[115]
- "Relative" means a relative within the third degree of consanguinity by blood or marriage.[116]

For any activity that is presented to the board of these entities for initial consideration and approval after July 1, 2021, or any contract which is being considered for renewal between July 1, 2021 and December 31, 2021, a board member or officer must make a disclosure of such potential conflict of interest. A rebuttable presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice.

[112] Sections 394.90825(1)(a) and 409.987(7)(a)1., F.S.
[113] Sections 349.90825(1)(b) and 409.987(7)(b)2., F.S. For purposes of this provision, the bill provides that the term "indirect interest" has the same meaning as provided in s. 112.312, F.S.
[114] For purposes of this provision, the bill provides that the term 'benefit' does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.
[115] Section 394.90825(1)(c), F.S.
[116] Sections 394.90825(1)(d) and 409.987(7)3., F.S.

If a contract is not subject to renewal before January 1, 2022, the board member or officer must disclose any information that could reasonably be construed to be a conflict of interest by December 31, 2021.

Any proposed activity or existing contract which does give rise to a disclosure obligation must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and relevant documents related to the transaction must be included. The meeting agenda must clearly state the potential conflict of interest. The board must be given an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

If the board votes against the proposed activity, the board member or officer must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity or the board member or officer must resign. If the board finds that an officer or member has violated this provision, he or she will be deemed removed from office before the next scheduled board meeting. If the board votes against the renewal of an existing contract which gives rise to a conflict of interest, the parties to the activity may opt to cancel the activity, or in the alternative, the member or officer must resign from the board before the next scheduled meeting. The bill provides for limitations on damages under any existing contracts.

A board member, officer, or relative who has an interest in an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board, make a presentation, and then leave the meeting during any relevant discussion by the other board members. A member or officer who is a party to, or has an interest in, the activity shall recuse himself or herself from the vote.

A contract entered into between a board member, officer, or relative of a member or an officer in which there is a conflict of interest or potential conflict of interest, is void or voidable and terminates upon the filing of a written notice to the board which contains at least 20 percent of the voting interests of the managing entity.

MEs will need to amend their by-laws or articles of incorporation to ensure that the new requirements for potential conflict of interest transactions are incorporated.[117] The DCF would need to amend existing contracts with lead agencies and may need addendums to active Invitations to Negotiate in relation to several amendments proposed by the bill.[118] The DCF also would need to edit the Supplemental Contract related to future Invitations to Negotiate.[119]

Community Alliances

The bill amends s. 20.19, F.S., modifying the requirement for the DCF to form a community alliance to cover a county or counties, to cover a "community-based care lead agency service area" instead.

[117] The DCF Analysis at p. 7.
[118] *Id.*
[119] *Id.*

It also requires each community alliance to adopt bylaws to determine the specific membership composition that best represents the local area being serviced by the alliance, and redefines the membership to a minimum of 20 members from a specified list of representatives, including all of the following:

- A representative from the DCF.
- Representatives from local government.
- Representatives from the school district.
- A representative from the United Way.
- Representatives from county sheriffs' offices.
- A representative from each circuit court in the lead agency service area.
- A representative from the children's services council, if one exists.
- A representative of a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, or promote adoption.

This section also requires community alliances to adopt bylaws that allow for increased membership to no more than 30 members if the change is necessary to adequately represent the diversity in population within the community alliance service area.

The bill amends s. 409.997, F.S., requiring the DCF to develop, in collaboration with the local community alliance, an alternative plan with specified details to use local community entities to implement community-based care services if conditions make it impossible or not feasible to competitively contract with a lead agency. This provision allows for the DCF and community alliance to work with partners that may include, but not be limited to, private entities, local and county governmental entities. The plan created must detail how the community will continue to implement community-based care through competitively procuring either the specific components of foster care and related services or comprehensive services for defined eligible populations of children and families. The bill requires the plan to ensure local control over the management and administration of the service provision and to adhere to recognized best business practices, including, but not limited to, the use of public or private partnerships. The bill is substantially similar to former s. 409.1671(1)(d), F.S. (2013), before that section was repealed by ch. 2014-224, s. 46, Laws of Florida.

Family-Finding and Kinship Navigator Programs

Sections 39.4015 and 39.5086, F.S., are amended to require, rather than permit if resources are available, the establishment of a formal family-finding program and kinship navigator program. The amendments clarify that family-finding efforts must go beyond basic search tools to comply with each of efforts required by the DCF and lead agencies' to search for children's families. The DCF may adopt rules to implement these programs.

Lead agencies would be encouraged to meet federal standards for the kinship program to claim 50 percent of the applicable costs.[120]

[120] The DCF Analysis at p. 5.

The Children's Home Network has an existing kinship navigator program that is recognized by the Children's Bureau and is collaborating with the DCF to become rated in the clearinghouse for future utilization in all lead agencies.[121]

Child and Family Well-Being

The bill requires the DCF to establish a program that consists of a child and family well-being, system[122] to provide services through contracts with lead agencies in accordance with s. 409.987, F.S. The bill provides program requirements, including:

- Creating a system that requires fundamental change;
- Designating lead agency leadership that will identify a core group of agency individuals to develop a plan for creating the change;
- Recognizing that change of this magnitude is difficult and time-consuming, and determine steps to determine the well-being of individuals involved at an early stage of the process;
- Developing a plan for creating a change in the way partners view the process;
- Building relationships throughout the process of change;
- Providing regular interaction amongst the workforce to discuss changes that are needed; and
- Redirecting resources toward primary prevention and away from removing children from their homes.

The DCF must implement the program in collaboration with the designated lead agency, community alliance, and Florida Institute for Child Welfare. By October 1, 2021, and annually thereafter, the Florida Institute for Child Welfare must report to the Governor, President of the Senate, and the Speaker of the House of Representatives regarding program compliance and outcomes of the program.

The DCF has begun transitioning to a prevention focused child and family well-being system in accordance with the Family First Prevention Services Act (FFPSA) which authorizes new Title IV-E funding for a limited time period and in limited circumstances.[123]

Caregivers

The bill provides that the DCF is required to treat caregivers in a certain manner and provide specified support and information that was formerly considered to be discretionary, depending on resources and subject to any laws to the contrary. Specifically, the DCF must treat caregivers with dignity, respect and trust while providing services that are in the best interest of the child. Also, the DCF now must provide specified support and information set out in s. 39.4087(1), F.S., including:

- Providing an explanation to the caregiver regarding the roles of the persons involved;
- Providing training and support to the caregiver;

[121] The DCF Analysis at p. 10.
[122] Section 409.998(2), F.S., defines "child and family well-being system" as a system that recognizes the difference between poverty and neglect and that provides mentoring and supports to biological parents as they develop the skills and resources necessary to adequately care for their children.
[123] The DCF Analysis at p. 8.

- Disclosing all relevant information regarding the child and the background of his or her biological family;
- Allowing caregivers to communicate with professionals who work with the child;
- Providing a means by which a caregiver may contact the lead agency 24 hours a day, 7 days a week;
- Soliciting and considering caregiver input on a child's case plan;
- Providing a clear, written explanation to a caregiver of any plan concerning the placement of a child;
- Providing information on any emergency situation which arises;
- Allowing a caregiver to request removal of the child without retaliation;
- Informing the caregiver as soon as possible of any decision made by the court or child-caring agency relating to a child who is placed with the caregiver;
- Giving at least 7 days' notice to a caregiver of any meeting or court hearing;
- Considering the caregiver as placement for the child if the child reenters out-of-home care;
- Allowing a caregiver a period of respite upon reasonable notice; and
- Providing the caregiver, upon request, with copies of all information in the department's records regarding the caregiver.

The amendments to this subsection clarify that a caregiver must maintain confidentiality of any information as required by law, rather than this requirement being stated in relation only to the information the caregiver receives related to the child and the background of his or her biological family.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is anticipated that a staff person will be needed by each CBC lead agency to sufficiently implement a family-finder program. Currently, five of the CBC lead agencies have an active family-finder program. For the 14 lead agencies that do not currently implement a family-finder program, adding one staff position each will cost $964,106 annually, plus one-time costs of $62,272.

The CBC lead agencies do not currently operate kinship navigator programs. It is projected that the lead agencies will need one position each to implement a kinship navigator program. In addition to the 19 additional CBC staff positions, it is projected that each CBC will need to contract with a kinship navigator program provider. It should be noted that Children's Home Network is an agency under contract with a CBC lead agency to provide a kinship navigator pilot program. The pilot program is the process of becoming an approved evidence-based program. Once it has received federal approval as an evidence-based program, it can be replicated in other CBC lead agencies. The cost to contract for similar kinship navigator services and hire one additional staff position will cost each CBC an average cost of $529,578 annually. The recurring cost for all 19 lead agencies is expected to be $10,061,982. The lead agencies will likely use current resources to support the technology requirements of the kinship navigator program.

The total costs for CBC lead agencies to implement statewide the family-finder and kinship navigator programs is $11,088,360, which includes one-time costs of $62,272.

C. Government Sector Impact:

It is anticipated that the seven sheriffs' offices that conduct their own child protective investigations will need to hire an additional staff position to implement the family-finding program. The cost for the additional staffing is projected to total $513,189, which includes one-time costs of $31,136.[124]

The DCF projects the need for 64 additional Child Protective Investigator FTE positions to implement the family-finding program.[125] Estimated expenditures, including Salaries and Benefits and associated expenses, total $4,713,147, including one-time costs of $284,672.[126] The DCF will likely require minimal use of existing technology resources to adapt any websites and contracts, as necessary.[127]

[124] The DCF Analysis at p. 9.
[125] The DCF Analysis at p. 9.
[126] *Id.*
[127] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.19, 30.4015, 39.4087, 39.5086, 394.9082, 409.987, 409.988, and 409.996.

This bill creates the following sections of the Florida Statutes: 394.90825 and 409.998.

IX. Additional Information:

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

PCS 519024 by Appropriations (Recommended by Appropriations Subcommittee on Health and Human Services):
The proposed committee substitute:

- Modifies the DCF's requirement to collect and post on its website annual and other specified expenses, and instead requires the DCF to post and report findings related to a multi-year review of the lead agencies' and ME's financial information; and
- Removes the bill's proposed salary cap for managing entities' employees, and the change to reduce the salary cap for lead agencies' employees.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 755 - 778

and insert:

(k) Shall publish ~~post~~ on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-5. ~~subparagraphs 1.-4.~~ for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total

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for all case management services subcontracted or directly provided by the lead agency:

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

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

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

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

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

(l) Shall identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating with the lead agency or offering services or other assistance on a volunteer basis to the children and families served by the lead agency. The lead agency shall ensure that appropriate lead agency staff and subcontractors, including, but not limited to, case managers, are informed of the specific services or assistance available from community-based and faith-based organizations.

Section 7. Subsection (3) of section 402.40, Florida Statutes, is amended to read:

402.40 Child welfare training and certification.—

(3) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs for persons who provide child welfare services. A third-party credentialing entity shall request such approval in writing from the department. In order to obtain

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approval, the third-party credentialing entity must:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain a child welfare certification and to maintain such certification.

(b) Develop and apply core competencies and examination instruments according to nationally recognized certification and psychometric standards.

(c) Maintain a professional code of ethics and a disciplinary process that apply to all persons holding child welfare certification.

(d) Maintain a database, accessible to the public, of all persons holding child welfare certification, including any history of ethical violations.

(e) Require annual continuing education for persons holding child welfare certification.

(f) Administer a continuing education provider program to ensure that only qualified providers offer continuing education opportunities for certificateholders.

(g) Review the findings and all relevant records involving the death of a child or other critical incident following completion of any reviews by the department, the inspector general, or the Office of the Attorney General. Such review may occur only upon the filing of a complaint from an outside party involving certified personnel. This review shall assess the certified personnel’s compliance with the third-party credentialing entity’s published code of ethical and professional conduct and disciplinary procedures.

(h) Maintain an advisory committee, including representatives from each region of the department, each

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sheriff's office providing child protective services, and each community-based care lead agency, who shall be appointed by the organization they represent. The third-party credentialing entity may appoint additional members to the advisory committee.

(i) Any decision by a department-recognized credentialing entity to deny, revoke, or suspend a certification, or otherwise impose sanctions on an individual who is certified, is reviewable by the department pursuant to 397.321(15).

Section 10. Subsection (7) of section 409.990, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to that section to read:

409.990 Funding for lead agencies.—A contract established between the department and a lead agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources.

(7) If subcontracted service providers must provide services that are beyond the contract limits due to increased client need or caseload, the lead agencies shall fund the cost of increased care.

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

And the title is amended as follows:

Delete line 62

and insert:

welfare practices; requiring lead agencies to publish on its website within a specified time certain information related to case managers' caseloads; amending s. 402.40, F.S.; providing that the department is authorized to review any decision to

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take specified actions against certified individuals; amending s. 409.990, F.S.; requiring lead agencies to fund the cost of increased care in certain circumstances; amending s. 409.996, F.S.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	
	.	

The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Between lines 953 and 954
insert:

Section 11. Subsection (2) of section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental

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illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant. For a forensic client who is held in a jail awaiting admission to a facility of the department, and who is likely to regain competence to proceed in the foreseeable future, restoration treatment may be provided at any facility deemed appropriate by the department secretary.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 6 months after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported to the committing court's jurisdiction for the hearing. If the defendant is

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receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

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

And the title is amended as follows:

Delete line 81

and insert:

Governor and the Legislature; amending s. 916.13, F.S.; providing that a forensic client who is being held in a jail awaiting admission to a facility of the Department of Children and Families who is likely to regain competence to proceed may receive treatment at any facility designated by the department; providing an effective

519024

576-02688-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the Department of Children and Families; amending s. 20.19, F.S.; requiring the department to establish community alliances in each community-based care lead agency service area; requiring community alliances to adopt certain bylaws; revising the membership of community alliances; amending s. 39.4015, F.S.; requiring, rather than authorizing, the department to develop a family-finding program; removing the limitation that the development of family-finding programs is subject to available resources; requiring that family finding begin as soon as a child is taken into custody of the department; making technical changes; amending s. 39.4087, F.S.; requiring the department to treat caregivers in a specified manner; requiring the department to provide certain information to and training for caregivers of children in foster care; removing the requirement that such information be provided subject to available resources; expanding certain information that is required to be fully disclosed to the caregivers to include the child's issues related to behavioral health; making technical changes; amending s. 39.5086, F.S.; removing the limitation that the development of kinship navigator programs is subject to available resources; requiring, rather than authorizing, each community-based care

519024

576-02688-21

lead agency to establish a kinship navigator program; amending s. 394.9082, F.S.; requiring the department to collect and post specified information on its website for each managing entity under contract with the department; creating s. 394.90825, F.S.; defining terms; requiring a board member or an officer of a managing entity to disclose specified activity that may reasonably be construed as a conflict of interest; creating a rebuttable presumption of a conflict of interest if the activity was acted upon by the board without prior notice; establishing a process for the managing entity's board of directors to address the activity under certain timelines; providing for certain consequences for failure to obtain a board's approval or failure to properly disclose a contract as a conflict of interest; amending s. 409.987, F.S.; requiring the department to develop an alternative plan to contracting with a lead agency in a community under certain circumstances; providing requirements for the alternative plan; defining terms; requiring a board member or an officer of a lead agency to disclose activity that may reasonably be construed as a conflict of interest; creating a rebuttable presumption of a conflict of interest if the activity was acted upon by the board without prior notice; establishing a process for the lead agency's board of directors to address the activity under certain timelines; providing for certain consequences for failure to obtain a board's approval or failure to

properly disclose a contract as a conflict of interest; amending s. 409.988, F.S.; deleting a requirement that lead agencies post their current budgets on their websites; requiring a lead agency to demonstrate the ability to adhere to all best child welfare practices; amending s. 409.996, F.S.; requiring that contracts between the department and lead agencies provide information to the department which specifies how the lead agency will adhere to all best child welfare practices; requiring the department to collect and post on its website specified information relating to contracts between lead agencies and the department; creating s. 409.998, F.S.; providing legislative findings and intent; requiring the department to establish a program that consists of a child and family well-being system; requiring the designated lead agency to carry out programmatic functions; defining the term "child and family well-being system"; specifying program requirements; requiring the department, in collaboration with specified entities, to design, implement, and evaluate the program requirements; requiring the Florida Institute for Child Welfare, by a specified date, to annually submit a report to the Governor and the Legislature; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (5) of section 20.19, Florida Statutes, are amended to read:

20.19 Department of Children and Families.—There is created a Department of Children and Families.

(5) COMMUNITY ALLIANCES.—

(a) The department shall, in consultation with local communities, establish a community alliance ~~or similar group~~ of the stakeholders, community leaders, client representatives, and funders of human services in each community-based care lead agency service area ~~county~~ to provide a focal point for community participation and governance of community-based services. ~~An alliance may cover more than one county when such arrangement is determined to provide for more effective representation.~~ The community alliance shall represent the diversity of the community.

(d) Each community alliance shall adopt bylaws to determine the specific membership composition that best represents the local community served by that community alliance. The membership of a ~~the~~ community alliance must ~~in a county shall at a minimum~~ be composed of no more than 20 members selected from the following:

1. A representative from the department.

2. Representatives ~~A representative~~ from local ~~county~~ government.

3. Representatives ~~A representative~~ from the school district.

4. A representative from the ~~county~~ United Way.

5. Representatives ~~A representative~~ from ~~the~~ county sheriffs' offices ~~sheriff's office~~.

6. A representative from each ~~the~~ circuit court in the lead agency service area ~~corresponding to the county~~.

7. A representative from the ~~county~~ children's services council ~~board~~, if one exists.

8. A representative of a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, or promote adoption.

(e) The community alliance shall adopt bylaws that allow for the ~~and may increase the~~ membership of the alliance to be increased to no more than 30 members if, in the judgment of the alliance, such change is necessary to adequately represent the diversity of the population within the community alliance service circuits. The additional membership may ~~to~~ include the state attorney for the judicial circuit in which the community alliance is located, or his or her designee;~~,~~ the public defender for the judicial circuit in which the community alliance is located, or his or her designee; or~~, and~~ other individuals and organizations who otherwise represent perspectives that will enable the community alliance to accomplish the duties specified in paragraph (b). Such individuals and organizations may include, but need not be limited to, ~~represent~~ funding organizations, ~~are~~ community leaders, and individuals who have knowledge of community-based service issues~~, or otherwise represent perspectives that will enable them to accomplish the duties listed in paragraph (b), if, in the judgment of the alliance, such change is necessary to adequately represent the diversity of the population within the community alliance service circuits~~.

Section 2. Subsection (3) of section 39.4015, Florida

Statutes, is amended to read:

39.4015 Family finding.—

(3) FAMILY-FINDING PROGRAM.~~ Subject to available resources,~~ The department, in collaboration with sheriffs' offices that conduct child protective investigations and community-based care lead agencies, shall ~~may~~ develop a formal family-finding program to be implemented by child protective investigators and community-based care lead agencies ~~as resources permit~~.

(a) Family finding shall ~~may~~ begin as soon as a child is taken into custody of the department, pursuant to s. 39.401, and throughout the duration of the case as necessary, finding and engaging with as many family members and fictive kin as possible for each child who may help with care or support for the child. The department or community-based care lead agency must specifically document strategies taken to locate and engage relatives and fictive kin. Strategies of engagement may include, but are not limited to, asking the relatives and fictive kin to:

1. Participate in a family group decision-making ~~decisionmaking~~ conference, family team conferencing, or other family meetings aimed at developing or supporting the family service plan;

2. Attend visitations with the child;

3. Assist in transportation of the child;

4. Provide respite or child care services; or

5. Provide actual kinship care.

(b) The family-finding ~~family finding~~ program shall provide the department and the community-based care lead agencies with best practices for identifying family and fictive kin. The family-finding ~~family finding~~ program must use diligent efforts

in family finding and~~,~~ must continue those efforts until multiple relatives and fictive kin are identified~~, and must go beyond basic searching tools by exploring alternative tools and methodologies~~. Family-finding ~~Family finding~~ efforts by the department and the community-based care lead agency may include, but are not limited to:

1. Searching for and locating adult relatives and fictive kin.

2. Identifying and building positive connections between the child and the child's relatives and fictive kin.

3. Supporting the engagement of relatives and fictive kin in social service planning and delivery of services and creating a network of extended family support to assist in remedying the concerns that led to the child becoming involved with the child welfare system, when appropriate.

4. Maintaining family connections, when possible.

5. Keeping siblings together in care, when in the best interest of each child and when possible.

(c) To be compliant with this section, family-finding efforts must go beyond basic searching tools by exploring alternative tools and methodologies. A basic computer search using the Internet or attempts to contact known relatives at a last known address or telephone number do not constitute effective family finding.

Section 3. Section 39.4087, Florida Statutes, is amended to read:

39.4087 Department ~~goals and~~ requirements relating to caregivers; dispute resolution.—

(1) To provide the best care to children, the Legislature

requires ~~establishes as goals for~~ the department to treat foster parents, kinship caregivers, and nonrelative caregivers with dignity, respect, and trust while ensuring delivery of child welfare services is focused on the best interest of the child. To that end, regarding foster parents, kinship caregivers, and nonrelative caregivers caring for dependent children in their home, to the extent not otherwise prohibited by state or federal law ~~and to the extent of current resources~~, the department is required to do all of the following ~~will strive to~~:

(a) Provide a clear explanation to a caregiver on the role of the department, the role of the child's biological family as it relates to the delivery of child welfare services, and the rights and responsibilities of the caregiver.

(b) Provide training and support to the caregiver to help meet the necessary requirements for the daily care of the child and any special needs the child may have.

(c)1. Fully disclose all relevant information regarding the child and the background of his or her biological family. ~~A caregiver must maintain the confidentiality of any information as required by law.~~ Such disclosure includes, but is not limited to:

a.~~1.~~ Any issues relative to the child that may jeopardize the health and safety of the caregiver or other individuals residing in the household or alter the manner in which the caregiver would normally provide care.

b.~~2.~~ Any delinquency or criminal record of the child, including, but not limited to, any pending petitions or adjudications of delinquency when the conduct constituting the delinquent act, if committed by an adult, would constitute

murder in the first degree, murder in the second degree, rape, robbery, or kidnapping.

c.~~3.~~ Information about any physical or sexual abuse the child has experienced.

d.~~4.~~ Any behavioral issues that may affect the care and supervision of the child.

e.~~5.~~ With parental consent to the extent required by law, any known health history and medical, psychological, or behavioral ~~mental~~ health issues or needs of the child, including, but not limited to, current infectious diseases the child has or any episodes of hospitalization due to mental or physical illness.

2. A caregiver must maintain the confidentiality of any information as required by law.

(d) Allow caregivers to communicate with professionals who work with the child, including, but not limited to, therapists and other behavioral health professionals, physicians and other health care professionals, and teachers.

(e) Provide a means by which a caregiver may contact the community-based care lead agency 24 hours a day, 7 days a week, for the purpose of receiving assistance from the lead agency.

(f) Solicit and consider caregiver input on a child's case plan.

(g) Provide a clear, written explanation to a caregiver of any plan concerning the placement of a child in the caregiver's home. If a plan was not developed before the placement, the department must provide a clear, written explanation to the caregiver once the plan is developed.

(h) Provide information, when it becomes available, on any

emergency situation that requires a child to be placed in the caregiver's home.

(i) Allow a caregiver to request the removal of a child from the home without retaliation. However, the caregiver must be open to receiving training or other support services that may mitigate the need for the child's removal. If removal occurs, the caregiver shall cooperate with any transition that is in the best interest of the child to the extent that doing so is safe for the caregiver and other individuals in the caregiver's home.

(j) Inform the caregiver as soon as possible of any decision made by a court or child-caring agency relating to a child who is placed with the caregiver.

(k) Give at least 7 days' notice to a caregiver, to the extent possible, of any meeting or court hearing related to a child in his or her care. The notice must ~~shall~~ include, at minimum, ~~but is not limited to,~~ the name of the judge or hearing officer, the docket number, and the purpose and location of the hearing or meeting. If the department is providing such information to a child's biological parent, the department shall provide notice to the caregiver at the same time as the biological parent.

(l) ~~If the caregiver agrees,~~ Consider the caregiver as a placement option for a child if such child, who was formerly placed with the caregiver, reenters out-of-home care and the caregiver agrees to the child being placed with the caregiver upon reentry ~~and reenters out-of-home care~~.

(m) Upon reasonable notice from a caregiver, allow him or her a period of respite.

(n) Upon request, provide a caregiver with copies of all

information in the department's records relating to the caregiver.

(2)(a) If a caregiver believes that the department, an employee of the department, an agency under contract with the department, or an employee of such agency has violated this section, and that the violation has harmed or could harm a child who is or was in the custody of the department, or that the violation inhibited the caregiver's ability to meet the child's needs as set forth in the case plan, the caregiver may notify the liaison assigned to the caregiver or the child's case manager. The liaison or case manager must make every attempt to resolve the dispute.

(b) If a caregiver believes the dispute is not adequately resolved by the case manager, the caregiver or the liaison for the caregiver may contact the supervisor of the liaison or the supervisor of the case manager. If the caregiver or the liaison for the caregiver contacts a supervisor in writing, he or she may copy the department on the communication, and the department shall maintain a record of any such communication received.

(c) If a caregiver believes that the supervisor of the liaison or the supervisor of the case manager did not adequately resolve the dispute, the caregiver may contact the department, and the department must conduct a review and respond to the caregiver in writing within 30 days after being contacted.

Section 4. Paragraph (b) of subsection (2) of section 39.5086, Florida Statutes, is amended to read:

39.5086 Kinship navigator programs.—

(2) PURPOSE AND SERVICES.—

(b) ~~Subject to available resources,~~ Each community-based

care lead agency shall ~~may~~ establish a kinship navigator program that:

1. Coordinates with other state or local agencies that promote service coordination or provide information and referral services, including any entities that participate in the Florida 211 Network, to avoid duplication or fragmentation of services to kinship care families;

2. Is planned and operated in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant governmental agencies, and relevant community-based or faith-based organizations;

3. Has a toll-free telephone hotline to provide information to link kinship caregivers, kinship support group facilitators, and kinship service providers to:

a. One another;

b. Eligibility and enrollment information for federal, state, and local benefits;

c. Relevant training to assist kinship caregivers in caregiving and in obtaining benefits and services; and

d. Relevant knowledge related to legal options available for child custody, other legal assistance, and help in obtaining legal services.

4. Provides outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials; and

5. Promotes partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant governmental agencies, to increase their knowledge of the needs of kinship care families to promote

better services for those families.

Section 5. Paragraph (m) is added to subsection (3) of section 394.9082, Florida Statutes, to read:

394.9082 Behavioral health managing entities.—

(3) DEPARTMENT DUTIES.—The department shall:

(m) Collect and post all of the following information on its website, updated annually, for each managing entity under contract with the department:

1. Current salaries, bonuses, and other compensation paid, by position, for any employee who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families. For purposes of this subparagraph, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any other executive staff of the managing entity.

2. All findings of the comprehensive, multiyear review of the revenues, expenditures, and financial position of all managing entities, which shall cover the most recent 2 consecutive fiscal years. The review must include a comprehensive system-of-care analysis and provide expenditure information related to direct care, administration, and indirect costs. All contracted entities must develop and maintain a plan to achieve financial viability which shall accompany the department's submission. The findings from this review shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each

year in addition to being posted on the department's Internet website.

Section 6. Section 394.90825, Florida Statutes, is created to read:

394.90825 Boards of managing entities; conflicts of interest.—

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

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

(b) "Conflict of interest" means when a board member or an officer, or a relative of a board member or an officer, of the managing entity does any of the following:

1. Enters into a contract or other transaction for goods or services with the managing entity.

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

3. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the member or officer, with the managing entity. For purposes of

this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.

(c) "Managing entity" has the same meaning as in s. 394.9082.

(d) "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(2)(a) For any activity that is presented to the board of a managing entity for its initial consideration and approval after July 1, 2021, or any activity that involves a contract that is being considered for renewal on or after July 1, 2021, and before January 1, 2022, a board member or an officer of a managing entity shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice as required under subsection (3).

(b) For contracts with a managing entity which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021.

(3)(a) If a board member or an officer, or a relative of a member or an officer, proposes to engage in an activity as described in paragraph (2)(a), the proposed activity must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the proposed activity must be

included in the agenda. The meeting agenda must clearly identify the existence of a potential conflict of interest for the proposed activity. Before a member or an officer, or a relative of a member or an officer, engages in the proposed activity, the activity and contract or other transaction documents must be approved by an affirmative vote of two-thirds of all other members present.

(b) If a member or an officer notifies the board of a potential conflict of interest with the member or officer, or a relative of the member or officer, under an existing contract as described in paragraph (2)(b), the board must notice the activity on a meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the activity must be attached. The meeting agenda must clearly identify the existence of a potential conflict of interest. The board must be given the opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

(4)(a) If the board votes against the proposed activity pursuant to paragraph (3)(a), the board member or officer, or the relative of the member or officer, must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity, or the member or officer shall withdraw from office before the next scheduled board meeting. If the board finds that an officer or a member has violated this paragraph, the officer or member shall be deemed removed from office before the next scheduled board meeting.

(b) In the event that the board does not approve of a

conflict of interest as required in paragraph (3)(b), the parties to the activity may opt to cancel the activity or, in the alternative, the member or officer must resign from the board before the next scheduled board meeting. If the activity canceled is a contract, the managing entity is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(5) A board member or an officer, or a relative of a member or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the member or officer, or the relative of the member or officer, shall leave the meeting during the discussion of, and the vote on, the activity. A member or an officer who is a party to, or has an interest in, the activity shall recuse himself or herself from the vote.

(6) A contract entered into between a board member or an officer, or a relative of a member or an officer, and the managing entity which has not been properly disclosed as a conflict of interest or potential conflict of interest under this section is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the managing entity.

Section 7. Section 409.987, Florida Statutes, is amended to read:

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

(1) Community-based care lead agencies shall be procured by the department through a competitive process as required under chapter 287.

(2) The department shall produce a schedule for the procurement of community-based care lead agencies and provide the schedule to the community alliances established pursuant to s. 20.19(5) and post the schedule on the department's website.

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies.

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

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

(b) Be governed by a board of directors or a board committee composed of board members. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

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

percent of its membership must consist of persons residing within the service area of the lead agency.

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

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

(5) The department's procurement team procuring any lead agencies' contracts must include individuals from the community alliance in the area to be served under the contract. All meetings at which vendors make presentations to or negotiate with the procurement team shall be held in the area to be served by the contract.

(6) In communities where conditions make it impossible or not feasible to competitively contract with a lead agency, the department shall develop an alternative plan, in collaboration with the local community alliance, that may include establishing an innovative consortia of partners which may include, but is not limited to, private entities, local and county governmental entities, and the department. The plan must detail how the community will continue to implement community-based care through competitively procuring either the specific components of foster care and related services or comprehensive services

for defined eligible populations of children and families from qualified licensed agencies as part of the community's efforts to develop the local capacity for a community-based system of coordinated care. The plan must ensure local control over the management and administration of the service provision in accordance with the intent of this section and may adhere to recognized best business practices, including, but not limited to, the use of public or private partnerships.

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

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

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

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

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

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the

relationship of such member or officer, or relative of the member or officer, with the lead agency. For purposes of this subparagraph, the term "benefits" does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.

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

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

2. For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or officer shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021.

(c)1. If a member or an officer, or a relative of a member or an officer, proposes to engage in an activity that is covered by subparagraph (b)1., the proposed activity must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the proposed activity must be included in

the agenda. The meeting agenda must clearly identify the existence of a potential conflict of interest for the proposed activity. Before a member or an officer, or a relative of a member or an officer, engages in the proposed activity, the activity and contract or other transaction documents must be approved by an affirmative vote of two-thirds of all other members present.

2. If a member or an officer notifies the board of a potential conflict of interest with the member or officer, or a relative of the member or officer, under an existing contract as described in subparagraph (b)2., the board must notice the activity on a meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the activity must be attached. The meeting agenda must clearly identify the existence of a potential conflict of interest. The board must be given the opportunity to approve or disapprove of the conflict of interest by a vote of two-thirds of all other members present.

(d)1. If the board votes against the proposed activity pursuant to subparagraph (c)1., the member or officer, or the relative of the member or officer, must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity, or the member or officer shall withdraw from office before the next scheduled board meeting. If the board finds that an officer or a member has violated this subparagraph, the officer or member shall be deemed removed from office before the next scheduled board meeting.

2. In the event that the board does not approve of a

conflict as required in subparagraph (c)2., the parties to the activity may opt to cancel the activity or, in the alternative, the member or officer must resign from the board before the next scheduled board meeting. If the activity canceled is a contract, the lead agency is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(e) A member or an officer, or a relative of a member or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the member or officer, or the relative of the member or officer, must leave the meeting during the discussion of, and the vote on, the activity. A member or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(f) A contract entered into between a member or an officer, or a relative of a member or an officer, and the lead agency which has not been properly disclosed as a conflict of interest or potential conflict of interest under this subsection is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the lead agency.

Section 8. Subsection (1) of section 409.988, Florida Statutes, is amended to read:

409.988 Lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(a) Shall serve all children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

(b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare results-oriented accountability system required by s. 409.997.

(c) Shall follow the financial guidelines developed by the department and provide for a regular independent auditing of its financial activities. Such financial information shall be provided to the community alliance established under s. 20.19(5).

(d) ~~Shall post on its website the current budget for the lead agency, including the salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.~~

~~(c)~~ Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent

children, except those related to the investigation of a referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The lead agency shall make the necessary staff available to department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department.

(e) ~~(f)~~ Shall ensure that all individuals providing care for dependent children receive:

1. Appropriate training and meet the minimum employment standards established by the department. Appropriate training shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age developed by the Child Protection Team Program within the Department of Health.

2. Contact information for the local mobile response team established under s. 394.495.

(f) ~~(g)~~ Shall maintain eligibility to receive all available federal child welfare funds.

(g) Shall demonstrate the ability to adhere to all best child welfare practices pursuant to ss. 39.4087, 39.523, 409.1415, and 409.145.

(h) Shall maintain written agreements with Healthy Families Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention

and intervention services.

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services.

(j) May subcontract for the provision of services required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need, within the lead agency's geographic service area, to exceed this threshold. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and recommendation shall be made by representatives of local stakeholders, including at least one representative from each of the following:

1. The department.
2. The county government.
3. The school district.
4. The county United Way.
5. The county sheriff's office.

6. The circuit court corresponding to the county.

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

(k) Shall post on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-4. for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

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

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

3. The percentage of required home visits completed; and

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

(l) Shall identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating with the lead agency or offering services or other assistance on a volunteer basis to the children and families served by the lead agency. The lead agency shall ensure that appropriate lead agency staff and subcontractors, including, but not limited to, case managers, are informed of the specific services or assistance available from community-based and faith-based organizations.

Section 9. Present subsections (3) through (25) of section 409.996, Florida Statutes, are redesignated as subsections (4) through (26), respectively, a new subsection (3) is added to

that section, and subsections (1) and (2) and paragraph (d) of present subsection (25) are amended, to read:

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

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

(a) Provide for the services needed to accomplish the duties established in s. 409.988. ~~and~~

(b) Provide information to the department which specifies how the lead agency will adhere to all best child welfare practices pursuant to ss. 39.4087, 39.523, 409.1415, and 409.145.

(c) Provide information to the department which is necessary to meet the requirements for a quality assurance program under subsection (20) ~~(19)~~ and the child welfare results-oriented accountability system under s. 409.997.

(d) ~~(b)~~ Provide for tiered interventions and graduated penalties for failure to comply with contract terms or in the event of performance deficiencies. Such interventions and

penalties shall include, but are not limited to:

1. Enhanced monitoring and reporting.

2. Corrective action plans.

3. Requirements to accept technical assistance and consultation from the department under subsection (5) ~~(4)~~.

4. Financial penalties, which shall require a lead agency to reallocate funds from administrative costs to direct care for children.

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

(e) ~~(c)~~ Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(f) ~~(d)~~ Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely follow-up ~~followup~~ of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring

activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall collect and post on its website, and annually update, all of the following information for each lead agency under contract with the department:

(a) Current salaries, bonuses, and other compensation paid, by position, for any employee who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families. For purposes of this paragraph, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any other executive staff of the community-based care lead agency.

(b) All findings of the comprehensive, multiyear review of the revenues, expenditures, and financial position of all lead agencies, which shall cover the most recent 2 consecutive fiscal years. The review must include a comprehensive system-of-care analysis and provide expenditure information related to direct care, administration, and indirect costs. All contracted agencies must develop and maintain a plan to achieve financial viability which shall accompany the department's submission. The findings from this review shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of

Representatives by November 1 of each year in addition to being posted on the department's Internet website.

(26)~~(25)~~ Subject to an appropriation, for the 2020-2021 and 2021-2022 fiscal years, the department shall implement a pilot project in the Sixth and Thirteenth Judicial Circuits, respectively, aimed at improving child welfare outcomes.

(d) The department shall include the results of the pilot projects in the report required in subsection (25) ~~(24)~~ of this section. The report must include the department's findings and recommendations relating to the pilot projects.

Section 10. Section 409.998, Florida Statutes, is created to read:

409.998 Child and family well-being.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that every child deserves a safe, stable, and permanent family and that all families deserve the opportunities and supports to raise their children safely and successfully in their own homes and communities.

(b) The Legislature also finds that families are our greatest asset in ensuring that all children are safe and have what they need to thrive and succeed, and there is evidence that, with appropriate support, many families can remain safely together without court involvement or traumatic separations.

(c) The Legislature further finds that the state's current child welfare system and practices do not always align with current research related to the needs of children and families.

(d) It is the intent of the Legislature that the state establish a child and family well-being system that shifts the focus from child welfare to child well-being by allowing all

sectors of a community and the state to work together to reallocate resources into services and supports that reduce the need for out-of-home care and that improve the well-being of children and families.

(2) ESTABLISHMENT OF PROGRAM.—The department shall establish a program that consists of a child and family well-being system to serve children and their families through a contract with a designated lead agency operating in accordance with s. 409.987. The lead agency shall carry out all programmatic functions necessary to fulfill the intent of this section. As used in this section, the term "child and family well-being system" means a system that recognizes the difference between poverty and neglect and that provides mentoring and supports to biological parents as they develop the skills and resources necessary to adequately care for their children.

(3) PROGRAM REQUIREMENTS.—The creation of a child and family well-being system requires a fundamental change that refocuses all aspects of child welfare on supporting the family's role in caring for children. Successful implementation will result in a community-based network of support where the trauma of child removal is prevented and children are thriving in their own safe, permanent, and nurturing families. The designated lead agency shall collaborate with national experts that specialize in child welfare systems change to create a program that is required to do all of the following:

(a) Designate lead agency leadership that will identify a core group of agency individuals to develop a plan for creating necessary change in the way the agency works.

(b) Recognize that change of this magnitude is difficult

and time-consuming and determine steps necessary to attend to the well-being of individuals involved early on in the process to reduce undesired staff turnover and burnout and increase staff satisfaction and well-being.

(c) Develop a plan for creating a change in the way all partners in the process think about how to best keep families and children safe and together.

(d) Build working relationships throughout the process of change, including some unexpected or unconventional partners, allies, and mentors in the community.

(e) Provide regular and ongoing opportunities for the workforce to interact to discuss new ideas and principles that are needed for change to become permanent.

(f) Redirect resources toward primary prevention and away from removing children from their families.

(4) IMPLEMENTATION.—The department shall, in collaboration with the designated lead agency, the community alliance, and the Florida Institute for Child Welfare, design, implement, and evaluate the program requirements specified in subsection (3).

(5) REPORTING REQUIREMENTS.—By October 1, 2021, and annually thereafter, the Florida Institute for Child Welfare shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which evaluates the child and family well-being program, including, but not limited to, whether the program is in compliance with this section and the outcomes of the children served by the child and family well-being program.

Section 11. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 92
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Bean
SUBJECT:	Department of Children and Families
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Favorable**
2.	Sneed	Kidd	AHS	**Recommend: Fav/CS**
3.	Sneed	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 92 makes a number of changes to various provisions related the Department of Children and Families (DCF) and entities under contract with the DCF, including community-based care lead agencies (lead agency) and managing entities (ME), who operate and provide services in the child welfare and behavioral health systems in accordance with chapters 394 and 409, F.S., respectively.

The bill makes the following changes:

- Requires, rather than authorizes, the DCF, contracted sheriffs' offices, and lead agencies to develop a formal family-finding program. The program must be implemented as soon as a child is taken into custody.
- Requires, rather than authorizes, each lead agency to establish a kinship navigator program.
- Removes the limitations for the family-finding and kinship navigator programs that tie the development of such programs to available resources.
- Requires the DCF to treat foster parents and other caregivers with dignity, respect, and trust while ensuring delivery of services is focused on the best interest of the child.
- Requires the DCF, rather than encourages, to provide information, training, and support to foster parents and caregivers except as otherwise provided by state or federal law.
- Amends the DCF's duties to collect and post information regarding the managing entities and lead agencies' compensation and findings of the multi-year review of their financial position.

- Removes requirement that the lead agencies post their current budgets on their websites and relocating it to the above-mentioned provision.
- Adds additional information that must be published by lead agencies on their websites to include the total number and percentage of case managers who have 25 or more cases on their caseloads.
- Requires lead agencies to fund the cost of increased care if subcontracted service providers must provide services that are beyond the contract limits due to increased client need or caseload.
- Requires through their contracts with the DCF that the lead agencies demonstrate the ability to adhere to best child welfare practices enumerated in chapters 39 and 409, Florida Statutes, and provide information on their adherence to such best practices.
- Requires board members or officers of a managing entity or lead agency to disclose specified activity that may reasonably be construed as a conflict of interest. The bill provides procedures to follow to address the potential conflict of interest.
- Requires the DCF to create a community alliance in each service area of the lead agency, rather than in each county, to align with the current service model in Florida.
- Modifies the membership of the community alliances by allowing the number of representative members to be increased from 20 to up to 30 members to provide for adequate representation of the diverse population within the service area.
- Directs the DCF to work in collaboration with the local community alliances to achieve community-focused delivery of child welfare services. Provides for an alternative plan that establishes an innovative consortium of partners in communities where conditions make it infeasible to competitively contract with a lead agency.
- Authorizes the DCF to review any decision by a department-recognized credentialing entity to impose a sanction against a child welfare professional upon request of an administrative hearing pursuant to ch. 120, F.S.
- Authorizes competency restoration treatment to be provided at any facility deemed appropriate by the DCF for a forensic client who is held in a jail awaiting admission to a facility and who is likely to regain competence to proceed in the foreseeable future.
- Creates a program that allows Florida to partner with national experts to implement a new child and family well-being system and requires the Florida Institute of Child Welfare to report to Governor and the Legislature annually on program compliance and outcomes.

The DCF estimates a fiscal impact on local government of $513,189, state government of $4,713,147, and the lead agencies of $15,175,268 to implement the family-finding and kinship navigator programs required under the bill. Additionally, the bill is projected to cost state government $360,000 annually for two years to contract with national experts on implementation of a new child and family well-being system. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

II. Present Situation:

The DCF was created to support and promote stable and safe families.[1] The DCF is required to work with local partners to provide services by contract through private providers to the extent

[1] *See* s. 20.19, F.S.

allowed by law and within specified appropriations.[2] The DCF is responsible for providing services relating, amongst other services, to:

- Child care regulation;
- Child welfare;
- Domestic violence;
- Economic self-sufficiency;
- Homelessness;
- Mental health and substance abuse;
- Refugee services; and
- Human trafficking.[3]

Some of these services, which are affected by the bill, are explained in more detail below.

Community-based Care Lead Agency

The DCF operates a community-based care child welfare system that outsources foster care and related services to agencies with an increased local community ownership to enhance accountability, resource development, and system performance.[4] The DCF contracts with community-based care lead agencies (lead agency) to provide direct or indirect child welfare services.[5]

The DCF Duties

Notwithstanding that services are contracted with local lead agencies, the DCF remains responsible for providing child welfare and support services in accordance with federal and state law.[6] The Legislature has articulated several duties with which DCF must comply, including, in part, all of the following:

- Ensuring the DCF's contracts with the lead agencies contain specified terms, including to:
  - Provide for the services which must be provided as required under s. 409.988, F.S., and provide relevant information to the DCF related to the quality assurance program and the child welfare results-oriented accountability system;
  - Provide for tiered interventions and graduated penalties for failure to comply with the contract or performance deficiencies;
  - Require the lead agencies to provide current and accurate information of its activities related to case records in the statewide automated child welfare information system; and
  - Specify the procedures to resolve differences in interpreting the contract or to resolve a disagreement amongst the parties regarding compliance with the contract.
- Developing and maintaining written policies and procedures for monitoring compliance with the services that must be provided by lead agencies under their contracts and posted on the DCF website.

[2] Section 20.19(1)(c), F.S.
[3] Section 20.19(4), F.S.
[4] The DCF, *Community-Based Care*, available at https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml (last visited Feb. 16, 2021).
[5] *Id.*
[6] Section 409.996, F.S.

- Developing and implementing statewide and local interagency agreements to coordinate services that need to be provided to children and parents.
- Establishing a quality assurance program for contracted services to dependent children; and
- Evaluating lead agencies under contract at least once annually.[7]

Contracted Lead Agencies

A lead agency is a single entity with which the DCF has a contract for the provision of care in the child protection and welfare system.[8] The DCF enters into 5-year contracts with lead agencies for the procurement of services.[9] There are minimum requirements with which lead agencies must comply to be eligible to contract with the DCF, including, but not limited to:

- The lead agency must be organized as a Florida corporation or a governmental entity;[10]
- The board of directors or board committee must have the authority to approve the lead agency's budget and to hire the lead agency's executive director;[11] and
- The lead agency must also demonstrate financial responsibility by having a plan for regular fiscal audits and securing a performance bond.[12]

The lead agencies are obligated to perform several duties including, in part, to:

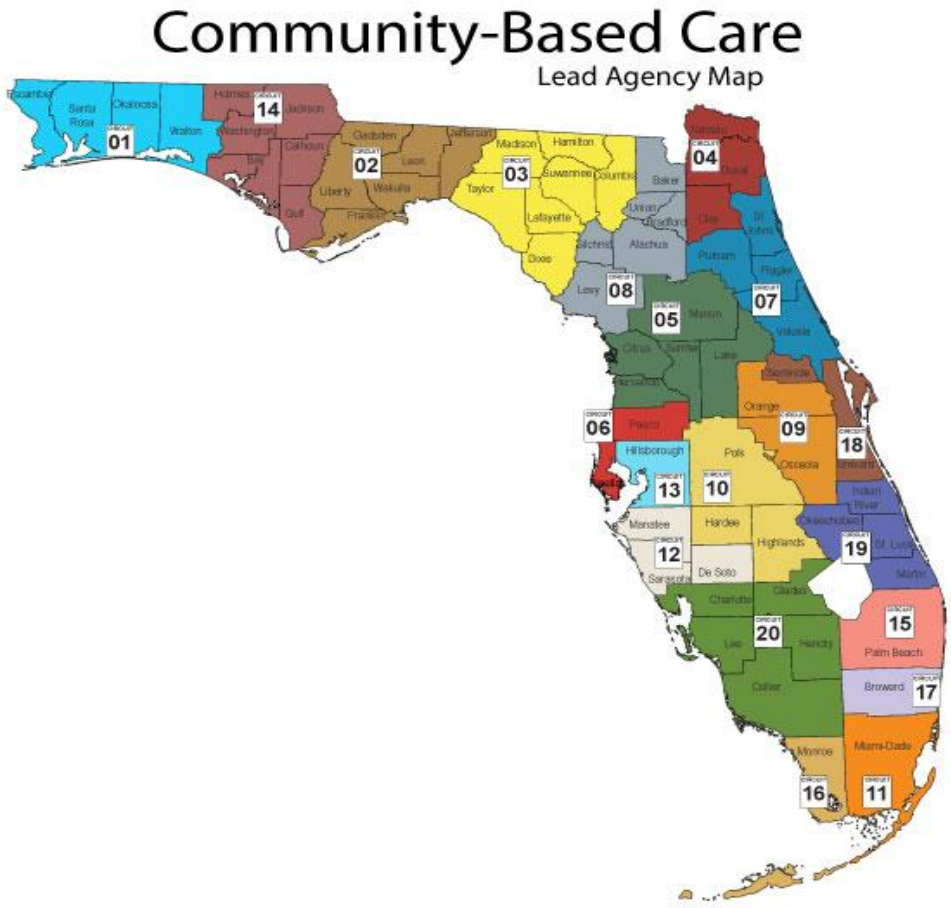
- Serve the children who are referred as a result of abuse, abandonment, or neglect reports;
- Provide accurate and timely information to the DCF, as specified in s. 409.997, F.S.;
- Follow financial guidelines developed by the DCF and provide for a regular independent audits;
- Post its current budget, including the salaries, bonuses and other compensation paid to the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents, on the lead agency's website;
- Prepare and file all necessary court documents, and attend dependency court proceedings to give evidence;
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements;
- Maintain eligibility to receive all available federal child welfare funds;
- Maintain written agreements with Health Families Florida lead entities;
- Comply with federal and state statutory requirements and agency rules in the provision of contractual rules;
- Use authority to subcontract for the provision of services provided the lead agency contribute to services and meet specified criteria; and
- Post information regarding case management services on its website by a specified date.[13]

[7] *Id.*
[8] Section 409.986(3)(d), F.S.
[9] Section 409.987(3), F.S.
[10] Section 409.987(4)(a), F.S.
[11] Section 409.987(4)(b), F.S.
[12] Section 409.987(4)(c), F.S.
[13] Section 409.988(1), F.S. Further, s. 409.988(1)(k), F.S., provides that lead agencies and subcontracted case management providers must disclose the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.

The DCF contracts with the following lead agencies as illustrated in the table and map below:[14]

Lead Agency	Circuit(s)
Lakeview Center, Families First Network	1
Big Bend Community Based Care, Inc.	2 & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida, Inc.	4 (Duval and Nassau)
Kids First of Florida, Inc.	4 (Clay)
Kids Central, Inc.	5
Eckerd Community Alternatives	6 and 13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children, Inc.	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children's Network of SW Florida	20

[14] The DCF, *Lead Agency Map, Community-Based Care*, available at: https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml (last visited March 11, 2021).



Funding

Section 409.990, F.S., requires that a contract between the DCF and a lead agency be funded through General Revenue, or other applicable state or federal funding sources.[15] Lead agencies must allocate their funding as provided under Florida law based on a proportion of child population, child abuse hotline workload, and children in care.[16]

Quality Assurance

The DCF shares responsibility with lead agencies and subcontractors to maintain a results-oriented accountability program that monitors and measures the use of resources, services provided, and outcomes achieved.[17] Reports must be produced quarterly, at a minimum, and

[15] Section 409.990, F.S.
[16] Section 409.991(2), F.S., provides that core services funds are calculated based on the proportion of the (a) child population weighted as 5 percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-2016 fiscal year, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) seventy percent of new funding amongst all lead agencies and (b) thirty percent of new funding to lead agencies that are funded below their equitable share.
[17] Section 409.997(2), F.S.

published on the DCF's website.[18] The DCF reports the results in a quarterly scorecard which summarizes key issues, namely safety, permanency, and well-being metrics.[19]

Community Alliances

The DCF is required to establish community alliances[20] which shall be made up of local stakeholders and representatives in each county to encourage and maintain community participation, and governance of community based services.[21] Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.[22] Community alliances have a duty, amongst other obligations, to serve as a catalyst for community resource development and promote prevention and early intervention.[23]

Community alliances are composed of a representative from the DCF, the county government, the school district, the county United Way, the county sheriff's office, the circuit court corresponding to the county, the county children's board, if one exists, and a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoptions.[24] The community alliances must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity of the population.[25] The additional members may include states attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based service issues.[26]

Prior to 2014, s. 409.1671(1)(d), F.S., in part, provided that the DCF could develop an alternative plan to outsource services in an area if it was impossible or not feasible to competitively contract with a lead agency.[27] The DCF was required to develop a plan in collaboration with the local community alliance.[28] It was required to detail how the community would implement community-based care through local providers, and to ensure control over management and administration of services.[29] A plan developed under this former provision had to include best business practices, including some form of public and private partnerships.[30]

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[18] Section 409.997(2)(g), F.S.
[19] The DCF, *CBC Scorecard*, available at https://www.myflfamilies.com/programs/childwelfare/dashboard/cbc-scorecard.shtml (last visited March 11, 2021).
[20] Section 409.986(2)(c), FS., defines "community alliance" to mean the group of stakeholders, community leaders, client representatives, and funders of human services established pursuant to s. 20.19(5), F.S., to provide a focal point for community participation and oversight of community-based services.
[21] Section 20.19(5)(a), F.S.
[22] *Id.*
[23] Section 20.19(5)(b), F.S.
[24] Section 20.19(5)(d), F.S.
[25] Section 20.19 (5)(e), F.S.
[26] *Id.*
[27] Chapter 2014-224, s. 46, Laws of Fla.
[28] *Id.*
[29] *Id.*
[30] Chapter 2014-224, s. 46 Laws of Fla.

Managing Entities (MEs)

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[31]

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[32] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[33] Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a managing entity.[34]

The DCF Duties

The DCF must also comply with duties with respect to the MEs, including, in part, to:
- Contract and conduct readiness reviews;
- Specify data reporting requirements and use of shared data systems;
- Define the priority populations that will receive care coordination;
- Support the development and implementation of a coordinated system of care;
- Contract to support efficient and effective administration and ensure accountability for performance; and[35]
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.[36]

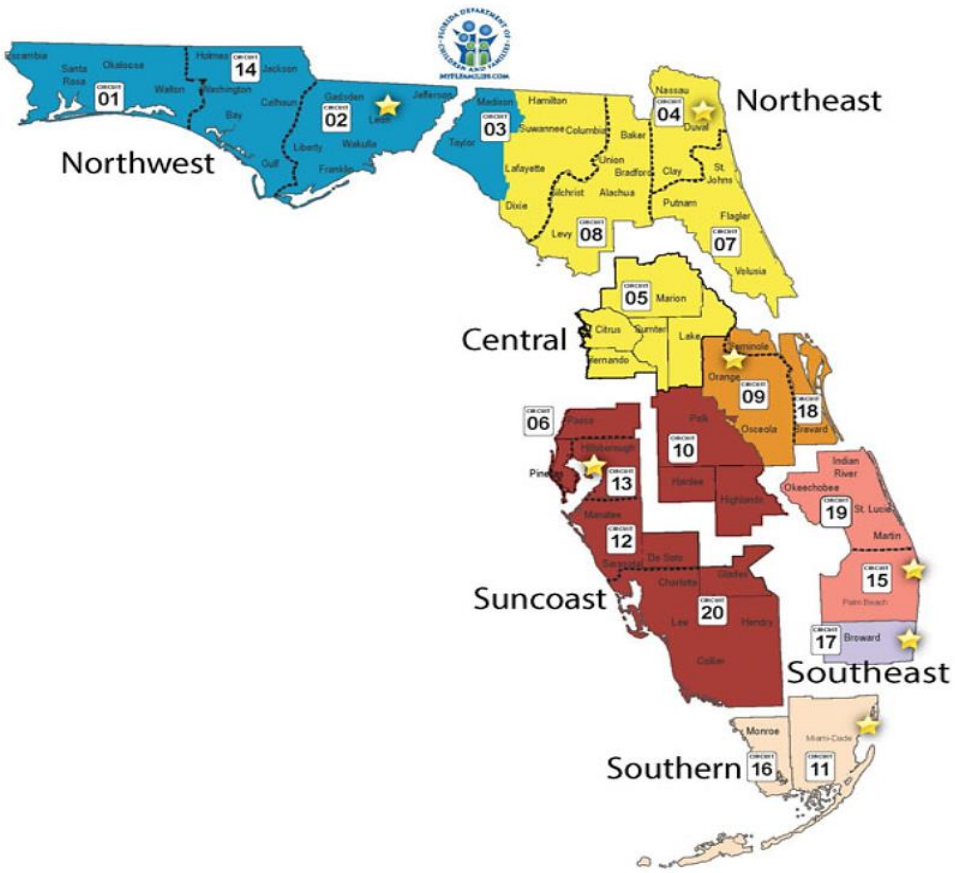
Contracted MEs

The MEs are required to comply with various statutory duties, including, in part, to:
- Maintain a governing board;
- Promote and support care coordination;[37]
- Develop a comprehensive list of qualified providers;
- Monitor network providers' performances;
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements; and

[31] *See* chs. 394 and 397, F.S.
[32] Chapter 2001-191, Laws of Fla.
[33] Chapter 2008-243, Laws of Fla.
[34] Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4 (March 2015) available at https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model (last visited March 11, 2021).
[35] Section 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.
[36] Section 394.9082(3), F.S.
[37] Section 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.

- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.[38]

The DCF contracts with seven MEs as shown in the map below and summarized as follows:
- Big Bend Community Based Care (blue).
- Lutheran Services Florida (yellow).
- Central Florida Cares Health System (orange).
- Central Florida Behavioral Health Network, Inc. (red).
- Southeast Florida Behavioral Health (pink).
- Broward Behavioral Health Network, Inc. (purple).
- South Florida Behavioral Health Network, Inc. (beige).[39]



[38] Section 394.9082(5), F.S.
[39] The DCF, *Managing Entities*, https://www.myflfamilies.com/service-programs/samh/managing-entities/ (last visited March 11, 2021).

The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.[40] In Fiscal Year 2018-2019, the network service providers under contract with the MEs served 339,093 individuals.[41]

Coordinated System of Care

MEs are required to promote the development and implementation of a coordinated system of care.[42] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a ME or by another method of community partnership or mutual agreement.[43] A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to MEs.[44] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[45] The DCF must use performance-based contracts to award grants.[46] There are several essential elements that make up a coordinated system of care, including all of the following:

- Community interventions.
- Case management.
- Care coordination.
- Outpatient services.
- Residential services.
- Hospital inpatient care.
- Aftercare and post-discharge services.
- Medication assisted treatment and medication management.
- Recovery support.[47]

A coordinated system of care must include, but is not limited to, the following array of services:

- Prevention services.
- Home-based services.
- School-based services.
- Family therapy.
- Family support.
- Respite services.
- Outpatient treatment.
- Crisis stabilization.

[40] Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.
[41] The DCF, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year,* (Dec. 6, 2019) available at https://www.myflfamilies.com/service-programs/samh/publications/docs/SAMH%20Services%20Plan%202018%20Update.pdf (last visited Feb. 16, 2021).
[42] Section 394.9082(5)(d), F.S.
[43] Section 394.4573(1)(c), F.S.
[44] Section 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[45] *Id.*
[46] *Id.*
[47] Section 394.4573(2), F.S.

- Therapeutic foster care.
- Residential treatment.
- Inpatient hospitalization.
- Case management.
- Services for victims of sex offenses.
- Transitional services.
- Trauma-informed services for children who have suffered sexual exploitation.[48]

Current law requires the DCF to define the priority populations which would benefit from receiving care coordination, including considerations when defining such population.[49] Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

Funding and Expenses

Contracts with MEs are funded with General Revenue, other qualifying state funds, or applicable federal funding.[50] The MEs are required to develop and implement standards for collecting and reporting data related to crisis stabilization and detoxification and addictions receiving services.[51] The data is collected from entities who have received funds and operate under s. 394.875, F.S.[52] MEs are required to reconcile the data on a monthly basis, and submit the data to the DCF on a monthly and annual basis. The DCF is required to post data on its website regarding each ME's utilization of funds.[53]

Kinship Navigator Programs

Section 39.5086(2)(b), F.S., permits each lead agency to establish a kinship navigator program subject to available resources. A kinship navigator program is defined as a program designed to ensure that kinship caregivers are provided with the necessary resources for the preservation of the family.[54] The purpose of such program is to provide support and services to kinship caregivers, specifically to:

- Coordinate with other state and local agencies that promote service coordination or provide information and referral services;
- Plan and operate in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant governmental agencies, and relevant community-based or faith-based organizations;
- Provide toll-free telephone hotline services with information to link kinship caregivers, kinship support facilitators, and kinship service providers;

[48] Section 394.495(4), F.S.
[49] Section 394.9082(3)(c), F.S.
[50] Section 394.9082(9), F.S.
[51] Section 394.9082(10), F.S.
[52] *Id.*
[53] Section 394.9082(10)(e) and (f), F.S.
[54] Section 39.5086(1)(c), F.S.

- Provide outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials; and
- Promote partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant governmental agencies, to increase their knowledge of the needs of kinship care families to promote better services for those families.[55]

Several provisions of law provide for financial support to relative and non-relative caregivers of children who are in out-of-home care who meet specified criteria, including the:

- Guardianship Assistance Program;[56]
- Level I family foster care homes licensure if qualifications are met;[57]
- Relative Caregiver Program (RCP);[58] and
- Temporary Cash Assistance (TCA) Program.[59]

The DCF operating procedures require case workers to provide information to relative caregivers about the kinship navigation program, including referrals, and guidelines about the program.[60] All lead agencies except for one offer kinship services,[61] but the services provided do not meet the current statutory requirements for such a program.[62] The DCF reports that approximately 39 percent of lead agencies offer more than 31 of 41 best practice services. Fifty percent of lead agencies offer more than 65 percent of services for kinship caregivers and offer 85 percent of services for programmatic support.[63]

The Family First Prevention Act allows Title IV-E agencies to claim 50 percent of kinship navigator program costs if specified criteria are met.[64] The DCF has been working with the

[55] Section 39.5086(2)(b), F.S.
[56] Section 39.6225, F.S.
[57] Section 409.175, F.S.
[58] Section 39.5085, F.S.
[59] RCP and TCA are funded by Temporary Assistance for Needy Families. State funds are also available for children who were placed in foster care and change placement to a nonrelative in a permanent guardianship. *See* The DCF, *Temporary Cash Assistance (TCA)*, available at https://www.myflfamilies.com/service-programs/access/temporary-cash-assistance.shtml (last visited Feb. 16, 2021).
[60] The DCF, *CFOP 170-10*, Chapter 8, p. 2, available at https://www.myflfamilies.com/admin/publications/policies.asp?path=CFOP%20170-xx%20Child%20Welfare/CFOP%20170-10%20%20Providing%20Services%20and%20Support%20for%20Children%20in%20Care%20and%20for%20Caregivers (last visited Feb. 16, 2021) (hereinafter referred to as "CFOP 170-10")
[61] The DCF, *Senate Bill 92 Fiscal Analysis*, p. 5 (Feb. 10, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DCF Analysis").
[62] *Id.*
[63] The DCF Analysis, p. 12.
[64] *Id.* The DCF Analysis explains that lead agencies must use evidenced-based kinship navigation program to be eligible for funds. Also, under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program is administered by the Children's Bureau, an agency within the U.S. Department of Health and Human Services. The DCF is Florida's Title IV-E agency. *See* Congressional Research Service, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, available at https://www.everycrsreport.com/reports/R42792.html; the DCF, CFOP 170-15, available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-

Children's Home Network to contribute to the evidence of their program.[65] The DCF received a one year grant and has been given the opportunity to continue receiving the Kinship grant to begin working with a second provider.[66] One of the DCF's objectives is to implement a plan with Kid's, Inc. to have one or more of its own models meet the eligibility requirements for federal reimbursement.[67]

Family-Finding Program

The DCF may establish a formal family-finding program, subject to available resources.[68] The family-finding program may begin as soon as the child is taken into custody and throughout the duration of the case, as necessary, locating and engaging as many family members as possible who may be candidates to assist with support and care of the child.[69] Florida law defines diligent search efforts to locate a parent or prospective parent,[70] but requires the DCF to make efforts beyond basic search tools by exploring alternative tools and methodology.[71]

The DCF has rule making authority to implement a family-finding program,[72] and must coordinate with the lead agencies to document strategies used to locate and engage the family to, in part:

- Attend visitation with the child;
- Assist with transportation of the child;
- Provide respite or child care services; or
- Provide actual kinship care.[73]

Between Fiscal Years 2001-02 and 2008-09, the DCF implemented or expanded family finding tools in all 67 counties to test the flexibility to use Title IV-E funding for expanded child welfare services and supports and to increase family connections in an effort to reduce the number of children in out-of-home care.[74] The six-step approach includes discovery, engagement, planning, decision making, evaluation, and follow-up support.[75] The overall conclusion was that the

15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15,%20%20Chapter%2004,%20Title%20IV-E%20Foster%20Care.pdf (all sites last visited Feb. 16, 2021).

[65] *Id*.

[66] The DCF Analysis, p. 12.

[67] *Id*.

[68] Section 39.4015(3), F.S.

[69] Section 39.4015(3)(a), F.S.

[70] Section 39.01(23), F.S., defines "diligent efforts of social service agency" to mean reasonable efforts were taken to provide social services or reunification services made by any social service agency that is a party to a case plan. Section 39.01(24), F.S., defines "diligent search" to mean the efforts of a social service agency to locate a parent, or prospective parent whose identity or location is unknown, is initiated as soon as the social service agency is made aware of the existence of such parent. When a parent's identity or location are unknown, s. 39.503, F.S., sets out efforts that must be made by the DCF to identify and locate him or her.

[71] Section 39.4015(3)(b), F.S.

[72] Section 39.4015(4), F.S.

[73] *Id*.

[74] Louis de la Parte, Florida Mental Health Institute, *Evaluation Brief 2*, *Florida's IV-E Waiver Demonstration Project*, pp. 1-2, 4 (Jan. 2010) available at https://www.myflfamilies.com/general-information/publications-forms/docs/APSR/S10-008463_Title%20IV-E%20Brief%202%20January2010.pdf (last visited Feb. 16, 2021).

[75] *Id*. at p. 4.

flexible use of Title IV-E funds for expanded services reduces the number of children in out-of-home care through reunification of the child and the caregiver.[76]

Child and Family Well-being Programs

Florida law does not presently provide for a child and family well-being system. There are, however, goals that the DCF in conjunction with lead agencies, community-based subcontractors, and the community alliance must aspire to achieve are to protect the best interest of the children including, in part, to:

- Protect children from abuse and neglect;
- Ensure that children remain safely in their home, if possible and appropriate;
- Preserve family relationships; and
- Provide services to families[77] and children to meet the children's needs, including their educational and mental health needs, and skills for independent living.[78]

There are innovative programs being developed throughout the United States which focus on family well-being and implementing creative preventative measures to keep families intact.[79] The U.S. Department of Health & Human Services Children's Bureau (Children's Bureau) provides information, training assistance, and grants focused on strengthening families, protecting children, and ensuring children have permanent families with a goal of improving safety, permanency, and well-being.[80]

Casey Family Programs (CFP) is an organization that focuses on these key objectives of child-well-being. CFP was founded in 1966 and operates in all 50 states.[81] The program provides consulting, research and analysis, and services free of charge to advance the goal of child well-being.[82]

Alia is another program that is transforming child welfare systems by conducting research, providing strategy sessions, leadership coaching, and other workshops and events.[83] Alia promotes building an "unsystem" with five phases for implementing change to shift the primary focus of child welfare systems to "prevention". The five stages consist of:

- Preparing to Lead Change: Co-creating your Vision.
- Building the Foundation: Workforce Resilience.
- Shifting Agency Mindset: *Why* Change is Needed.
- Aligning Practice with your *Why*.

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[76] *Id.* at p. 4-5.
[77] Section 39.001(47), F.S., defines "family support services" to mean services provided to children (and their families) who have been found to be safe and at high or very high risk of future maltreatment.
[78] Section 409.986, F.S.
[79] Casey Family Programs, *Who We Are*, available at https://www.casey.org/who-we-are/; Children's Bureau Express, *Transforming South Carolina's Approach to Child Welfare*, available at https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=219&sectionid=2&articleid=5652; Alia, *Get to Know Us*, available at https://www.aliainnovations.org/who-we-are (all sites last visited February 16, 2021).
[80] Children's Bureau, *What We Do*, available at https://www.acf.hhs.gov/cb/about/what-we-do (last visited Feb. 16, 2021).
[81] Casey Family Programs, *Who We Are*, available at https://www.casey.org/who-we-are/ (last visited Feb. 16, 2021).
[82] *Id.*
[83] Alia, *Project Work*, available at https://www.aliainnovations.org/project-work (last visited Feb. 16, 2021).

- Reaching a Tipping Point Toward Primary Prevention.[84]

South Carolina adopted a child welfare system with similar goals and objectives as these programs and allocates resources with a primary focus on a preventative system.[85] Key elements of the system include, in part, all of the following:

- Partnering with nonprofit and community-based organizations.
- Removing the stigma parents receive when receiving assistance.
- Engaging parents.
- Establishing family resource centers in local communities.
- Providing more services to meet families in locations convenient to them.
- Fostering a greater understanding of trauma.[86]

Out-of-Home Placement

Section 39.4087, F.S., establishes goals for the DCF to achieve and requirements to meet with respect to caregivers. Specifically, one goal of the DCF is to treat caregivers, including foster parents, with dignity, respect, and trust while ensuring services are aimed at achieving what is in the child's best interest.[87] Subject to available resources and any state or federal law to the contrary, the DCF is required to provide to caregivers an open exchange of information and supportive services.[88] For example, the DCF should:

- Provide training and support to the caregiver to help meet necessary requirements for the daily care and any special needs of the child; and
- Fully disclose all relevant information regarding the child and the background of his or her biological family, including, but not limited to:
  - Any delinquency or criminal record of the child; and
  - With parental consent to the extent required by law, any known health history and medical, psychological, or behavioral health issues or needs of the child.[89]

A caregiver must maintain the confidentiality of any information as required by law.[90]

Community-based care lead agencies are required to provide support for all licensed out-of-home caregivers,[91] including:

- Access to foster parent support groups;
- Service resources for children placed in the home;
- Foster parent mentors; and
- Service resources for caregivers.[92]

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[84] *Id.*
[85] Children's Bureau Express, *Transforming South Carolina's Approach to Child Welfare*, available at https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=219&sectionid=2&articleid=5652 (last visited Feb. 16, 2021).
[86] *Id.*
[87] Section 39.4087(1), F.S.
[88] *Id.*
[89] *Id.*
[90] Section 39.4087(1)(c), F.S.
[91] Fla. Admin. Code R. 65C-45.011.
[92] Fla. Admin. Code R. 65C-45.011(1).

The community-based care lead agencies must also make contact with the licensed caregiver at least quarterly.[93] Several other rules address efforts required by the child protective investigator or case manager to assist or provide information to caregivers.[94] Licensure rules address a caregiver's obligation to maintain confidentiality.[95]

The DCF has also established operating procedures for providing services and support for children in care and for caregivers,[96] including supporting relatives who are caring for children placed in out-of-home care,[97] and nonrelative caregiver financial assistance.[98] Additional subsidies are available depending on the permanency status of the child.[99] The DCF procedures also list information with which the child welfare professional must provide to the relative caregiver for completing the home study.[100]

Conflicts of Interest

There are several Florida statutes which address transactions or other situations in which a conflict of interest exists or may exist,[101] and define the term "conflict of interest" in context of the statute with which it relates.[102]

Corporations

Florida laws on corporations define "director's conflict of interest transaction" as a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation's directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial interest or other material interest.[103] If a director's conflict of interest transaction is fair to the corporation at the time it is authorized, approved, effectuated, or ratified:

- Such transaction is not void or voidable; and

[93] Fla. Admin. Code R. 65C-45.011(2).
[94] *See* Fla. Admin. Code R. 65C-35.004 (assisting the caregiver with attending appointments with a child if the caregiver is unavailable); Fla. Admin. Code R. 65C-35.011(10) (informing the caregiver about the importance of communicating regarding a child's psychotropic medication and recommending they exchange contact details); and Fla. Admin. Code R. 65C-28.005(4) (regarding services and information relating to the child upon a change of placement).
[95] *See* Fla. Admin. Code R. 65C-45.003 (requiring an assessment of how, amongst other things, the caregiver will maintain confidentiality as required by law).
[96] Chapter 8, CFOP 170-10.
[97] Chapter 8, CFOP 170-10, p. 2-5. Several programs exist to provide relative caregiver support, including, but not limited to, the kinship navigator program, medical insurance, "at-risk child care subsidy, local flexible funds, "child-only" temporary cash assistance, and relative caregiver program.
[98] Chapter 9, CFOP 170-10.
[99] *Id.*
[100] *Id.* at pp. 5-7.
[101] *See* ss. 112.312, 605.04092, 607.0832, and 617.0832, F.S.
[102] *See* ss. 112.312, and 605.0492, F.S.
[103] Section 607.0832, F.S.; *see also* s. 605.0492(1)(g), F.S., with respect to limited liability companies which defines "member's conflict of interest" as a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company's members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

- The fact that the transaction is a director's conflict of interest transaction is not grounds for any equitable relief, an award, or other sanctions.[104]

If proceedings challenging the validity of a director's conflict of interest transaction or proceedings seeking equitable relief, damages, or other sanction are brought, the person challenging the director's conflict of interest transaction has the burden to prove the lack of fairness of the transaction in specified situations.[105]

Nonprofit Organizations

Chapter 617, F.S., governs corporations not for profit and does not define conflict of interest. It provides, however, that no contract or other transaction between a corporation and one of its directors or other corporation in which one or more directors have an interest shall be void or voidable because of the relationship or interest, or because the interested director is present at the meeting which authorizes or ratifies such contract if:

- The relationship is disclosed or known to the other directors which authorizes or ratifies the transaction by a vote which is sufficient to approve the transaction without the interested director's vote;[106]
- The relationship is known or disclosed and the members entitled to vote authorize or ratify it by vote or written consent;[107] or
- The contract or transaction is fair and reasonable to the operation at the time is it authorized by the board, a committee, or the members.[108]

The transactions are required to be approved by a majority vote of the members.[109]

Public Officer and Employee

Public officers and employees must comply with standards of conduct provided for in s. 112.313, F.S. Chapter 112, F.S., restricts the type of business transactions that public officers and employees of an agency may have with a business entity in which the officer, employee, or the officer's or employee's specified family has a material interest.[110] Public officers and employees of agencies are also prohibited from having conflicting employment or contractual relationships with any business entity or regulation.[111] Section 112.312(8), F.S., defines "conflict" or "conflict of interest" as a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

[104] Section 607.0832(2), F.S. This is the case when because of the relationship or interest, because such director is present at the meeting in which the transaction was authorized, or because his or her votes are counted for such purpose.
[105] Section 607.0832(3), F.S. The presence of or a vote cast by a director with an interest does not affect the validity of an action if specified conditions are met.
[106] Section 617.0832(1)(a), F.S. The presence of a vote cast by a director having a relationship or interest does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized or ratified in this paragraph.
[107] Section 617.0832(1)(b), F.S.
[108] Section 617.0832(1)(c), F.S.
[109] Section 617.0832(2) and (3), F.S.
[110] Section 112.313(3), F.S.
[111] Section 112.313(7), F.S.

Sanction against Certifications of Child Welfare Professionals

The DCF must approve at least one third-party credentialing entity[112] to develop and administer child welfare certification[113] programs for individuals who provide child welfare services.[114, 115] In order to obtain approval as a third-party credentialing entity from the DCF, the entity must comply with minimum requirements, including establishing professional requirements and standards to maintain certification, and maintaining a professional code of ethics and a disciplinary process.[116]

Unlike sanctions against addiction professionals in s. 397.321(15), F.S., current law is silent as to whether the DCF is authorized to conduct an administrative hearing pursuant to ss. 120.569 and 120.57(1), F.S., to review a DCF-recognized credentialing entity's decision to deny, revoke, suspend, or otherwise impose sanction on the certification of a child welfare professional.

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, a network of state facilities and community services for persons with mental health issues involved with the criminal justice system. The forensic system serves defendants deemed incompetent to proceed or not guilty by reason of insanity. The court may appoint no more than three experts to determine a criminal defendant's mental condition, including competency to proceed.[117] A defendant is incompetent to proceed if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational or factual understanding of the proceedings against him or her.[118]

Every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon certain findings by the court of clear and convincing evidence.[119] A defendant who has been adjudicated incompetent to proceed due to mental illness and who meets the criteria for involuntary commitment may be committed to the DCF and the DCF must retain and treat the defendant.[120]

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment

[112] Section 402.40(2)(g), F.S., defines "third-party credentialing entity" as a DCF-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.
[113] Section 402.40(2)(a), F.S., defines "child welfare certification" as a professional credential awarded by a DCF approved third-party credentialing entity to individuals demonstrating core competency in any child welfare practice area.
[114] Section 402.40(2)(b), F.S., defines "child welfare services" as any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and supervision provided to children who are alleged to have been abused, abandoned, or neglected or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to ch. 39, F.S.
[115] Section 402.40(3), F.S.
[116] *Id.*
[117] Section 916.115(1), F.S.
[118] Section 916.12(1), F.S.
[119] Section 916.13(1), F.S.
[120] Section 916.13(2), F.S.

Center (NFETC).[121] The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions.[122]

III. Effect of Proposed Changes:

Lead agencies and Managing Entities (MEs)

Duties

The bill amends s. 409.988, F.S., requiring the lead agencies to demonstrate the ability to adhere to all best child welfare practices under ss. 39.4087, 39.523, 409.1415, and 409.145, F.S. Further, the bill amends s. 409.996, F.S., to require the DCF to include a provision in its contracts with the lead agencies which requires them to provide information specifying how the lead agency will adhere to this requirement.

Publication of Information

The bill amends s. 409.988, F.S., removing the requirement for the individual lead agency to post specified budget information, but requiring them to publish the total number and percentage of case managers who are assigned 25 or more cases on its website. Sections 394.9082 and 409.996, F.S., are amended to add a similar provision; however, the bill requires the DCF, rather than each entity, to collect and post on its website compensation benefits for employees of MEs and lead agencies. The term "employee" is defined as their Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, or any other executive staff of the managing entity. The requirement to post this information in one centralized location will provide more consistency with the information posted for lead agencies statewide.

The bill also requires the DCF to post findings of a multi-year review of specified financial information, including revenues, expenditures, and financial position relating to the MEs and lead agencies. It must be conducted every 2 years relating to the MEs and lead agencies, and the agencies and entities must develop and maintain a plan to achieve financial viability. The review findings must be reported to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year.

Conflicts of Interest

The bill creates ss. 394.90825 and 409.987(7), F.S., establishing a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of a lead agency or ME. The bill defines the following terms:

- "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with the managing

[121] The DCF, *State Mental Health Treatment Facilities*, available at https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml (last visited April 20, 2021).
[122] *Id*.

entity for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.[123]

- "Conflict of interest" means when a board member or an officer, or a relative of a board member or an officer, of the managing entity/lead agency does any of the following:
  - Enters into a contract or other transaction for goods or services with the managing entity/lead agency;
  - Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the managing entity/lead agency or proposes to enter into a contract or other transaction with the managing entity/lead agency; or[124]
  - Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the member or officer, with the managing entity/lead agency.[125]
- "Managing entity" has the same meaning as in s. 394.9082, F.S.[126]
- "Relative" means a relative within the third degree of consanguinity by blood or marriage.[127]

For any activity that is presented to the board of these entities for initial consideration and approval after July 1, 2021, or any contract which is being considered for renewal between July 1, 2021 and December 31, 2021, a board member or officer must make a disclosure of such potential conflict of interest. A rebuttable presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice.

If a contract is not subject to renewal before January 1, 2022, the board member or officer must disclose any information that could reasonably be construed to be a conflict of interest by December 31, 2021.

Any proposed activity or existing contract which does give rise to a disclosure obligation must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and relevant documents related to the transaction must be included. The meeting agenda must clearly state the potential conflict of interest. The board must be given an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

If the board votes against the proposed activity, the board member or officer must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity or the board member or officer must resign. If the board finds that an officer or member has violated this provision, he or she will be deemed removed from office before the next scheduled board meeting. If the board votes against the renewal of an existing contract which gives rise to a conflict of interest, the parties to the activity may opt to cancel the activity,

[123] Sections 394.90825(1)(a) and 409.987(7)(a)1., F.S.
[124] Sections 349.90825(1)(b) and 409.987(7)(b)2., F.S. For purposes of this provision, the bill provides that the term "indirect interest" has the same meaning as provided in s. 112.312, F.S.
[125] For purposes of this provision, the bill provides that the term 'benefit' does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.
[126] Section 394.90825(1)(c), F.S.
[127] Sections 394.90825(1)(d) and 409.987(7)3., F.S.

or in the alternative, the member or officer must resign from the board before the next scheduled meeting. The bill provides for limitations on damages under any existing contracts.

A board member, officer, or relative who has an interest in an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board, make a presentation, and then leave the meeting during any relevant discussion by the other board members. A member or officer who is a party to, or has an interest in, the activity shall recuse himself or herself from the vote.

A contract entered into between a board member, officer, or relative of a member or an officer in which there is a conflict of interest or potential conflict of interest, is void or voidable and terminates upon the filing of a written notice to the board which contains at least 20 percent of the voting interests of the managing entity.

MEs will need to amend their by-laws or articles of incorporation to ensure that the new requirements for potential conflict of interest transactions are incorporated.[128] The DCF would need to amend existing contracts with lead agencies and may need addendums to active Invitations to Negotiate in relation to several amendments proposed by the bill.[129] The DCF also would need to edit the Supplemental Contract related to future Invitations to Negotiate.[130]

Funding

The bill amends s. 409.990, F.S., to require lead agencies to fund the cost of increased care if a subcontracted service provider must provide services that are beyond the contract limits due to increased client need or caseload.

Community Alliances

The bill amends s. 20.19, F.S., modifying the requirement for the DCF to form a community alliance to cover a county or counties, to cover a "community-based care lead agency service area" instead.

It also requires each community alliance to adopt bylaws to determine the specific membership composition that best represents the local area being serviced by the alliance, and redefines the membership to a minimum of 20 members from a specified list of representatives, including all of the following:

- A representative from the DCF.
- Representatives from local government.
- Representatives from the school district.
- A representative from the United Way.
- Representatives from county sheriffs' offices.
- A representative from each circuit court in the lead agency service area.
- A representative from the children's services council, if one exists.

[128] The DCF Analysis at p. 7.
[129] *Id.*
[130] *Id.*

- A representative of a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, or promote adoption.

This section also requires community alliances to adopt bylaws that allow for increased membership to no more than 30 members if the change is necessary to adequately represent the diversity in population within the community alliance service area.

The bill amends s. 409.997, F.S., requiring the DCF to develop, in collaboration with the local community alliance, an alternative plan with specified details to use local community entities to implement community-based care services if conditions make it impossible or not feasible to competitively contract with a lead agency. This provision allows for the DCF and community alliance to work with partners that may include, but not be limited to, private entities, local and county governmental entities. The plan created must detail how the community will continue to implement community-based care through competitively procuring either the specific components of foster care and related services or comprehensive services for defined eligible populations of children and families. The bill requires the plan to ensure local control over the management and administration of the service provision and to adhere to recognized best business practices, including, but not limited to, the use of public or private partnerships. The bill is substantially similar to former s. 409.1671(1)(d), F.S. (2013), before that section was repealed by ch. 2014-224, s. 46, Laws of Florida.

Family-Finding and Kinship Navigator Programs

Sections 39.4015 and 39.5086, F.S., are amended to require, rather than permit if resources are available, the establishment of a formal family-finding program and kinship navigator program. The amendments clarify that family-finding efforts must go beyond basic search tools to comply with each of efforts required by the DCF and lead agencies' to search for children's families. The DCF may adopt rules to implement these programs.

Lead agencies would be encouraged to meet federal standards for the kinship program to claim 50 percent of the applicable costs.[131]

The Children's Home Network has an existing kinship navigator program that is recognized by the Children's Bureau and is collaborating with the DCF to become rated in the clearinghouse for future utilization in all lead agencies.[132]

Child and Family Well-Being

The bill requires the DCF to establish a program that consists of a child and family well-being, system[133] to provide services through contracts with lead agencies in accordance with s. 409.987, F.S. The bill provides program requirements, including:

- Creating a system that requires fundamental change;

[131] The DCF Analysis at p. 5.
[132] The DCF Analysis at p. 10.
[133] Section 409.998(2), F.S., defines "child and family well-being system" as a system that recognizes the difference between poverty and neglect and that provides mentoring and supports to biological parents as they develop the skills and resources necessary to adequately care for their children.

- Designating lead agency leadership that will identify a core group of agency individuals to develop a plan for creating the change;
- Recognizing that change of this magnitude is difficult and time-consuming, and determine steps to determine the well-being of individuals involved at an early stage of the process;
- Developing a plan for creating a change in the way partners view the process;
- Building relationships throughout the process of change;
- Providing regular interaction amongst the workforce to discuss changes that are needed; and
- Redirecting resources toward primary prevention and away from removing children from their homes.

The DCF must implement the program in collaboration with the designated lead agency, community alliance, and Florida Institute for Child Welfare. By October 1, 2021, and annually thereafter, the Florida Institute for Child Welfare must report to the Governor, President of the Senate, and the Speaker of the House of Representatives regarding program compliance and outcomes of the program.

The DCF has begun transitioning to a prevention focused child and family well-being system in accordance with the Family First Prevention Services Act (FFPSA) which authorizes new Title IV-E funding for a limited time period and in limited circumstances.[134]

Caregivers

The bill provides that the DCF is required to treat caregivers in a certain manner and provide specified support and information that was formerly considered to be discretionary, depending on resources and subject to any laws to the contrary. Specifically, the DCF must treat caregivers with dignity, respect and trust while providing services that are in the best interest of the child. Also, the DCF now must provide specified support and information set out in s. 39.4087(1), F.S., including:

- Providing an explanation to the caregiver regarding the roles of the persons involved;
- Providing training and support to the caregiver;
- Disclosing all relevant information regarding the child and the background of his or her biological family;
- Allowing caregivers to communicate with professionals who work with the child;
- Providing a means by which a caregiver may contact the lead agency 24 hours a day, 7 days a week;
- Soliciting and considering caregiver input on a child's case plan;
- Providing a clear, written explanation to a caregiver of any plan concerning the placement of a child;
- Providing information on any emergency situation which arises;
- Allowing a caregiver to request removal of the child without retaliation;
- Informing the caregiver as soon as possible of any decision made by the court or child-caring agency relating to a child who is placed with the caregiver;
- Giving at least 7 days' notice to a caregiver of any meeting or court hearing;
- Considering the caregiver as placement for the child if the child reenters out-of-home care;

[134] The DCF Analysis at p. 8.

- Allowing a caregiver a period of respite upon reasonable notice; and
- Providing the caregiver, upon request, with copies of all information in the department's records regarding the caregiver.

The amendments to this subsection clarify that a caregiver must maintain confidentiality of any information as required by law, rather than this requirement being stated in relation only to the information the caregiver receives related to the child and the background of his or her biological family.

Sanction against Certified Child Welfare Professionals

The bill provides that the DCF may review pursuant to s. 397.321(15), F.S., any decision by a department-recognized credentialing entity to deny, revoke, or suspend a certification, or otherwise sanction an individual who is certified as a child welfare professional. This means that an individual who has his or her certification sanctioned may request an administrative hearing pursuant to ch. 120, F.S., for the DCF to review the decision.

Competency Restoration Treatment

The bill amends s. 916.13, F.S., to grant the DCF the discretion to place at any facility deemed appropriate a forensic client who is held in a jail awaiting admission to a facility and who is likely to regain competence to proceed in the foreseeable future.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is anticipated that a staff person will be needed by each CBC lead agency to sufficiently implement a family-finder program. Currently, five of the CBC lead agencies have an active family-finder program. For the 14 lead agencies that do not currently implement a family-finder program, adding one staff position each will cost $964,106 annually, plus one-time costs of $62,272.

The CBC lead agencies do not currently operate kinship navigator programs. It is projected that the 19 lead agencies will need an average of 11 positions each to implement a kinship navigator program. The positions for each lead agency include a director, a program manager, an intake coordinator, two peer navigators, four family support navigators, and two part-time support group assistants. However, a lead agency may contract with a child welfare provider for the kinship navigator services. It should be noted that Children's Home Network is an agency under contract with a CBC lead agency to provide a kinship navigator pilot program. The pilot program is the process of becoming an approved evidence-based program. Once it has received federal approval as an evidence-based program, it can be replicated in other CBC lead agencies. The cost to staff the lead agency or to contract for kinship navigator services is estimated to cost each lead agency $695,750 annually, including expenses and travel costs to conduct the program. The lead agencies will likely use current resources to support the technology requirements of the kinship navigator program. Total projected costs for the lead agencies are estimated to be $14,148,890 ($13,219,258 in recurring costs and $929,632 in one-time costs.

In summary, total costs for the lead agencies to implement the family-finder and kinship navigator programs are projected to be $15,175,268 which includes one-time costs totaling $991,904.[135]

C. Government Sector Impact:

It is anticipated that the seven sheriffs' offices that conduct their own child protective investigations will need to hire an additional staff position to implement the family-finding program. The cost for the additional staffing is projected to total $513,189, which includes one-time costs of $31,136.[136]

[135] The DCF, *Senate Bill 92 Fiscal Analysis*, p. 10 (Feb. 10, 2021, as revised Mar. 26, 2021) (on file with the Senate Appropriations Subcommittee on Health and Human Services).
[136] The DCF Analysis at p. 9.

The DCF projects the need for 64 additional Child Protective Investigator FTE positions to implement the family-finding program.[137] Estimated expenditures, including Salaries and Benefits and associated expenses, total $4,713,147, including one-time costs of $284,672.[138] The DCF will likely require minimal use of existing technology resources to adapt any websites and contracts, as necessary.[139] Additionally, the bill is projected to cost the DCF $360,000 annually for two years to contract with national experts on the implementation of a new child and family well-being system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.19, 30.4015, 39.4087, 39.5086, 394.9082, 409.987, 409.988, and 409.996.

This bill creates the following sections of the Florida Statutes: 394.90825 and 409.998.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute makes the following changes:

- Modifies the DCF's requirement to collect and post on its website annual and other specified expenses, and instead requires the DCF to post and report findings related to a multi-year review of the lead agencies' and ME's financial information; and
- Removes the bill's proposed salary cap for managing entities' employees, and the change to reduce the salary cap for lead agencies' employees.
- Requires, rather than authorizes, the DCF, contracted sheriffs' offices, and lead agencies to develop a formal family-finding program. The program must be implemented as soon as a child is taken into custody.
- Requires, rather than authorizes, each lead agency to establish a kinship navigator program.
- Removes the limitations for the family-finding and kinship navigator programs that tie the development of such programs to available resources.

[137] The DCF Analysis at p. 9.
[138] *Id.*
[139] *Id.*

- Requires the DCF to treat foster parents and other caregivers with dignity, respect, and trust while ensuring delivery of services is focused on the best interest of the child.
- Requires the DCF, rather than encourages, to provide information, training, and support to foster parents and caregivers except as otherwise provided by state or federal law.
- Amends the DCF's duties to collect and post information regarding the managing entities and lead agencies' compensation and findings of the multi-year review of their financial position.
- Removes requirement that the lead agencies post their current budgets on their websites and relocating it to the above-mentioned provision.
- Adds additional information that must be published by lead agencies on its websites to include the total number and percentage of case managers who have 25 or more cases on their caseloads.
- Requires lead agencies to fund the cost of increased care if subcontracted service providers must provide services that are beyond the contract limits due to increased client need or caseload.
- Requires through their contracts with the DCF that the lead agencies demonstrate the ability to adhere to best child welfare practices enumerated in chapters 39 and 409, Florida Statutes, and provide information on their adherence to such best practices.
- Requires board members or officers of a managing entity or lead agency to disclose specified activity that may reasonably be construed as a conflict of interest. The bill provides procedures to follow to address the potential conflict of interest.
- Requires the DCF to create a community alliance in each service area of the lead agency, rather than in each county, to align with the current service model in Florida.
- Modifies the membership of the community alliances by allowing the number of representative members to be increased from 20 to up to 30 members to provide for adequate representation of the diverse population within the service area.
- Directs the DCF to work in collaboration with the local community alliances to achieve community-focused delivery of child welfare services. Provides for an alternative plan that establishes an innovative consortium of partners in communities where conditions make it infeasible to competitively contract with a lead agency.
- Authorizes the DCF to review any decision by a department-recognized credentialing entity to impose a sanction against a child welfare professional upon request of an administrative hearing pursuant to ch. 120, F.S.
- Authorizes competency restoration treatment to be provided at any facility deemed appropriate by the DCF for a forensic client who is held in a jail awaiting admission to a facility and who is likely to regain competence to proceed in the foreseeable future.
- Creates a program that allows Florida to partner with national experts to implement a new child and family well-being system and requires the Florida Institute of Child Welfare to report to Governor and the Legislature annually on program compliance and outcomes.

B. Amendments:

None.

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

By Senator Bean

4-01356F-21 202192__

A bill to be entitled

An act relating to the Department of Children and Families; amending s. 20.19, F.S.; requiring the department to establish community alliances in each community-based care lead agency service area; requiring community alliances to adopt certain bylaws; revising the membership of community alliances; amending s. 39.4015, F.S.; requiring, rather than authorizing, the department to develop a family-finding program; removing the limitation that the development of family-finding programs is subject to available resources; requiring that family finding begin as soon as a child is taken into custody of the department; making technical changes; amending s. 39.4087, F.S.; requiring the department to treat caregivers in a specified manner; requiring the department to provide certain information to and training for caregivers of children in foster care; removing the requirement that such information be provided subject to available resources; expanding certain information that is required to be fully disclosed to the caregivers to include the child's issues related to behavioral health; making technical changes; amending s. 39.5086, F.S.; removing the limitation that the development of kinship navigator programs is subject to available resources; requiring, rather than authorizing, each community-based care lead agency to establish a kinship navigator program; amending s. 394.9082, F.S.; requiring the department

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to collect and post specified information on its website for each managing entity under contract with the department; defining the term "employee"; providing a limitation on the managing entity employees' salaries; requiring that contracts and amendments to existing contracts between the department and managing entities include a specified provision; creating s. 394.90825, F.S.; defining terms; requiring a board member or an officer of a managing entity to disclose specified activity that may reasonably be construed as a conflict of interest; creating a rebuttable presumption of a conflict of interest if the activity was acted upon by the board without prior notice; establishing a process for the managing entity's board of directors to address the activity under certain timelines; providing for certain consequences for failure to obtain a board's approval or failure to properly disclose a contract as a conflict of interest; amending s. 409.987, F.S.; requiring the department to develop an alternative plan to contracting with a lead agency in a community under certain circumstances; providing requirements for the alternative plan; defining terms; requiring a board member or an officer of a lead agency to disclose activity that may reasonably be construed as a conflict of interest; creating a rebuttable presumption of a conflict of interest if the activity was acted upon by the board without prior notice; establishing a process for the lead agency's board of

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

directors to address the activity under certain timelines; providing for certain consequences for failure to obtain a board's approval or failure to properly disclose a contract as a conflict of interest; amending s. 409.988, F.S.; deleting a requirement that lead agencies post their current budgets on their websites; requiring a lead agency to demonstrate the ability to adhere to all best child welfare practices; amending s. 409.992, F.S.; defining the term "employee"; revising a limitation on salaries of community-based care lead agency employees; requiring that contracts and amendments to existing contracts between the department and lead agencies include a specified provision; amending s. 409.996, F.S.; requiring that contracts between the department and lead agencies provide information to the department which specifies how the lead agency will adhere to all best child welfare practices; requiring the department to collect and post on its website specified information relating to contracts between lead agencies and the department; creating s. 409.998, F.S.; providing legislative findings and intent; requiring the department to establish a program that consists of a child and family well-being system; requiring the designated lead agency to carry out programmatic functions; defining the term "child and family well-being system"; specifying program requirements; requiring the department, in collaboration with specified entities, to design,

implement, and evaluate the program requirements; requiring the Florida Institute for Child Welfare, by a specified date, to annually submit a report to the Governor and the Legislature; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (5) of section 20.19, Florida Statutes, are amended to read:

20.19 Department of Children and Families.—There is created a Department of Children and Families.

(5) COMMUNITY ALLIANCES.—

(a) The department shall, in consultation with local communities, establish a community alliance ~~or similar group~~ of the stakeholders, community leaders, client representatives, and funders of human services in each community-based care lead agency service area ~~county~~ to provide a focal point for community participation and governance of community-based services. ~~An alliance may cover more than one county when such arrangement is determined to provide for more effective representation.~~ The community alliance shall represent the diversity of the community.

(d) Each community alliance shall adopt bylaws to determine the specific membership composition that best represents the local community served by that community alliance. The membership of a ~~the~~ community alliance must ~~in a county shall at a minimum~~ be composed of no more than 20 members selected from the following:

1. A representative from the department.

2. Representatives ~~A representative~~ from local ~~county~~ government.

3. Representatives ~~A representative~~ from the school district.

4. A representative from the ~~county~~ United Way.

5. Representatives ~~A representative~~ from ~~the~~ county sheriffs' offices ~~sheriff's office~~.

6. A representative from each ~~the~~ circuit court in the lead agency service area ~~corresponding to the county~~.

7. A representative from the ~~county~~ children's services council ~~board~~, if one exists.

8. A representative of a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, or promote adoption.

(e) The community alliance shall adopt bylaws that allow for the ~~and may increase the~~ membership of the alliance to be increased to no more than 30 members if, in the judgment of the alliance, such change is necessary to adequately represent the diversity of the population within the community alliance service circuits. The additional membership may ~~to~~ include the state attorney for the judicial circuit in which the community alliance is located, or his or her designee~~;~~ ~~,~~ the public defender for the judicial circuit in which the community alliance is located, or his or her designee; or~~, and~~ other individuals and organizations who otherwise represent perspectives that will enable the community alliance to accomplish the duties specified in paragraph (b). Such individuals and organizations may include, but need not be

limited to, ~~represent~~ funding organizations, ~~are~~ community leaders, and individuals who have knowledge of community-based service issues~~, or otherwise represent perspectives that will enable them to accomplish the duties listed in paragraph (b), if, in the judgment of the alliance, such change is necessary to adequately represent the diversity of the population within the community alliance service circuits~~.

Section 2. Subsection (3) of section 39.4015, Florida Statutes, is amended to read:

39.4015 Family finding.—

(3) FAMILY-FINDING PROGRAM.~~—Subject to available resources,~~ The department, in collaboration with sheriffs' offices that conduct child protective investigations and community-based care lead agencies, shall ~~may~~ develop a formal family-finding program to be implemented by child protective investigators and community-based care lead agencies ~~as resources permit~~.

(a) Family finding shall ~~may~~ begin as soon as a child is taken into custody of the department, pursuant to s. 39.401, and throughout the duration of the case as necessary, finding and engaging with as many family members and fictive kin as possible for each child who may help with care or support for the child. The department or community-based care lead agency must specifically document strategies taken to locate and engage relatives and fictive kin. Strategies of engagement may include, but are not limited to, asking the relatives and fictive kin to:

1. Participate in a family group decision-making ~~decisionmaking~~ conference, family team conferencing, or other family meetings aimed at developing or supporting the family service plan;

2. Attend visitations with the child;

3. Assist in transportation of the child;

4. Provide respite or child care services; or

5. Provide actual kinship care.

(b) The family-finding ~~family finding~~ program shall provide the department and the community-based care lead agencies with best practices for identifying family and fictive kin. The family-finding ~~family finding~~ program must use diligent efforts in family finding and~~,~~ must continue those efforts until multiple relatives and fictive kin are identified~~, and must go beyond basic searching tools by exploring alternative tools and methodologies~~. Family-finding ~~Family finding~~ efforts by the department and the community-based care lead agency may include, but are not limited to:

1. Searching for and locating adult relatives and fictive kin.

2. Identifying and building positive connections between the child and the child's relatives and fictive kin.

3. Supporting the engagement of relatives and fictive kin in social service planning and delivery of services and creating a network of extended family support to assist in remedying the concerns that led to the child becoming involved with the child welfare system, when appropriate.

4. Maintaining family connections, when possible.

5. Keeping siblings together in care, when in the best interest of each child and when possible.

(c) To be compliant with this section, family-finding efforts must go beyond basic searching tools by exploring alternative tools and methodologies. A basic computer search

using the Internet or attempts to contact known relatives at a last known address or telephone number do not constitute effective family finding.

Section 3. Section 39.4087, Florida Statutes, is amended to read:

39.4087 Department ~~goals and~~ requirements relating to caregivers; dispute resolution.—

(1) To provide the best care to children, the Legislature requires ~~establishes as goals for~~ the department to treat foster parents, kinship caregivers, and nonrelative caregivers with dignity, respect, and trust while ensuring delivery of child welfare services is focused on the best interest of the child. To that end, regarding foster parents, kinship caregivers, and nonrelative caregivers caring for dependent children in their home, to the extent not otherwise prohibited by state or federal law ~~and to the extent of current resources~~, the department is required to do all of the following ~~will strive to~~:

(a) Provide a clear explanation to a caregiver on the role of the department, the role of the child's biological family as it relates to the delivery of child welfare services, and the rights and responsibilities of the caregiver.

(b) Provide training and support to the caregiver to help meet the necessary requirements for the daily care of the child and any special needs the child may have.

(c)1. Fully disclose all relevant information regarding the child and the background of his or her biological family. ~~A caregiver must maintain the confidentiality of any information as required by law.~~ Such disclosure includes, but is not limited to:

a.~~1.~~ Any issues relative to the child that may jeopardize the health and safety of the caregiver or other individuals residing in the household or alter the manner in which the caregiver would normally provide care.

b.~~2.~~ Any delinquency or criminal record of the child, including, but not limited to, any pending petitions or adjudications of delinquency when the conduct constituting the delinquent act, if committed by an adult, would constitute murder in the first degree, murder in the second degree, rape, robbery, or kidnapping.

c.~~3.~~ Information about any physical or sexual abuse the child has experienced.

d.~~4.~~ Any behavioral issues that may affect the care and supervision of the child.

e.~~5.~~ With parental consent to the extent required by law, any known health history and medical, psychological, or behavioral ~~mental~~ health issues or needs of the child, including, but not limited to, current infectious diseases the child has or any episodes of hospitalization due to mental or physical illness.

2. A caregiver must maintain the confidentiality of any information as required by law.

(d) Allow caregivers to communicate with professionals who work with the child, including, but not limited to, therapists and other behavioral health professionals, physicians and other health care professionals, and teachers.

(e) Provide a means by which a caregiver may contact the community-based care lead agency 24 hours a day, 7 days a week, for the purpose of receiving assistance from the lead agency.

(f) Solicit and consider caregiver input on a child's case plan.

(g) Provide a clear, written explanation to a caregiver of any plan concerning the placement of a child in the caregiver's home. If a plan was not developed before the placement, the department must provide a clear, written explanation to the caregiver once the plan is developed.

(h) Provide information, when it becomes available, on any emergency situation that requires a child to be placed in the caregiver's home.

(i) Allow a caregiver to request the removal of a child from the home without retaliation. However, the caregiver must be open to receiving training or other support services that may mitigate the need for the child's removal. If removal occurs, the caregiver shall cooperate with any transition that is in the best interest of the child to the extent that doing so is safe for the caregiver and other individuals in the caregiver's home.

(j) Inform the caregiver as soon as possible of any decision made by a court or child-caring agency relating to a child who is placed with the caregiver.

(k) Give at least 7 days' notice to a caregiver, to the extent possible, of any meeting or court hearing related to a child in his or her care. The notice must ~~shall~~ include, at minimum, ~~but is not limited to,~~ the name of the judge or hearing officer, the docket number, and the purpose and location of the hearing or meeting. If the department is providing such information to a child's biological parent, the department shall provide notice to the caregiver at the same time as the biological parent.

(l) ~~If the caregiver agrees,~~ Consider the caregiver as a placement option for a child if such child, who was formerly placed with the caregiver, reenters out-of-home care and the caregiver agrees to the child being placed with the caregiver upon reentry ~~and reenters out-of-home care~~.

(m) Upon reasonable notice from a caregiver, allow him or her a period of respite.

(n) Upon request, provide a caregiver with copies of all information in the department's records relating to the caregiver.

(2)(a) If a caregiver believes that the department, an employee of the department, an agency under contract with the department, or an employee of such agency has violated this section, and that the violation has harmed or could harm a child who is or was in the custody of the department, or that the violation inhibited the caregiver's ability to meet the child's needs as set forth in the case plan, the caregiver may notify the liaison assigned to the caregiver or the child's case manager. The liaison or case manager must make every attempt to resolve the dispute.

(b) If a caregiver believes the dispute is not adequately resolved by the case manager, the caregiver or the liaison for the caregiver may contact the supervisor of the liaison or the supervisor of the case manager. If the caregiver or the liaison for the caregiver contacts a supervisor in writing, he or she may copy the department on the communication, and the department shall maintain a record of any such communication received.

(c) If a caregiver believes that the supervisor of the liaison or the supervisor of the case manager did not adequately

resolve the dispute, the caregiver may contact the department, and the department must conduct a review and respond to the caregiver in writing within 30 days after being contacted.

Section 4. Paragraph (b) of subsection (2) of section 39.5086, Florida Statutes, is amended to read:

39.5086 Kinship navigator programs.—

(2) PURPOSE AND SERVICES.—

(b) ~~Subject to available resources,~~ Each community-based care lead agency shall ~~may~~ establish a kinship navigator program that:

1. Coordinates with other state or local agencies that promote service coordination or provide information and referral services, including any entities that participate in the Florida 211 Network, to avoid duplication or fragmentation of services to kinship care families;

2. Is planned and operated in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant governmental agencies, and relevant community-based or faith-based organizations;

3. Has a toll-free telephone hotline to provide information to link kinship caregivers, kinship support group facilitators, and kinship service providers to:

a. One another;

b. Eligibility and enrollment information for federal, state, and local benefits;

c. Relevant training to assist kinship caregivers in caregiving and in obtaining benefits and services; and

d. Relevant knowledge related to legal options available for child custody, other legal assistance, and help in obtaining

legal services.

4. Provides outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials; and

5. Promotes partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant governmental agencies, to increase their knowledge of the needs of kinship care families to promote better services for those families.

Section 5. Present paragraphs (f) through (j) of subsection (4) of section 394.9082, Florida Statutes, are redesignated as paragraphs (h) through (l), respectively, paragraph (m) is added to subsection (3) and new paragraphs (f) and (g) are added to subsection (4) of that section, and paragraph (a) of subsection (6) of that section is amended, to read:

394.9082 Behavioral health managing entities.—

(3) DEPARTMENT DUTIES.—The department shall:

(m) Collect and post all of the following information on its website, updated annually, for each managing entity under contract with the department:

1. Current salaries, bonuses, and other compensation paid, by position, for any employee who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 100 percent of the annual salary paid to the secretary of the Department of Children and Families. For purposes of this subparagraph, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any

other executive staff of the managing entity.

2. Annual expenses, reported as both a percentage of total managing entity funds and as a total dollar amount, as follows:

a. Program expenses, including, but not limited to, costs directly related to carrying out the managing entity's mission, which result in services being provided;

b. Administrative expenses, including, but not limited to, costs of board of director meetings, general legal services, accounting, insurance, office management, auditing, human resources, and other centralized services; and

c. Fundraising expenses, including, but not limited to, costs for publicizing and conducting fundraising campaigns, maintaining donor mailing lists, conducting special fundraising events, and any other activities that involve soliciting contributions.

(4) CONTRACT WITH MANAGING ENTITIES.—

(f)1. For purposes of this paragraph, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any other executive staff of the managing entity.

2. Notwithstanding any other law, a managing entity employee may not receive a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, including the base pay or base pay combined with any bonus or incentive payments received as a result of employment with more than one community-based care lead agency or managing entity, in excess of 100 percent of the annual salary paid to the secretary of the Department of Children and Families.

3. This paragraph does not prohibit any party from providing cash that is not from appropriated state funds to a managing entity employee.

(g) Upon the execution of a new contract or in any amendment to an existing contract, the department shall include a provision that includes the limitation on compensation specified in paragraph (f).

(6) NETWORK ACCREDITATION AND SYSTEMS COORDINATION AGREEMENTS.—

(a)1. The department shall identify acceptable accreditations which address coordination within a network and, if possible, between the network and major systems and programs with which the network interacts, such as the child welfare system, the courts system, and the Medicaid program. In identifying acceptable accreditations, the department shall consider whether the accreditation facilitates integrated strategic planning, resource coordination, technology integration, performance measurement, and increased value to consumers through choice of and access to services, improved coordination of services, and effectiveness and efficiency of service delivery.

2. All managing entities under contract with the state by July 1, 2016, shall earn accreditation deemed acceptable by the department pursuant to subparagraph 1. by June 30, 2019. Managing entities whose initial contract with the state is executed after July 1, 2016, shall earn network accreditation within 3 years after the contract execution date. Pursuant to paragraph (4)(l) ~~(4)(j)~~, the department may continue the contract of a managing entity under contract as of July 1, 2016,

that earns the network accreditation within the required timeframe and maintains it throughout the contract term.

Section 6. Section 394.90825, Florida Statutes, is created to read:

394.90825 Boards of managing entities; conflicts of interest.—

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

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

(b) "Conflict of interest" means when a board member or an officer, or a relative of a board member or an officer, of the managing entity does any of the following:

1. Enters into a contract or other transaction for goods or services with the managing entity.

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

3. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the member or officer, with the managing entity. For purposes of

this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.

(c) "Managing entity" has the same meaning as in s. 394.9082.

(d) "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(2)(a) For any activity that is presented to the board of a managing entity for its initial consideration and approval after July 1, 2021, or any activity that involves a contract that is being considered for renewal on or after July 1, 2021, and before January 1, 2022, a board member or an officer of a managing entity shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice as required under subsection (3).

(b) For contracts with a managing entity which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021.

(3)(a) If a board member or an officer, or a relative of a member or an officer, proposes to engage in an activity as described in (2)(a), the proposed activity must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the proposed activity must be included in the agenda.

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The meeting agenda must clearly identify the existence of a potential conflict of interest for the proposed activity. Before a member or an officer, or a relative of a member or an officer, engages in the proposed activity, the activity and contract or other transaction documents must be approved by an affirmative vote of two-thirds of all other members present.

(b) If a member or an officer notifies the board of a potential conflict of interest with the member or officer, or a relative of the member or officer, under an existing contract as described in paragraph (2)(b), the board must notice the activity on a meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the activity must be attached. The meeting agenda must clearly identify the existence of a potential conflict of interest. The board must be given the opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

(4)(a) If the board votes against the proposed activity pursuant to paragraph (3)(a), the board member or officer, or the relative of the member or officer, must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity, or the member or officer shall withdraw from office before the next scheduled board meeting. If the board finds that an officer or a member has violated this paragraph, the officer or member shall be deemed removed from office before the next scheduled board meeting.

(b) In the event that the board does not approve of a conflict of interest as required in paragraph (3)(b), the

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parties to the activity may opt to cancel the activity or, in the alternative, the member or officer must resign from the board before the next scheduled board meeting. If the activity canceled is a contract, the managing entity is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(5) A board member or an officer, or a relative of a member or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the member or officer, or the relative of the member or officer, shall leave the meeting during the discussion of, and the vote on, the activity. A member or an officer who is a party to, or has an interest in, the activity shall recuse himself or herself from the vote.

(6) A contract entered into between a board member or an officer, or a relative of a member or an officer, and the managing entity which has not been properly disclosed as a conflict of interest or potential conflict of interest under this section is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the managing entity.

Section 7. Section 409.987, Florida Statutes, is amended to read:

409.987 Lead agency procurement; boards; conflicts of

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interest.—

(1) Community-based care lead agencies shall be procured by the department through a competitive process as required under chapter 287.

(2) The department shall produce a schedule for the procurement of community-based care lead agencies and provide the schedule to the community alliances established pursuant to s. 20.19(5) and post the schedule on the department's website.

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies.

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

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

(b) Be governed by a board of directors or a board committee composed of board members. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must consist of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

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

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within the service area of the lead agency.

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

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

(5) The department's procurement team procuring any lead agencies' contracts must include individuals from the community alliance in the area to be served under the contract. All meetings at which vendors make presentations to or negotiate with the procurement team shall be held in the area to be served by the contract.

(6) In communities where conditions make it impossible or not feasible to competitively contract with a lead agency, the department shall develop an alternative plan, in collaboration with the local community alliance, that may include establishing an innovative consortia of partners which may include, but is not limited to, private entities, local and county governmental entities, and the department. The plan must detail how the community will continue to implement community-based care through competitively procuring either the specific components of foster care and related services or comprehensive services for defined eligible populations of children and families from

qualified licensed agencies as part of the community's efforts to develop the local capacity for a community-based system of coordinated care. The plan must ensure local control over the management and administration of the service provision in accordance with the intent of this section and may adhere to recognized best business practices, including, but not limited to, the use of public or private partnerships.

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

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

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

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

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

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the

member or officer, with the lead agency. For purposes of this subparagraph, the term "benefits" does not include per diem and travel expenses paid or reimbursed to board members in connection with their service on the board.

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

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

2. For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or officer shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021.

(c)1. If a member or an officer, or a relative of a member or an officer, proposes to engage in an activity that is covered by subparagraph (b)1., the proposed activity must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the proposed activity must be included in the agenda. The meeting agenda must clearly identify the

existence of a potential conflict of interest for the proposed activity. Before a member or an officer, or a relative of a member or an officer, engages in the proposed activity, the activity and contract or other transaction documents must be approved by an affirmative vote of two-thirds of all other members present.

2. If a member or an officer notifies the board of a potential conflict of interest with the member or officer, or a relative of the member or officer, under an existing contract as described in subparagraph (b)2., the board must notice the activity on a meeting agenda for the next general or special meeting of the members, and copies of all contracts and transactional documents related to the activity must be attached. The meeting agenda must clearly identify the existence of a potential conflict of interest. The board must be given the opportunity to approve or disapprove of the conflict of interest by a vote of two-thirds of all other members present.

(d)1. If the board votes against the proposed activity pursuant to subparagraph (c)1., the member or officer, or the relative of the member or officer, must notify the board in writing of his or her intention, or his or her relative's intention, not to pursue the proposed activity, or the member or officer shall withdraw from office before the next scheduled board meeting. If the board finds that an officer or a member has violated this subparagraph, the officer or member shall be deemed removed from office before the next scheduled board meeting.

2. In the event that the board does not approve of a conflict as required in subparagraph (c)2., the parties to the

activity may opt to cancel the activity or, in the alternative, the member or officer must resign from the board before the next scheduled board meeting. If the activity canceled is a contract, the lead agency is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(e) A member or an officer, or a relative of a member or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the member or officer, or the relative of the member or officer, must leave the meeting during the discussion of, and the vote on, the activity. A member or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(f) A contract entered into between a member or an officer, or a relative of a member or an officer, and the lead agency which has not been properly disclosed as a conflict of interest or potential conflict of interest under this subsection is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the lead agency.

Section 8. Subsection (1) of section 409.988, Florida Statutes, is amended to read:

409.988 Lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

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(a) Shall serve all children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred. The lead agency may also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

(b) Shall provide accurate and timely information necessary for oversight by the department pursuant to the child welfare results-oriented accountability system required by s. 409.997.

(c) Shall follow the financial guidelines developed by the department and provide for a regular independent auditing of its financial activities. Such financial information shall be provided to the community alliance established under s. 20.19(5).

(d) ~~Shall post on its website the current budget for the lead agency, including the salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.~~

~~(e)~~ Shall prepare all judicial reviews, case plans, and other reports necessary for court hearings for dependent children, except those related to the investigation of a

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referral from the department's child abuse hotline, and shall submit these documents timely to the department's attorneys for review, any necessary revision, and filing with the court. The lead agency shall make the necessary staff available to department attorneys for preparation for dependency proceedings, and shall provide testimony and other evidence required for dependency court proceedings in coordination with the department's attorneys. This duty does not include the preparation of legal pleadings or other legal documents, which remain the responsibility of the department.

(e) ~~(f)~~ Shall ensure that all individuals providing care for dependent children receive:

1. Appropriate training and meet the minimum employment standards established by the department. Appropriate training shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age developed by the Child Protection Team Program within the Department of Health.

2. Contact information for the local mobile response team established under s. 394.495.

(f) ~~(g)~~ Shall maintain eligibility to receive all available federal child welfare funds.

(g) Shall demonstrate the ability to adhere to all best child welfare practices pursuant to ss. 39.4087, 39.523, 409.1415, and 409.145.

(h) Shall maintain written agreements with Healthy Families Florida lead entities in its service area pursuant to s. 409.153 to promote cooperative planning for the provision of prevention and intervention services.

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services.

(j) May subcontract for the provision of services required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need, within the lead agency's geographic service area, to exceed this threshold. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and recommendation shall be made by representatives of local stakeholders, including at least one representative from each of the following:

1. The department.
2. The county government.
3. The school district.
4. The county United Way.
5. The county sheriff's office.
6. The circuit court corresponding to the county.

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

(k) Shall post on its website by the 15th day of each month at a minimum the information contained in subparagraphs 1.-4. for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

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

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

3. The percentage of required home visits completed; and

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

(l) Shall identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating with the lead agency or offering services or other assistance on a volunteer basis to the children and families served by the lead agency. The lead agency shall ensure that appropriate lead agency staff and subcontractors, including, but not limited to, case managers, are informed of the specific services or assistance available from community-based and faith-based organizations.

Section 9. Subsection (3) of section 409.992, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

409.992 Lead agency expenditures.—

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(3)(a) For purposes of this subsection, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any other executive staff of the community-based care lead agency.

(b) Notwithstanding any other ~~provision of~~ law, a community-based care lead agency ~~administrative~~ employee may not receive a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, including the base pay or base pay combined with any bonus or incentive payments received as a result of employment with more than one community-based care lead agency or managing entity, in excess of 100 ~~150~~ percent of the annual salary paid to the secretary of the Department of Children and Families ~~from state-appropriated funds, including state-appropriated federal funds~~.

(c) This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency ~~administrative~~ employee.

(5) Upon the execution of a new contract or in any amendment to an existing contract with a lead agency, the department shall include a provision that includes the limitation on compensation specified in subsection (3).

Section 10. Present subsections (3) through (25) of section 409.996, Florida Statutes, are redesignated as subsections (4) through (26), respectively, a new subsection (3) is added to that section, and subsections (1) and (2) and paragraph (d) of present subsection (25) are amended, to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration,

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

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

(a) Provide for the services needed to accomplish the duties established in s. 409.988. ~~and~~

(b) Provide information to the department which specifies how the lead agency will adhere to all best child welfare practices pursuant to ss. 39.4087, 39.523, 409.1415, and 409.145.

(c) Provide information to the department which is necessary to meet the requirements for a quality assurance program under subsection (20) ~~(19)~~ and the child welfare results-oriented accountability system under s. 409.997.

(d)~~(b)~~ Provide for tiered interventions and graduated penalties for failure to comply with contract terms or in the event of performance deficiencies. Such interventions and penalties shall include, but are not limited to:

1. Enhanced monitoring and reporting.

2. Corrective action plans.

3. Requirements to accept technical assistance and

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

consultation from the department under subsection (5) ~~(4)~~.

4. Financial penalties, which shall require a lead agency to reallocate funds from administrative costs to direct care for children.

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

(e)~~(c)~~ Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(f)~~(d)~~ Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely follow-up ~~followup~~ of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are

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

communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall collect and post on its website, and annually update, all of the following information for each lead agency under contract with the department:

(a) Current salaries, bonuses, and other compensation paid, by position, for any employee who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 100 percent of the annual salary paid to the secretary of the Department of Children and Families. For purposes of this paragraph, the term "employee" includes, but is not limited to, the chief executive officer, chief financial officer, and chief operating officer, or any other executive staff of the community-based care lead agency.

(b) Annual expenses, reported as both a percentage of total lead agency funds and as a total dollar amount, as follows:

1. Program expenses, including, but not limited to, costs directly related to carrying out the lead agency's mission and which result in services being provided;

2. Administrative expenses, including, but not limited to, costs of board of directors' meetings, general legal services, accounting, insurance, office management, auditing, human resources, and other centralized services; and

3. Fundraising expenses, including, but not limited to, costs for publicizing and conducting fundraising campaigns, maintaining donor mailing lists, conducting special fundraising events, and any other activities that involve soliciting contributions.

(26)~~(25)~~ Subject to an appropriation, for the 2020-2021 and 2021-2022 fiscal years, the department shall implement a pilot project in the Sixth and Thirteenth Judicial Circuits, respectively, aimed at improving child welfare outcomes.

(d) The department shall include the results of the pilot projects in the report required in subsection (25) ~~(24)~~ of this section. The report must include the department's findings and recommendations relating to the pilot projects.

Section 11. Section 409.998, Florida Statutes, is created to read:

409.998 Child and family well-being.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that every child deserves a safe, stable, and permanent family and that all families deserve the opportunities and supports to raise their children safely and successfully in their own homes and communities.

(b) The Legislature also finds that families are our greatest asset in ensuring that all children are safe and have what they need to thrive and succeed, and there is evidence that, with appropriate support, many families can remain safely together without court involvement or traumatic separations.

(c) The Legislature further finds that the state's current child welfare system and practices do not always align with current research related to the needs of children and families.

(d) It is the intent of the Legislature that the state establish a child and family well-being system that shifts the focus from child welfare to child well-being by allowing all sectors of a community and the state to work together to reallocate resources into services and supports that reduce the

need for out-of-home care and that improve the well-being of children and families.

(2) ESTABLISHMENT OF PROGRAM.—The department shall establish a program that consists of a child and family well-being system to serve children and their families through a contract with a designated lead agency operating in accordance with s. 409.987. The lead agency shall carry out all programmatic functions necessary to fulfill the intent of this section. As used in this section, the term "child and family well-being system" means a system that recognizes the difference between poverty and neglect and that provides mentoring and supports to biological parents as they develop the skills and resources necessary to adequately care for their children.

(3) PROGRAM REQUIREMENTS.—The creation of a child and family well-being system requires a fundamental change that refocuses all aspects of child welfare on supporting the family's role in caring for children. Successful implementation will result in a community-based network of support where the trauma of child removal is prevented and children are thriving in their own safe, permanent, and nurturing families. The designated lead agency shall collaborate with national experts that specialize in child welfare systems change to create a program that is required to do all of the following:

(a) Designate lead agency leadership that will identify a core group of agency individuals to develop a plan for creating necessary change in the way the agency works.

(b) Recognize that change of this magnitude is difficult and time-consuming and determine steps necessary to attend to the well-being of individuals involved early on in the process

to reduce undesired staff turnover and burnout and increase staff satisfaction and well-being.

(c) Develop a plan for creating a change in the way all partners in the process think about how to best keep families and children safe and together.

(d) Build working relationships throughout the process of change, including some unexpected or unconventional partners, allies, and mentors in the community.

(e) Provide regular and ongoing opportunities for the workforce to interact to discuss new ideas and principles that are needed for change to become permanent.

(f) Redirect resources toward primary prevention and away from removing children from their families.

(4) IMPLEMENTATION.—The department shall, in collaboration with the designated lead agency, the community alliance, and the Florida Institute for Child Welfare, design, implement, and evaluate the program requirements specified in subsection (3).

(5) REPORTING REQUIREMENTS.—By October 1, 2021, and annually thereafter, the Florida Institute for Child Welfare shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which evaluates the child and family well-being program, including, but not limited to, whether the program is in compliance with this section and the outcomes of the children served by the child and family well-being program.

Section 12. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 16, 2021

I respectfully request that **Senate Bill # 92**, relating to Department of Children & Families, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

92
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dept. of Children & Families

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy
Street
Orlando FL 32809
City *State* *Zip*

Phone 407 855 7604

Email vp.education@floridapt
org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 122
INTRODUCER:	Appropriations Committee; Senator Baxley; and others
SUBJECT:	Surrendered Newborn Infants
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Favorable**
2.	Howard	Kidd	AHS	**Recommend: Favorable**
3.	Howard	Sadberry	AP	**Fav/CS**

I. Summary:

CS/SB 122 modifies statutory provisions relating to surrendered newborn infants. The bill increases the age at which an infant may be lawfully relinquished, from approximately seven days old to approximately 30 days old.
The bill has no fiscal impact on state revenues or state expenditures.

The bill takes effect on July 1, 2021.

II. Present Situation:

Infant Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted these safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated locations where the babies are protected and provided with care until a permanent home is found.[1]

While there is great variability in the laws across states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from criminal liability and prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven.[2]

[1] *See* Infant Safe Haven Laws (Current through December 2016) *available at* https://www.childwelfare.gov/pubPDFs/safehaven.pdf (last visited Jan. 19, 2021).
[2] *Id.*

According to the nonprofit organization known as the National Safe Haven Alliance (NSHA), 4,126 safe haven relinquishments have occurred since 1999 nationwide.[3] Fifty-one relinquishments occurred in 2020.[4] These statistics are unofficial estimates, as there is no federally mandated safe haven reporting requirement. Therefore, the NSHA relies on county and state reporting. Illegal abandonments have also occurred during that time span, with some newborns found alive and others deceased.

Surrender of Newborn Infants in Florida

The Florida Legislature enacted Florida's initial abandoned newborn infant law in 2000.[5] The law created s. 383.50, F.S., and authorized the abandonment of a newborn infant, up to three days old or younger, at a hospital or a fire station and addressed: presumption of relinquishment of parental rights; implied consent to treatment; anonymity; and physical custody of the infant.[6] The law also directed the Department of Health, in conjunction with the Department of Children and Families, to produce a media campaign to promote safe placement alternatives for newborn infants.

In 2001, the law was amended to authorize EMS stations, in addition to hospitals and fire stations, to be used as optional locations for the lawful relinquishment of a newborn infant.[7] A firefighter, emergency medical technician, or paramedic is required to provide emergency medical services to the newborn infant to the extent he or she is trained to provide those services, and arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services. Upon admitting a newborn infant, a hospital must immediately contact a licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the newborn infant. The receiving hospital must also notify the licensed child-placing agency that a newborn infant has been left with the hospital and when the agency can take physical custody of the child.[8]

In 2008, multiple provisions of statute were modified to refer to a "surrendered newborn infant" rather than "abandoned newborn infant." The three-day age limit for surrender of a newborn infant was increased to a seven-day age limit. Additionally, a provision was added to indicate that when an infant is born in a hospital and the mother expresses intent to leave the infant and not return, the hospital or registrar is directed, upon her request, to complete the infant's birth certificate without naming the mother.

According to the NSHA, since 2000 there have been approximately 324 surrendered newborns in Florida. Of those, approximately 244 newborns were surrendered at hospitals and approximately 74 were surrendered at fire rescue or emergency medical service stations.[9] In 2020,

[3] *See* Our Cause, National Safe Haven Alliance *available at* https://www.nationalsafehavenalliance.org/our-cause (last visited Jan. 19, 2021).
[4] *Id.*
[5] Chapter 2000-188, Laws of Fla.
[6] Section 383.50, F.S.
[7] Chapter 2001-53, s. 15, Laws of Fla.
[8] Section 383.50, F.S.
[9] Safe Haven for Newborns, *Safe Haven for Newborns Statistics* (updated Jan. 25, 2021) (on file with the Senate Committee on Health Policy).

approximately 14 newborns were surrendered in Florida.[10] On the following page is a table outlining the approximate number of surrendered newborns in Florida from 2000 through January 20, 2021.

Newborns surrendered since 2000[11]			
County	**Surrendered Safely**	**Abandoned in Unsafe Places**	**Total**
Alachua	17	0	17
Bay	4	1	5
Brevard	5	2	7
Broward	38	8	46
Charlotte	4	0	4
Clay	4	0	4
Collier	3	1	4
Columbia	5	0	5
Duval	22	3	25
Escambia	7	0	7
Flagler	3	0	3
Hernando	8	0	8
Highlands	3	2	5
Hillsborough	10	2	12
Indian River	2	1	3
Lake	4	0	4
Lee	16	1	17
Leon	6	1	7
Manatee	7	1	8
Marion	4	2	6
Martin	1	0	1
Miami-Dade	51	8	59
Monroe	5	2	7
Nassau	2	0	2
Okaloosa	2	1	3
Orange	18	8	26
Osceola	2	0	2
Palm Beach	21	6	27
Pasco	2	1	3
Pinellas	7	3	10
Polk	6	3	9
Putnam	1	1	2
St. Johns	2	0	2
St. Lucie	3	0	3
Santa Rosa	6	1	7
Seminole	11	1	12

[10] *Id.*
[11] *Id.*

Newborns surrendered since 2000[11]			
County	**Surrendered Safely**	**Abandoned in Unsafe Places**	**Total**
Sumter	0	1	1
Taylor	1	0	1
Volusia	10	1	11
Wakulla	1	0	1
TOTAL	**324**	**62**	**386**

III. Effect of Proposed Changes:

Section 1 amends s. 383.50, F.S., revising the definition of "newborn infant" to increase the allowable age of a relinquished newborn infant from approximately seven days old to approximately 30 days old.

Section 2 amends s. 63.0423, F.S., to make conforming and technical changes and revise a cross-reference.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.50 and 63.0423.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute removes the language related to the newborn safety device including the requirements for placement and handling of surrendered infants in the device and specifications for the device.

B. Amendments:

None.

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

242386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 21 - 114
and insert:
Section 1. Subsection (1) of section 383.50, Florida Statutes, is amended to read:
383.50 Treatment of surrendered newborn infant.—
(1) As used in this section, the term "newborn infant" means a child who a licensed physician reasonably believes is approximately 30 ~~7~~ days old or younger at the time the child is

242386

left at a hospital, an emergency medical services station, or a fire station.

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

And the title is amended as follows:

Delete lines 3 - 15

and insert:

amending s. 383.50, F.S.; revising the definition of the term "newborn infant"; amending s. 63.0423, F.S.;

By Senator Baxley

12-00035-21 2021122__

A bill to be entitled

An act relating to surrendered newborn infants; amending s. 383.50, F.S.; revising and defining terms; authorizing the Department of Health to approve, and certain hospitals, emergency medical services stations, and fire stations to use, newborn infant safety devices to accept surrendered newborn infants under certain circumstances; requiring such hospitals, emergency medical services stations, or fire stations to physically check and test the devices at specified intervals; conforming provisions to changes made by the act; providing additional locations to which the prohibition on the initiation of criminal investigations based solely on the surrendering of a newborn infant applies; amending s. 63.0423, F.S.; conforming a cross-reference; making conforming and technical changes; providing an effective date.

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

Section 1. Present subsections (2) through (10) of section 383.50, Florida Statutes, are redesignated as subsections (3) through (11), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsections (3), (5), and (10) of that section are amended, to read:

383.50 Treatment of surrendered newborn infant.—

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

(a) "Department" means the Department of Health.

(b) "Newborn infant" means a child who a licensed physician

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12-00035-21 2021122__

reasonably believes is approximately 30 ~~7~~ days old or younger at the time the child is left at a hospital, an emergency medical services station, or a fire station.

(c) "Newborn infant safety device" means a device approved by the department under subsection (2) which is installed in an exterior wall of a hospital, an emergency medical services station, or a fire station and which has an exterior point of access that allows an individual to place a newborn infant inside and an interior point of access that allows individuals inside the building to safely retrieve the newborn infant.

(2)(a) The department may approve by rule, and a hospital, an emergency medical services station, or a fire station that is staffed 24 hours per day may use, a newborn infant safety device to accept surrendered newborn infants under this section if the device is:

1. Physically part of the hospital, emergency medical services station, or fire station;

2. Temperature-controlled and ventilated for the safety of newborns;

3. Equipped with an alarm system connected to the physical location of the device which automatically triggers an alarm inside the building when a newborn infant is placed in the device;

4. Equipped with a surveillance system that allows employees of the hospital, emergency medical services station, or fire station to monitor the inside of the device 24 hours per day; and

5. Located such that the interior point of access is in an area that is conspicuous and visible to the employees of the

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hospital, emergency medical services station, or fire station.

(b) A hospital, an emergency medical services station, or a fire station that uses a newborn infant safety device to accept surrendered newborn infants shall use the device's surveillance system to monitor the inside of the newborn infant safety device 24 hours per day and shall physically check the device at least twice daily and test the device at least weekly to ensure that the alarm system is in working order.

(4) ~~(3)~~ Each emergency medical services station or fire station that is staffed 24 hours per day with ~~full-time~~ firefighters, emergency medical technicians, or paramedics shall accept any newborn infant left with a firefighter, an emergency medical technician, or a paramedic or in a newborn infant safety device that is physically part of the emergency medical services station or fire station. The firefighter, emergency medical technician, or paramedic shall consider these actions as implied consent to and shall:

(a) Provide emergency medical services to the newborn infant to the extent that he or she is trained to provide those services, and

(b) Arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.

A licensee as defined in s. 401.23, a fire department, or an employee or agent of a licensee or fire department may treat and transport a newborn infant pursuant to this section. If a newborn infant is placed in the physical custody of an employee or agent of a licensee or fire department or is placed in a newborn infant safety device that is physically part of an

emergency medical services station or a fire station, such placement is ~~shall be~~ considered implied consent for treatment and transport. A licensee, a fire department, or an employee or agent of a licensee or fire department is immune from criminal or civil liability for acting in good faith pursuant to this section. Nothing in this subsection limits liability for negligence.

(6) ~~(5)~~ Except when there is actual or suspected child abuse or neglect, any parent who leaves a newborn infant in a newborn infant safety device or with a firefighter, an emergency medical technician, or a paramedic at a fire station or an emergency medical services station, leaves a newborn infant in a newborn infant safety device at a hospital, or brings a newborn infant to an emergency room of a hospital and expresses an intent to leave the newborn infant and not return, has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the newborn infant. When an infant is born in a hospital and the mother expresses intent to leave the infant and not return, upon the mother's request, the hospital or registrar shall complete the infant's birth certificate without naming the mother thereon.

(11) ~~(10)~~ A criminal investigation may ~~shall~~ not be initiated solely because a newborn infant is left at a hospital, an emergency medical services station, or a fire station under this section unless there is actual or suspected child abuse or neglect.

Section 2. Section 63.0423, Florida Statutes, is amended to read:

63.0423 Procedures with respect to surrendered newborn infants.—

(1) Upon entry of final judgment terminating parental rights, a licensed child-placing agency that takes physical custody of a newborn ~~an~~ infant surrendered at a hospital, an emergency medical services station, or a fire station pursuant to s. 383.50 assumes responsibility for the medical and other costs associated with the emergency services and care of the surrendered newborn infant from the time the licensed child-placing agency takes physical custody of the surrendered newborn infant.

(2) The licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the surrendered newborn infant. The emergency custody order shall remain in effect until the court orders preliminary approval of placement of the surrendered newborn infant in the prospective home, at which time the prospective adoptive parents become guardians pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parents shall remain subject to the right of the licensed child-placing agency to remove the surrendered newborn infant from the placement during the pendency of the proceedings if such removal is deemed by the licensed child-placing agency to be in the best interests of the child. The licensed child-placing agency may immediately seek to place the surrendered newborn infant in a prospective adoptive home.

(3) The licensed child-placing agency that takes physical custody of the surrendered newborn infant shall, within 24 hours

thereafter, request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether the surrendered newborn infant is a missing child.

(4) The parent who surrenders the newborn infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the licensed child-placing agency shall not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, a surrendered newborn ~~an~~ infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of a licensed child-placing agency. Such a placement does not eliminate the reporting requirement under s. 383.50(8) ~~s. 383.50(7)~~. When the department is contacted regarding a newborn ~~an~~ infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a licensed child-placing agency and may not take custody of the newborn infant unless reasonable efforts to contact a licensed child-placing agency to accept the newborn infant have not been successful.

(5) A petition for termination of parental rights under this section may not be filed until 30 days after the date the newborn infant was surrendered in accordance with s. 383.50. A petition for termination of parental rights may not be granted until a parent has failed to reclaim or claim the surrendered

newborn infant within the time period specified in s. 383.50.

(6) A claim of parental rights of the surrendered newborn infant must be made to the entity having legal custody of the surrendered newborn infant or to the circuit court before which proceedings involving the surrendered newborn infant are pending. A claim of parental rights of the surrendered newborn infant may not be made after the judgment to terminate parental rights is entered, except as otherwise provided by subsection (9).

(7) If a claim of parental rights of a surrendered newborn infant is made before the judgment to terminate parental rights is entered, the circuit court may hold the action for termination of parental rights in abeyance for a period of time not to exceed 60 days.

(a) The court may order scientific testing to determine maternity or paternity at the expense of the parent claiming parental rights.

(b) The court shall appoint a guardian ad litem for the surrendered newborn infant and order whatever investigation, home evaluation, and psychological evaluation are necessary to determine what is in the best interests of the surrendered newborn infant.

(c) The court may not terminate parental rights solely on the basis that the parent left the newborn infant at a hospital, an emergency medical services station, or a fire station in accordance with s. 383.50.

(d) The court shall enter a judgment with written findings of fact and conclusions of law.

(8) Within 7 business days after recording the judgment,

the clerk of the court shall mail a copy of the judgment to the department, the petitioner, and any person whose consent was required, if known. The clerk shall execute a certificate of each mailing.

(9)(a) A judgment terminating parental rights of a surrendered newborn infant pending adoption is voidable, and any later judgment of adoption of that child ~~minor~~ is voidable, if, upon the motion of a parent, the court finds that a person knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities toward the child ~~minor~~ or from exercising his or her parental rights. A motion under this subsection must be filed with the court originally entering the judgment. The motion must be filed within a reasonable time but not later than 1 year after the entry of the judgment terminating parental rights.

(b) No later than 30 days after the filing of a motion under this subsection, the court shall conduct a preliminary hearing to determine what contact, if any, will be allowed ~~permitted~~ between a parent and the child pending resolution of the motion. Such contact may be allowed only if it is requested by a parent who has appeared at the hearing and the court determines that it is in the best interests of the child. If the court orders contact between a parent and the child, the order must be issued in writing as expeditiously as possible and must state with specificity any provisions regarding contact with persons other than those with whom the child resides.

(c) The court may not order scientific testing to determine the paternity or maternity of the child ~~minor~~ until such time as

the court determines that a previously entered judgment terminating the parental rights of that parent is voidable pursuant to paragraph (a), unless all parties agree that such testing is in the best interests of the child. Upon the filing of test results establishing that person's maternity or paternity of the surrendered newborn infant, the court may order visitation only if it appears to be in the best interests of the child.

(d) Within 45 days after the preliminary hearing, the court shall conduct a final hearing on the motion to set aside the judgment and shall enter its written order as expeditiously as possible thereafter.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent adoption of a newborn infant left at a hospital, an emergency medical services station, or a fire station in accordance with s. 383.50 shall be conducted pursuant to this chapter.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

January 27, 2021

The Honorable Chair Kelli Stargel
420 Senate Office Building
Tallahassee, FL 32399

Dear Chair Stargel,

I would like to request that SB 122 Surrendered Newborn Infants be heard in the next Appropriations Committee meeting.

This bill changes the age of an infant from 7 days old, current Safe Haven laws, to 30 days old, where the baby can be surrendered to either a hospital, fire station or law enforcement facility without being charged with abandonment.

It also allows for the use of what is called "Newborn Safety Device." These Newborn Safety Device's allow a mother in crisis to safely, securely, and anonymously surrender her newborn. It is designed to be installed in an exterior wall of a designated fire station, hospital or law enforcement facility. It will have an exterior door that automatically locks upon placement of a newborn inside, and an interior door which allows a staff member to secure the surrendered newborn from inside the designated building. The Newborn Safety Device, has to provide a temperature controlled environment. The door is sealed to ensure air circulation is free from pollutants, exhaust, chemical fumes, and smoke. It will have a clear medical bassinet that sits in a supporting frame with a bassinet mattress and sheet that fits snugly onto the mattress. The alarm system is set up to ensure safety and quick response with 3 alarm notifications/triggers. The medical facility that agrees to have one of these Newborn Safety Devices installed, will be required to inspect them at least twice daily to ensure they are performing accurately.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

REPLY TO:
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- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

19 APRIL 2021
Meeting Date

SB 122
Bill Number (if applicable)

Topic FLORIDA BABY BOX BILL

Amendment Barcode (if applicable)

Name BILL SNYDER

Job Title

Address
Street

Phone

MONTICELLO FL 32344
City *State* *Zip*

Email

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

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

Representing SELF

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

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

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

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

S-001 (10/14/14)

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

SB 122
Bill Number (if applicable)

Topic Surrendered Newborn Infants

Amendment Barcode (if applicable)

Name Andrew Shirvell

Job Title Executive Director

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Voice for the Unborn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

SB 122
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Surrendered Newborn Infants

Name Andrew Shirvell

Job Title Executive Director

Address PO Box 12152
Street
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Email andrew@floridavoicefortheunborn.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Voice for the Unborn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

SB 172
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Safe Haven law

Name Jerome Hurtak

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Address 533 Grand Concourse
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Miami Shores FL 33138
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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Gloria M. Silveria Foundation 501c3 / Safe Haven for Newborns

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 192
INTRODUCER:	Education Committee and Senator Book and others
SUBJECT:	Students with Disabilities in Public Schools
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 192 revises the circumstances and procedures required for restraining students with a disability in public schools and prohibits the use of seclusion. The bill also provides enhanced mechanisms for monitoring specified classrooms. Specifically, the bill requires:

- School districts to:
  - Adopt positive behavior interventions and supports for students with a disability and identify all school personnel authorized to use the interventions and supports.
  - Provide training to all school personnel authorized to use positive behavior interventions and supports.
  - Publish the procedures for training in positive behavior interventions and supports in the district's special policies and procedures manual.
- The development of a crisis intervention plan for a student who has been restrained twice during a semester.
- Schools within the Broward County school district, as part of the Video Cameras in Public School Classrooms Pilot Program, to install a video camera, upon the request of a parent, in self-contained classrooms where students with a disability are enrolled and specifies the circumstances under which the video recording may be viewed.
- The Department of Education (DOE) to collect information relating to the installation and maintenance of video cameras in self-contained classrooms as part of the pilot program.
- Data maintained by the DOE on the use of restraint to be updated monthly and made available to the public through the DOE's website by October 1, 2021.

- The Commissioner of Education to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or in-service training requirements for instructional personnel.

The bill does not require a state appropriation. However, school districts may incur costs to provide training in the use of restraint or positive behavior interventions. The Broward County School District may incur costs related to the installation and maintenance of video recording equipment. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

The Individuals with Disabilities Education Act (IDEA)[1] was enacted to ensure that all children with a disability have available to them a free appropriate public education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and ensuring that the rights of children with disabilities and parents of such children are protected.[2] Accordingly, Florida law specifies conditions regarding the use of restraint and seclusion on students with a disability.[3]

The Use of Restraint and Seclusion

The Florida Department of Education (DOE) requires that all documenting, reporting, and monitoring requirements related to the use of restraint in schools are based on the definitions issued by the Office for Civil Rights (OCR) within the United States Department of Education.[4]

Restraint

According to the DOE:

- Physical restraint immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.
- Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or devices used by a student that have been prescribed by an appropriate medical or related service professional and are used for specific and approved purposes for which such devices were designed.[5]

School personnel are prohibited from using a mechanical restraint or a physical or manual restraint that restricts a student's breathing.[6]

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[1] 20 U.S.C. s. 1400 et seq.
[2] U.S. Department of Education, *IDEA Purpose,* https://sites.ed.gov/idea/about-idea (last visited Mar. 18, 2021).
[3] Section 1003.573, F.S.
[4] Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf, at 2.
[5] *Id.*
[6] Section 1003.573(4), F.S.

Seclusion

The OCR defines seclusion as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time out, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.[7] School personnel may not close, lock, or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshall for seclusion time-out rooms.[8]

School District Responsibilities

Each school district must develop policies and procedures regarding the use of restraint and seclusion of students with a disability. School district policies and procedures must address:

- Incident-reporting procedures.
- Data collection and monitoring, including when, where, and why students are restrained or secluded.
- Training programs relating to manual or physical restraint and seclusion.
- The district's plan for reducing the use of restraint and seclusion, particularly in settings in which it occurs frequently or with students who are restrained repeatedly,[9] and for reducing the use of prone restraint and mechanical restraint.[10]

Confidentiality of Student Records

With limited exceptions, school districts may not disclose personally identifiable information contained within student records to a third party without parental consent.[11] School districts may disclose personally identifiable information from an education record regarding threats of violence and other issues regarding a student's well-being without parental consent in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.[12]

School districts may also share student information with juvenile justice and criminal justice agencies if the disclosure concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released.[13] If the juvenile

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[7] U.S. Department of Education, Office of Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), *available at* https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf, at 7.

[8] Section 1003.573(5), F.S. Rule 69A-58.0084, F.A.C.

[9] The recurrent use of seclusion or restraint for an individual student indicates the need for a functional behavioral assessment (FBA) and should trigger a review and possible revision of that student's IEP and Behavioral Intervention Plan (BIP). For example, students with limited communication skills may exhibit aggressive behaviors in an effort to communicate. The FBA should be used to identify such situations and a BIP should be developed to address the need(s) through appropriate instructional techniques. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf, at 15.

[10] Section 1003.573(3)(a), F.S.

[11] Section 1002.22, F.S.; 20 U.S.C. s. 1232(g).

[12] 34 C.F.R. s. 99.36.

[13] 34 C.F.R. s. 99.38.

justice system seeks the disclosure of information on a student in order to identify and intervene with a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of an adjudicated delinquent, the juvenile could be classified as a preadjudicated delinquent, and the records may be shared.[14]

School Responsibilities

Florida law requires a school to prepare an incident report within 24 hours after a student is released from restraint or seclusion. The incident report must contain:

- The name, age, grade, ethnicity, and disability of the student restrained or secluded.
- The date and time of the event and the duration of the restraint or seclusion.
- A description of the type of restraint.
- A description of the incident.[15]

Before the end of the school day, a school must provide written notification to the parent or guardian of a student each time restraint or seclusion is used on the student. Reasonable efforts must also be taken to notify the parent or guardian by telephone or e-mail, or both, and these efforts must be documented. The school must obtain and keep in its records the parent's or guardian's signed acknowledgement that he or she was notified of his or her child's restraint or seclusion.[16] A school must also provide the parent or guardian with the completed incident report in writing by mail within three school days after a student was manually or physically restrained or secluded.[17]

Monitoring of the use of restraint and seclusion on students is required at the classroom, building, district, and state levels. The incident report and the notification to the parent or guardian must be provided to the school principal, the school district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services within the DOE electronically each month that school is in session.[18]

Forty-three school districts prohibited seclusion in the 2019-2020 school year. In the 2019-2020 school year, school districts reported 6,300 incidents of restraint and 557 incidents of seclusion.[19]

Florida Department of Education Responsibilities

The DOE is required to maintain aggregate data of incidents of manual or physical restraint and seclusion by county, school, student exceptionality, and other variables, including the type and method of restraint or seclusion used. This information must be updated monthly. The DOE is

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[14] *See* U.S. Dep't. of Justice and U.S. Dep't of Ed., *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs (June 1997), available at* https://www.ncjrs.gov/pdffiles/163705.pdf at 9.

[15] Section 1003.573(1), F.S. If the student's release occurs on a day before the school closes for the weekend, a holiday or another reason, the incident report must be completed by the end of the school day on the day the school reopens. *Id.*

[16] *Id.*

[17] Section 1003.573(1)(d), F.S.

[18] Section 1003.573(2)(a)-(b), F.S.

[19] Florida Department of Education, *Legislative Bill Analysis for SB 192* (December 14, 2020) (on file with the Senate Committee on Education).

also required to establish standards for documenting, reporting, and monitoring the use of manual or physical restraint or mechanical restraint, and occurrences of seclusion.[20]

Commissioner of Education Responsibilities

The Commissioner of Education is required to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education or in-service training requirements for personnel. These recommendations must address:

- Early identification and intervention methods.
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques.
- The use of available state and local resources.
- The use of positive behavioral supports to deescalate problem behaviors.
- Appropriate use of manual physical restraint and seclusion techniques.[21]

III. Effect of Proposed Changes:

The Use of Restraint and Seclusion

The bill modifies s. 1003.573, F.S., revises the circumstances and procedures required for restraining students with a disability in public schools and prohibits the use of seclusion.

Restraint

The bill defines terms related to restraint and ensures restraint is only used as a last resort to avoid imminent harm. Specifically, the bill defines:

- "Crisis intervention plan" to mean an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury.
- "Imminent risk of serious injury" to mean the threat posed by dangerous behavior that may cause serious physical harm to self or others.
- "Positive behavior interventions and supports" means the use of behavioral interventions to prevent dangerous behaviors that may cause serious physical harm to the student or others.
- "Restraint" to mean the use of a mechanical or physical restraint.
- "Mechanical restraint" to mean the use of a device that restricts a student's freedom of movement. The term does not include the use devices prescribed or recommended by physical or behavioral health professionals when used for indicated purposes.
- "Physical restraint" to mean the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body but does not include briefly holding a student in order to calm or comfort the student or physically escorting a student to a safe location.
- "Seclusion" to mean the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include time-out used as a behavior management technique intended to calm a student.

[20] Section 1003.573(2)(c)-(d), F.S.
[21] Section 1012.582(1), F.S.

- "Student," as the term relates to the restraint of students with a disability, to mean a child with an individual education plan[22] enrolled in grades kindergarten through 12. The term does not include students in prekindergarten, students who reside in residential care facilities, or students participating in a Department of Juvenile Justice education program.

The bill specifies that restraint may only be used to protect the safety of students, school personnel, or others, and only after all behavioral interventions to prevent the dangerous behavior posing a risk of serious physical harm to the student or others have been exhausted, and the threat of injury posed by the dangerous behavior remains. When restraining a student, a person may only apply the degree of force necessary to protect the student or others from imminent risk of serious injury. Restraint may not:

- Be used to inflict pain, induce compliance, discipline a student, or to correct student noncompliance.
- Involve the use of straightjackets, zip ties, handcuffs, or tie-downs to obstruct or restrict breathing or blood flow.
- Be used in a manner that places a student in a facedown position with the student's hands restrained behind the student's back.

Seclusion

The bill prohibits the use of seclusion of students by school personnel. Seclusion is defined as the involuntary confinement of a student in a room or area alone. The term does not include time-out used as a behavior management technique to calm a student.

This prohibition may encourage school personnel to consider effective and appropriate intervention strategies to address student behavior in the school setting.

School District Responsibilities

The bill requires school districts to adopt approved behavioral intervention and restraint training, pursuant to State Board of Education (SBE) rules, for students with a disability and identify all school personnel authorized to use the interventions. District policies and procedures on positive behavior interventions and supports must be publicly posted at the beginning of each school year, and any revisions must be filed with the bureau chief of the Bureau of Exceptional Education and Student Services within the DOE within 90 days after the revision.

Existing requirements governing policies and procedures for the seclusion and restraint of students with a disability are updated to align with the new definitions relating to restraint and the prohibition of the use of seclusion. The bill authorizes school districts to include in their required plans for achieving goals to reduce the use of restraint an analysis of data to determine trends related to the use of restraint.

[22] The individualized education plan is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.

Training

The bill requires school districts to provide training to all school personnel authorized to use positive behavior interventions and supports and publish the procedures for the training in the district's special policies and procedures manual. The bill adds the date an individual was last trained in the use of positive behavior interventions and supports to the required components of the incident report that is prepared within 24 hours after a student is released from restraint. Training must be provided annually and include:

- The use of positive behavior interventions and supports.
- Risk assessment procedures to identify when restraint may be used.
- Examples of when positive behavior interventions and support techniques have failed to reduce the imminent risk of serious injury.
- Examples of safe and appropriate restraint techniques and how to use these techniques with multiple staff members working as a team.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies arising during the use of restraint.
- Cardiopulmonary resuscitation.

The establishment of school district training protocol on the use of positive behavior interventions and supports may provide school personnel with additional resources and knowledge related to the techniques to deescalate disruptive student behavior.

Crisis Intervention Plan

The bill requires a team comprised of school personnel, applicable physical and behavioral health professionals, and a student's parent to develop a crisis intervention plan after the second time the student is restrained during a semester. A crisis intervention plan is an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury. The bill adds the date the crisis intervention plan was last reviewed, and whether changes were recommended, to the required components to be included in an incident report prepared within 24 hours after a student is released from restraint. The crisis intervention plan must be provided to the student's parent and include:

- Specific positive behavior interventions and supports to use in response to dangerous behaviors that create a threat of imminent risk of serious injury.
- Known physical and behavioral health concerns that will limit the use of restraint for the student.
- A timetable for the review and, if necessary, revision of the crisis intervention plan.

Video Cameras in Self-Contained Classrooms

Operation of Video Cameras

The bill creates s. 1003.574, F.S., which requires the Broward County school district to participate in the three-year Video Cameras in Public School Classrooms Pilot Program to provide a video camera to any school with a self-contained classroom upon the written request of a parent of a student in the classroom. A self-contained classroom is a classroom at a public school in which a majority of the students in regular attendance are provided special education

services and are assigned to one or more such classrooms for at least 50 percent of the instructional day. Before the video camera is placed in any classroom, schools must provide written notification of the placement of the video camera to the parents of each student assigned to the self-contained classroom, the school district, and each employee assigned to work with any of the students in the self-contained classroom. The video camera must be operational in each classroom in which the student is in attendance within 30 days after receipt of the parent's written request. The bill does not apply to self-contained classrooms in which the only students receiving special education services are those who have been deemed gifted.

The video camera must be capable of recording, through both video and audio, all areas of the self-contained classroom and any room attached to that classroom when students are present. Schools are prohibited from:

- Recording a restroom or any area where a student changes his or her clothes.
- Using videos for teacher evaluations or any purpose other than for ensuring the health, safety, and well-being of students receiving special education services in a self-contained classroom.
- Allowing regular or continuous monitoring of the video recording.

Any interruption in the operation of the video camera must be explained in writing to the school principal and the district school board. The explanation must include the duration of the interruption, and the district school board office is required to maintain the written explanation for at least one year.

If the parent withdraws the request or the student no longer attends the classroom, the school must notify the parents of the other students in the classroom at least five school days prior to ceasing operation of the video camera. The school must notify the parents that operation of the video camera will cease unless the continued use of the camera is requested by a parent. The school must also send the notification at least ten school days prior to the end of each school year.

Maintenance and Disclosure of Video Camera Recordings

The bill provides measures related to the maintenance and disclosure of recordings generated by video cameras in self-contained classrooms. The school principal is the custodian of video cameras, video recordings, and access to video recordings and must protect the confidentiality of all student records contained in video camera recordings in accordance with Florida laws governing the disclosure of student records. When making video recordings available for viewing, the school principal must conceal the identity of any student who appears in a video camera recording, but is not involved in the incident that formed the basis of the request for disclosure.

The school must make a recording available for viewing within seven days after receiving a request from:

- A school or school district employee who is involved in an alleged incident that is documented by the video recording as part of the investigative process.
- A parent of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the school or school district.

- A school or school district employee as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the school or school district.
- A law enforcement officer as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the law enforcement agency.
- The Department of Children and Families (DCF) as part of a child abuse or neglect investigation.

An incident is defined as an event, circumstance, act, or omission that results in the abuse or neglect of a student by an employee of a public school, school district or another student. The person who requested to view the recording must view the recording within 30 days of receiving notice that his or her request for viewing has been granted and report any suspected child abuse to the DCF. The bill specifies that an incidental viewing by a school employee or contractor involved in the installation, operation, or maintenance of video equipment, or the retention of video recordings does not violate limitations on the disclosure of video recordings.

Schools must retain video footage for at least three months after the date the video was recorded or until the conclusion of any investigation or legal proceedings that result from the recording, including the exhaustion of all appeals.

State Board of Education Appeals

An individual may appeal to the SBE an action by a school or school district which the individual alleges violates requirements related to video cameras in self-contained classrooms, and the SBE must grant a hearing within 45 days[23] of receiving the request for appeal. The bill specifies that statutory requirements related to video cameras in self-contained classrooms do not:

- Limit the access of the parent of a student, under the Family Educational Rights and Privacy Act (FERPA)[24] or any other law, to a video recording regarding his or her student.
- Waive any immunity from liability of a school district or an employee of a school district.
- Create any liability for a cause of action against a school or school district or an employee of a school or school district carrying out the duties and responsibilities related to video cameras in self-contained classrooms.

The bill provides rulemaking authority to the SBE to implement requirements related to video cameras in classrooms.

Florida Department of Education Responsibilities

The bill requires the DOE to collect various information. As part of the pilot program, DOE is required to collect information related to the installation and maintenance of video cameras. The DOE is required to make available to the public through DOE's website aggregate-level data on incidents of restraint by county, school, student exceptionality, and other variables by October 1, 2020.

[23] The State Board of Education generally meets every other month, it is unclear if the SBE would have to schedule special meetings specifically to meet the 45-day appeal deadline. Florida Department of Education, *Legislative Bill Analysis for SB 192* (2021), at 7 and 11.
[24] 20 U.S.C. s. 1232g.

The bill replaces the requirement for the DOE to establish standards for documenting, reporting, and monitoring the use of restraint with the requirement to establish standards for documenting, reporting, and monitoring the incident reports related to the use of restraint. This may assist school districts in documenting and reporting incidents related to the use of restraint.

Commissioner of Education Responsibilities

The bill requires the Commissioner of Education to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or in-service training requirements for instructional personnel. The bill also modifies the information required to be addressed in such recommendations by requiring the recommendations to address the use of positive behavior interventions and support, and effective classroom behavior management strategies.

Accordingly, the bill may help instructional personnel to be better informed and trained in strategies to teach students with emotional or behavioral disabilities.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

School districts may incur costs to provide professional development in the use of restraint or positive behavior interventions. These costs are indeterminate.

In addition, the Broward County School District may incur costs associated with installing and maintaining video cameras and retaining recordings. The Department of Education estimates a cost of $960 to install a 360-degree video camera in each classroom. However, the configuration of some classrooms may require up to two cameras per classroom. In addition to the cameras, schools would need to purchase software capable of concealing the identity of any student in the video recording who is not involved in the alleged incident.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.573, 1003.574, and 1012.582.

IX. Additional Information:

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

CS by Education Committee on March 23, 2021:
The committee Substitute removes the Volusia County school district from the pilot program created in the bill for the installation of video cameras in self-contained classrooms. The committee substitute retains Broward County in the pilot program. The committee substitute also:

- Clarifies that mechanical restraints may not be used in a manner that place a student in a facedown position with the student's hands restrained behind the student's back.
- Modifies the requirement for school districts to adopt positive behavior interventions and supports to require school districts to adopt approved behavioral intervention and restraint training, pursuant to State Board of Education rules, for students with a disability and identify all school personnel authorized to use the interventions.

[25] Florida Department of Education, *Legislative Bill Analysis for SB 192* (December 14, 2020) (on file with the Senate Committee on Education).

- Corrects a cross-reference to s. 1003.52, F.S., related to educational services in Department of Juvenile Justice programs.

B. Amendments:

None.

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

By the Committee on Education; and Senators Book and Rodrigues

581-03256-21 2021192c1

A bill to be entitled

An act relating to students with disabilities in public schools; amending s. 1003.573, F.S.; defining terms; requiring school districts to prohibit the use of seclusion on students with disabilities in public schools; requiring the Department of Education to make certain information available to the public by a specified date; providing requirements for the use of restraint; prohibiting specified restraint techniques; revising school district policies and procedures relating to restraint; requiring school districts to adopt approved behavioral interventions and restraint training, pursuant to State Board of Education rules; requiring each school district to publicly post specified policies and procedures; requiring school districts to provide training on certain interventions and supports to specified personnel; providing requirements for such training; requiring each school district to publish training procedures in its special policies and procedures manual; requiring schools to develop a crisis intervention plan for certain students; providing requirements for such plans; revising the requirements for documenting, reporting, and monitoring the use of restraint; conforming provisions to changes made by the act; creating s. 1003.574, F.S.; creating the Video Cameras in Public School Classrooms Pilot Program; defining terms; requiring a video camera to be placed in specified classrooms upon the request of a parent; requiring

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

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video cameras to be operational within a specified time period; providing requirements for the discontinuation of such video cameras; providing requirements for such video cameras; providing an exception; requiring a written explanation if the operation of such cameras is interrupted; requiring district school boards to maintain such explanation for a specified time; requiring schools to provide written notice of the placement of a video camera to certain individuals; providing requirements for retaining and deleting video recordings; prohibiting specified uses of such video cameras and recordings; providing that school principals are the custodians of such video cameras and recordings; providing requirements for school principals and video recordings; providing requirements relating to student privacy; providing requirements for the viewing of such video recordings; providing for an appeal process for actions of a school or school district; providing that incidental viewings of video recordings by specified individuals are not a violation of certain provisions; providing construction; requiring the Department of Education to collect specified information; authorizing the State Board of Education to adopt rules; amending s. 1012.582, F.S.; requiring continuing education and inservice training for instructional personnel teaching students with emotional or behavioral disabilities; conforming provisions to changes made by the act; providing an

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

effective date.

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

Section 1. Section 1003.573, Florida Statutes, is amended to read:

1003.573 Seclusion and ~~Use of~~ restraint of ~~and seclusion on~~ students with disabilities in public schools.—

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

(a) "Crisis intervention plan" means an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury.

(b) "Imminent risk of serious injury" means the threat posed by dangerous behavior that may cause serious physical harm to self or others.

(c) "Positive behavior interventions and supports" means the use of behavioral interventions to prevent dangerous behaviors that may cause serious physical harm to the student or others.

(d) "Restraint" means the use of a mechanical or physical restraint.

1. "Mechanical restraint" means the use of a device that restricts a student's freedom of movement. The term does not include the use of devices prescribed or recommended by physical or behavioral health professionals when used for indicated purposes.

2. "Physical restraint" means the use of manual restraint techniques that involve significant physical force applied by a

teacher or other staff member to restrict the movement of all or part of a student's body. The term does not include briefly holding a student in order to calm or comfort the student or physically escorting a student to a safe location.

(e) "Seclusion" means the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include time-out used as a behavior management technique intended to calm a student.

(f) "Student" means a child with an individual education plan enrolled in kindergarten through grade 12 in a school, as defined in s. 1003.01(2), or the Florida School for the Deaf and Blind. The term does not include students in prekindergarten, students who reside in residential care facilities under s. 1003.58, or students participating in a Department of Juvenile Justice education program under s. 1003.52.

(7) DOCUMENTATION AND REPORTING.—

(a) A school shall prepare an incident report within 24 hours after a student is released from restraint ~~or seclusion~~. If the student's release occurs on a day before the school closes for the weekend, a holiday, or another reason, the incident report must be completed by the end of the school day on the day the school reopens.

(b) The following must be included in the incident report:

1. The name of the student restrained ~~or secluded~~.

2. The age, grade, ethnicity, and disability of the student restrained ~~or secluded~~.

3. The date and time of the event and the duration of the restraint ~~or seclusion~~.

4. The location at which the restraint ~~or seclusion~~ occurred.

5. A description of the type of restraint used in terms established by the department ~~of Education~~.

6. The name of the person using or assisting in the restraint ~~or seclusion~~ of the student and the date the person was last trained in the use of positive behavior interventions and supports.

7. The name of any nonstudent who was present to witness the restraint ~~or seclusion~~.

8. A description of the incident, including all of the following:

a. The context in which the restraint ~~or seclusion~~ occurred.

b. The student's behavior leading up to and precipitating the decision to use ~~manual or physical~~ restraint ~~or seclusion~~, including an indication as to why there was an imminent risk of serious injury ~~or death~~ to the student or others.

c. The ~~specific~~ positive behavior interventions and supports ~~behavioral strategies~~ used to prevent and deescalate the behavior.

d. What occurred with the student immediately after the termination of the restraint ~~or seclusion~~.

e. Any injuries, visible marks, or possible medical emergencies that may have occurred during the restraint ~~or seclusion~~, documented according to district policies.

f. Evidence of steps taken to notify the student's parent or guardian.

g. The date the crisis intervention plan was last reviewed

and whether changes were recommended.

(c) A school shall notify the parent or guardian of a student each time ~~manual or physical~~ restraint ~~or seclusion~~ is used. Such notification must be in writing and provided before the end of the school day on which the restraint ~~or seclusion~~ occurs. Reasonable efforts must also be taken to notify the parent or guardian by telephone or ~~computer~~ e-mail, or both, and these efforts must be documented. The school shall obtain, and keep in its records, the parent's or guardian's signed acknowledgment that he or she was notified of his or her child's restraint ~~or seclusion~~.

(d) A school shall also provide the parent or guardian with the completed incident report in writing by mail within 3 school days after a student was ~~manually or physically~~ restrained ~~or secluded~~. The school shall obtain, and keep in its records, the parent's or guardian's signed acknowledgment that he or she received a copy of the incident report.

(2) SECLUSION.—Each school district shall prohibit school personnel from using seclusion.

(8) MONITORING.—

(a) ~~Monitoring of~~ The use of ~~manual or physical~~ restraint ~~or seclusion~~ on students shall be monitored ~~occur~~ at the classroom, building, district, and state levels.

(b) Any documentation prepared by a school pursuant to ~~as required in~~ subsection (7) ~~(1)~~ shall be provided to the school principal, the district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services electronically each month that the school is in session.

(c) The department shall maintain aggregate data of incidents of ~~manual or physical~~ restraint ~~and seclusion~~ and disaggregate the data for analysis by county, school, student exceptionality, and other variables, including the type and method of restraint ~~or seclusion~~ used. This information shall be updated monthly, de-identified, and made available to the public through the department's website no later than October 1, 2021.

(d) The department shall establish standards for documenting, reporting, and monitoring the incident reports related to the use of ~~manual or physical~~ restraint ~~or mechanical restraint, and occurrences of seclusion~~. These standards shall be provided to school districts ~~by October 1, 2011~~.

(3) RESTRAINT.—

(a) Authorized school personnel may use restraint only when all positive behavior interventions and supports have been exhausted. Restraint may be used only when there is an imminent risk of serious injury and shall be discontinued as soon as the threat posed by the dangerous behavior has dissipated. Techniques or devices such as straightjackets, zip ties, handcuffs, or tie downs may not be used in ways that may obstruct or restrict breathing or blood flow or that place a student in a facedown position with the student's hands restrained behind the student's back. Restraint techniques may not be used to inflict pain to induce compliance.

(b) Notwithstanding the authority provided in s. 1003.32, restraint shall be used only to protect the safety of students, school personnel, or others and may not be used for student discipline or to correct student noncompliance.

(c) The degree of force applied during physical restraint

must be only that degree of force necessary to protect the student or others from imminent risk of serious injury.

(4) SCHOOL DISTRICT POLICIES AND PROCEDURES.—

(a) Each school district shall adopt approved behavioral interventions and restraint training, pursuant to State Board of Education rules, and identify all school personnel authorized to use the interventions. Each school district shall develop policies and procedures ~~that are~~ consistent with this section which ~~and that~~ govern the following:

1. Incident-reporting procedures.

2. Data collection and monitoring, including when, where, and why students are restrained and ~~or secluded;~~ the frequency of occurrences of such restraint ~~or seclusion; and the prone or mechanical restraint that is most used~~.

3. Monitoring and reporting of data collected.

4. Training programs and procedures relating to ~~manual or physical~~ restraint as described in subsection (3) ~~and seclusion~~.

5. The district's plan for selecting personnel to be trained pursuant to this subsection.

6. The district's plan for reducing the use of restraint, ~~and seclusion~~ particularly in settings in which it occurs frequently or with students who are restrained repeatedly~~, and for reducing the use of prone restraint and mechanical restraint~~. The plan must include a goal for reducing the use of restraint ~~and seclusion~~ and must include activities, skills, and resources needed to achieve that goal. Activities may include, but are not limited to:

a. Additional training in positive behavior interventions and supports. ~~behavioral support and crisis management;~~

b. Parental involvement.~~,~~

c. Data review.~~,~~

d. Updates of students' functional behavioral analysis and positive behavior intervention plans.~~,~~

e. Additional student evaluations.~~,~~

f. Debriefing with staff.~~,~~

g. Use of schoolwide positive behavior support.~~; and~~

h. Changes to the school environment.

i. Analysis of data to determine trends.

j. Ongoing reduction of the use of restraint.

(b) Any revisions a school district makes to its ~~to the district's~~ policies and procedures pursuant to this section~~, which must be prepared as part of its special policies and procedures,~~ must be filed with the bureau chief of the Bureau of Exceptional Education and Student Services within 90 days after the revision ~~no later than January 31, 2012~~.

(c) At the beginning of each school year, each school district shall publicly post its policies and procedures on positive behavior interventions and supports as adopted by the school district.

(5) TRAINING.—Each school district shall provide training to all school personnel authorized to use positive behavior interventions and supports pursuant to school district policy. Training shall be provided annually and must include:

(a) The use of positive behavior interventions and supports.

(b) Risk assessment procedures to identify when restraint may be used.

(c) Examples of when positive behavior interventions and

support techniques have failed to reduce the imminent risk of serious injury.

(d) Examples of safe and appropriate restraint techniques and how to use these techniques with multiple staff members working as a team.

(e) Instruction in the district's documentation and reporting requirements.

(f) Procedures to identify and deal with possible medical emergencies arising during the use of restraint.

(g) Cardiopulmonary resuscitation.

Each school district shall publish the procedures for the training required under this subsection in the district's special policies and procedures manual.

(6) CRISIS INTERVENTION PLAN.—

(a) Upon the second time a student is restrained during a semester, the school shall develop a crisis intervention plan for the student. The crisis intervention plan shall be developed by a team comprised of the student's parent, school personnel, and applicable physical and behavioral health professionals.

(b) The crisis intervention plan must include:

1. Specific positive behavior interventions and supports to use in response to dangerous behaviors that create a threat of imminent risk of serious injury.

2. Known physical and behavioral health concerns that will limit the use of restraint for the student.

3. A timetable for the review and, if necessary, revision of the crisis intervention plan.

(c) The school must provide a copy of the crisis

intervention plan to the student's parent

~~(4) PROHIBITED RESTRAINT.—School personnel may not use a mechanical restraint or a manual or physical restraint that restricts a student's breathing.~~

~~(5) SECLUSION. School personnel may not close, lock, or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshal for seclusion time-out rooms~~.

Section 2. Section 1003.574, Florida Statutes, is created to read:

1003.574 Video cameras in public school classrooms; pilot program.—Beginning with the 2021-2022 school year, the Video Cameras in Public School Classrooms Pilot Program is created for a period of 3 school years.

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

(a) "Incident" means an event, a circumstance, an act, or an omission that results in the abuse or neglect of a student by:

1. An employee of a public school or school district; or

2. Another student.

(b) "School district" means the Broward County Public Schools.

(c) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education services and are assigned to one or more such classrooms for at least 50 percent of the instructional day.

(2)(a) A school district shall provide a video camera to any school with a self-contained classroom upon the written

request of a parent of a student in the classroom.

(b) Within 30 days after receipt of the request from a parent, a video camera shall be operational in each self-contained classroom in which the parent's student is in regular attendance for the remainder of the school year, unless the parent withdraws his or her request in writing.

(3) If the student who is the subject of the initial request is no longer in attendance in the classroom and a school discontinues operation of a video camera during a school year, no later than the fifth school day before the date the operation of the video camera is discontinued, the school must notify the parents of each student in regular attendance in the classroom that operation of the video camera will cease unless the continued use of the camera is requested by a parent. No later than the 10th school day before the end of each school year, the school must notify the parents of each student in regular attendance in the classroom that operation of the video camera will not continue during the following school year unless a written request is submitted by a parent for the next school year.

(4)(a) A video camera placed in a self-contained classroom must be capable of all of the following:

1. Monitoring all areas of the self-contained classroom, including, without limitation, any room attached to the self-contained classroom which is used for other purposes.

2. Recording audio from all areas of the self-contained classroom, including, without limitation, any room attached to the self-contained classroom which is used for other purposes.

(b) A video camera placed in a self-contained classroom may

not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes, except for the entryway, exitway, or hallway outside a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(c) A video camera placed in a self-contained classroom is not required to be in operation when students are not present in the self-contained classroom.

(d) If there is an interruption in the operation of the video camera for any reason, an explanation must be submitted in writing to the school principal and the district school board which explains the reason for and duration of the interruption. The written explanation must be maintained at the district school board office for at least 1 year.

(5) Before a school initially places a video camera in a self-contained classroom pursuant to this section, the school shall provide written notice of the placement of such video camera to all of the following:

(a) The parent of each student who is assigned to the self-contained classroom.

(b) Each student who is assigned to the self-contained classroom.

(c) The school district.

(d) Each school employee who is assigned to work with one or more students in the self-contained classroom.

(6) A school shall:

(a) Retain video recorded from a video camera placed pursuant to this section for at least 3 months after the date the video was recorded, after which the recording shall be

deleted or otherwise made irretrievable; or

(b) Retain the recording until the conclusion of any investigation or any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(7) A school or school district may not:

(a) Allow regular, continuous, or continual monitoring of videos recorded under this section; or

(b) Use videos recorded under this section for teacher evaluations or any purpose other than for ensuring the health, safety, and well-being of students receiving special education services in a self-contained classroom.

(8) The principal of the school is the custodian of a video camera operated pursuant to this section, all recordings generated by that video camera, and access to such recordings.

(a) The release or viewing of any video recording under this section must comply with s. 1002.22.

(b) A school or school district shall:

1. Conceal the identity of any student who appears in a video recording, but is not involved in the alleged incident documented by the video recording, which the school allows to be viewed under subsection (9), including, without limitation, blurring the face of the uninvolved student.

2. Protect the confidentiality of all student records contained in a video recording in accordance with s. 1002.22.

(9)(a) Within 7 days after receiving a request to view a video recording, a school or school district shall allow the following individuals to view a video recording made under this section:

1. A school or school district employee who is involved in an alleged incident that is documented by the video recording as part of the investigative process;

2. A parent of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the school or school district;

3. A school or school district employee as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the school or school district;

4. A law enforcement officer as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the law enforcement agency; or

5. The Department of Children and Families as part of a child abuse or neglect investigation.

(b) A person who requests to view a recording shall make himself or herself available for viewing the recording within 30 days after being notified by the school or school district that the person's request has been granted.

(c) A person who views the recording and suspects that child abuse has occurred must report the suspected child abuse to the Department of Children and Families.

(10)(a) Any individual may appeal to the State Board of Education regarding an action by a school or school district which the individual alleges to be in violation of this section.

(b) The state board shall grant a hearing on an appeal under this subsection within 45 days after receiving the appeal.

(11) A school or school district does not violate

subsection (8) if a contractor or other employee of the school or school district incidentally views a video recording made under this section in connection with the performance of his or her duties related to either of the following:

(a) The installation, operation, or maintenance of video equipment; or

(b) The retention of video recordings.

(12) This section does not:

(a) Limit the access of the parent of a student, under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, or any other law, to a video recording regarding his or her student.

(b) Waive any immunity from liability of a school district or an employee of a school district.

(c) Create any liability for a cause of action against a school or school district or an employee of a school or school district carrying out the duties and responsibilities required by this section.

(d) Apply to self-contained classrooms in which the only students receiving special education services are those who have been deemed gifted.

(13) The department shall collect information relating to the installation and maintenance of video cameras under this section.

(14) The State Board of Education may adopt rules to implement this section.

Section 3. Section 1012.582, Florida Statutes, is amended to read:

1012.582 Continuing education and inservice training for

teaching students with developmental and emotional or behavioral disabilities.—

(1) The Commissioner of Education shall develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, ~~and~~ other developmental disabilities, and emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel. These recommendations shall address:

(a) Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, ~~or~~ other developmental disabilities, or emotional or behavioral disabilities.

(b) Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques.

(c) The use of available state and local resources.

(d) The use of positive behavior interventions and ~~behavioral~~ supports to deescalate problem behaviors.

(e) The ~~Appropriate~~ use of ~~manual physical~~ restraint ~~and seclusion~~ techniques, positive behavior interventions and supports, and effective classroom behavior management strategies.

(2) In developing the recommendations, the commissioner shall consult with the State Surgeon General, the Director of the Agency for Persons with Disabilities, representatives from the education community in the state, and representatives from entities that promote awareness about autism spectrum disorder, Down syndrome, ~~and~~ other developmental disabilities, and emotional or behavioral disabilities and provide programs and

services to persons with ~~developmental~~ disabilities, including, but not limited to, regional autism centers pursuant to s. 1004.55.

(3) Beginning with the 2010-2011 school year, the Department of Education shall incorporate the course curricula recommended by the Commissioner of Education, pursuant to subsection (1), into existing requirements for the continuing education or inservice training of instructional personnel. The requirements of this section may not add to the total hours required for continuing education or inservice training as currently established by the department.

(4) The State Board of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 200 (808686)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; Senator Berman and others
SUBJECT:	Student Retention
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 200 authorizes a parent or guardian to request that his or her K-8 public school student be retained, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year. Specifically, the bill:

- Requires parents or guardians to submit a retention request in writing to the school principal by June 30, 2021;
- Requires the principal to consider the retention request if timely filed and inform the student's teachers of the request;
- Allows, in lieu of retention, the development of an education plan with the intent of helping the student return to grade level readiness;
- Allows the parent or guardian to have the final decision regarding the promotion or retention of the student;
- Allows a middle school student who is retained to retake high school credits toward grade forgiveness, if the student earned a grade of "C" or lower in the high school level course; and
- Requires school districts to report to the Department of Education the number of retained students under this act.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Student Progression

Each district school board must establish a plan for student progression from one grade to another based on the student's mastery of the Next Generation Sunshine State Standards.[1] The plan must, among other things:

- Emphasize student reading proficiency in grades K-3 and provide targeted instructional support for students with identified deficiencies.
- Use results of statewide, standardized assessments and end-of-course assessments to advise high school students of any identified deficiencies and to provide appropriate preparatory instruction.
- Provide for timely information to a student's teacher and parent evaluation results of progress monitoring in grades K-12.
- Provide requirements and notification procedures regarding student participation in whole-grade promotion, midyear promotion[2], or subject-matter acceleration.[3]

Statewide Standardized Assessments

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, and schools. The program is designed to, in part:

- Assess the achievement level and annual learning gains of each student in English Language Arts and mathematics and the achievement level in all other subjects assessed.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.[4]

Each student must participate in the statewide, standardized assessment program in grades 3 through 10.[5] Students who do not achieve a Level 3 or above on the statewide, standardized English Language Arts (ELA) assessment, the statewide, standardized Mathematics assessment, or the Algebra I EOC assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.[6]

Any student in grades K-3 who exhibits a substantial deficiency[7] in reading must be provided interventions immediately following the identification of the reading deficiency.[8]

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[1] Sections 1003.41 and 1008.25, F.S. The plan must focus specifically on ELA, math, science, and social studies standards.
[2] Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level. Section 1008.25(5)(c)8., F.S.
[3] Section 1008.25(2), F.S.
[4] Section 1008.22(1), F.S.
[5] Sections 1008.22, F.S and 1008.25(4)(a), F.S.
[6] Section 1008.25(4)(a), F.S.
[7] Determination of a substantial deficiency is based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations. Section 1008.25(5)(a), F.S. School districts are required determine the criteria used by the district to identify K-3 students with a substantial deficiency in reading. Fla. Admin. Code R. 6A-10.053(9)(c)3.
[8] Section 1008.25(5)(a), F.S.

Student Retention

Florida law specifies that no student may be assigned to a grade level based solely on age or other factors that constitute social promotion.[9]

To be promoted to grade 4, a student must score a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3. The student must be retained if the student's reading deficiency is not remedied by the end of grade 3, by scoring a Level 2 or higher on the statewide, standardized assessment required for grade 3.[10]

The district school board may only exempt students from mandatory retention in grade 3 for good cause. A student who is promoted to grade 4 with a good cause exemption must be provided intensive reading instruction and intervention. Good cause exemptions are limited to students in grade 3 and relate to limited English proficiency students, students with disabilities, the use of alternative assessments or portfolios, and students previously retained in grades K-3.[11]

In the 2018-2019 school year, 28,436 students were promoted to grade 4 based on a good cause exemption.[12]

Based on data from the Florida Department of Education (DOE),[13] there was an overall 43 percent reduction in statewide K-12 student retention rates for the 2019-20 school year compared to the previous 5-year average. The reduction in statewide K-8 retention rates for the same period was 50 percent. Students in grade 3 had the most significant reduction in retention rates, with a 77 percent reduction in grade 3 student retentions in 2019-20 compared to the previous 5-year average. See table below for a breakdown of the data provided form the DOE.

[9] Section 1008.25(6)(a), F.S.
[10] Section 1008.25(5)(b), F.S.
[11] Section 1008.25(6)(b), F.S.
[12] Pursuant to Florida Department of Education Emergency (DOE) Order No. 2020-EO-01, spring K-12 statewide assessment test administrations for the 2019-20 school year were canceled. DOE, *Emergency Order No. 2020-EO-01, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf. Therefore, 3rd grade good cause exemption data are not available for the 2019-20 school year. Florida Department of Education, *3rd Grade Promotions: Good Cause Exemption 2018-19 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml, and DOE, *3rd Grade Promotions: Good Cause Exemption 2014-15 to 2017-18 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml (last visited Jan. 27, 2021).
[13] Senate staff analysis of DOE, *Retention Rates by District 2019-20 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml, and DOE, *Retention Rates by District 2014-15 to 2018-19 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml (last visited Jan. 27, 2021).

Grade	Total Retained 5-year Average 2014-15 to 2018-19	Percent Retained 5-year Average 2014-15 to 2018-19	Total Retained 2019-20	Percent Retained 2019-20	Percent Reduction in Retained Students 2014-19 to 2019-20
K	6,894	3.40%	4,710	2.33%	32%
1	7,647	3.63%	4,830	2.34%	37%
2	4,941	2.31%	2,862	1.38%	42%
3	16,841	7.55%	3,805	1.74%	77%
4	2,289	1.06%	669	0.32%	71%
5	1,464	0.68%	521	0.24%	64%
6	2,621	1.25%	1,719	0.77%	34%
7	3,525	1.70%	2,370	1.09%	33%
8	5,445	2.61%	4,260	1.94%	22%
9	7,714	3.60%	4,670	2.14%	39%
10	8,776	4.21%	6,115	2.89%	30%
11	7,852	4.06%	4,651	2.36%	41%
12	11,351	5.83%	8,270	4.08%	27%
Total	**87,360**	**3.21%**	**49,452**	**1.80%**	**43%**

COVID-19 Public Health Emergency

In response to the COVID-19 emergency, the DOE issued an Executive Order (EO),[14] which cancelled remaining K-12 state assessments for the 2019-2020 school year.[15] The EO also authorized school districts and other educational entities to evaluate students for promotion, graduation, and final course grades for the 2019-2020 school year, without consideration of the assessments that were cancelled.[16]

Resulting state guidance relating to the cancellation of state assessments specified that, because the Grade 3 ELA FSA was a key component districts used to make promotion decisions, and such data would not be available due to the cancellation of statewide assessments for the 2019-2020 school year, promotion decisions should be made in consultation with parents, teachers, and school leaders based on the students' classroom performance and progress monitoring data. The guidance also specified that parents should have the ability to request retention of their child in the current grade for the 2020-2021 year. [17]

[14] Florida Department of Education, *Emergency Order No. 2020-EO-01, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[15] *Id., Section 4. Assessment, Accountability and Promotion, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[16] Florida Department of Education, Coronavirus (COVID-19), K-12 Public, Private & Charter Schools, Assessments, Accountability and Promotion http://www.fldoe.org/em-response/schools.stml (last visited Jan. 27, 2021).
[17] DOE, *Q&A Guidance*, http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-COVID-QAl.pdf at p. 2.

III. Effect of Proposed Changes:

The bill authorizes a parent or guardian to request that his or her K-8 public school student be retained, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year.

The bill specifies that a parent or guardian who wishes for his or her K-8 student to be retained must submit a retention request in writing to the school principal, specifying the academic reason for the retention. Only retention requests received by the principal on or before June 30, 2021, must be considered.

The bill requires that the principal inform the student's teacher and collaboratively discuss the request with the parent or guardian. In lieu of retention, a customized education plan may be developed for the student to return to grade level readiness by the end of the next academic year.

The bill specifies that the parent or guardian has the final decision whether to retain the student.

The bill allows a middle school student who is retained to retake high school credits toward grade forgiveness, if the student earned a grade of "C" or lower in the high school level course.

The bill requires school districts to report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

The bill may likely provide parents with greater authority to determine that their child should be retained in the 2021-2022 school year. However, this authority is granted only for the 2021-2022 school year, unless extended by legislative action.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 200 has no impact on state revenues or expenditures for fiscal year 2021-2022. However, to the extent the bill increases student retention, it could affect the number of FTE projected for funding as students may remain in the public K-12 system longer.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an unnumbered section of Florida Law.

IX. Additional Information:

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

PCS 808686 by Appropriations (Recommended by Appropriations Subcommittee on Education):
The proposed committee substitute:

- Adds that in addition to a parent, a guardian may also make a retention request.
- Changes the request from being automatically granted by the superintendent to being a request that shall be considered by the school principal in consultation with the teachers.
- Adds that the submitted request must specify the academic reason for the retention.
- Adds a provision that in lieu of retention, the principal in consultation with the teacher and parent or guardian may develop an education plan for the student to return to grade level readiness by the end of the next academic year.

- Retains the provision that the parent has final determination if their child is retained.
- Allows a middle school student who is retained to retake high school credits toward grade forgiveness.
- Removes the prohibition that a student retained does not qualify for a midyear promotion.

CS by Education on February 3, 2021
The committee substitute:

- Limits the retention request eligibility for K-8 students, rather than K-12 students.
- Modifies the request deadline from June 1, 2021 to June 30, 2021.
- Removes the requirement in the bill for school districts to administer midyear and annual statewide assessments to students retained under this act.
- Removes the option of midyear promotion eligibility for students retained under this act.
- Modifies from June 1, 2022 to June 30, 2022, the school district reporting date to the Department of Education.
- Omits the repeal of the act on June 30, 2022; however the act is created only within Florida Law.

B. Amendments:

None.

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

499062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Notwithstanding s. 1008.25, Florida Statutes, a parent or guardian may request that his or her K-5 public school student be retained for the 2021-2022 school year in the grade level to which the student was assigned at the beginning of the 2020-2021 school year, provided that such request is made for academic reasons.

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(1) A parent or guardian who wishes for his or her student to be retained as provided by this act must submit, in writing, to the school principal a retention request that specifies the academic reasons for the retention. Only requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

(2)(a) A principal who considers a retention request submitted pursuant to this act shall inform the student's teachers of the retention request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request. As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.

(b) In lieu of retention, the principal, teachers, and parent or guardian may collaborate to develop a customized 1-year education plan for the student with the intent of helping the student return to grade level readiness by the end of the next academic year. Such plan may include, but need not be limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

(c) The parent's or guardian's decision to promote or retain his or her student after discussing the retention request with the principal shall control. The parent or guardian must sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the academic and athletic

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ramifications of their decision. This form must be retained in the student's record.

(3) If a student retained under this subsection has an individual education plan (IEP) in effect, the student's IEP team must convene to review and revise the student's IEP, as appropriate.

(4) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to student retention; authorizing a parent or guardian to request that his or her K-5 student be retained in a grade level for academic reasons for a specified school year; requiring that such a request be submitted in a specified manner; requiring school principals to consider such requests if they are timely received; authorizing school principals to consider requests that are not timely received; requiring a school principal who considers a request for retention to inform the student's teachers of the request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request; requiring such

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discussion to disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports; authorizing the principal, teachers, and parent or guardian to collaborate to develop a customized 1-year education plan for the student in lieu of retaining the student; requiring a parent's or guardian's decision regarding retention to control; requiring a parent or guardian to sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the academic and athletic ramifications of their decision; requiring such form to be retained in the student's record; requiring the individual education plan (IEP) team for a retained student to review and revise the student's IEP, as appropriate; requiring school districts to report certain data to the Department of Education by a specified date; providing an effective date.

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to student retention; authorizing a parent or guardian to request that his or her student be retained in a grade level for academic reasons for a specified school year; requiring that such a request be submitted in a specified manner; requiring school principals to consider such requests if they are timely received; authorizing school principals to consider requests that are not timely received; requiring a school principal that considers a request to inform the student's teachers of the request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request; authorizing the principal, teachers, and parent or guardian to collaborate to develop a customized 1-year education plan for the student in lieu of retaining the student; requiring a parent or guardian's decision regarding retention to control; prohibiting a retained middle school student from retaking certain classes; requiring school districts to report certain data to the Department of Education by a specified date; providing an effective date.

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

Section 1. Notwithstanding s. 1008.25, Florida Statutes, a parent or guardian may request that his or her K-8 public school

student be retained for the 2021-2022 school year in the grade level to which the student was assigned at the beginning of the 2020-2021 school year, provided that such request is made for academic reasons.

(1) A parent or guardian who wishes for his or her student to be retained as provided by this act must submit, in writing, to the school principal a retention request that specifies the academic reasons for the retention. Only requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

(2)(a) A principal who considers a retention request submitted pursuant to subsection (1) shall inform the student's teachers of the retention request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request.

(b) In lieu of retention, the principal, teachers, and parent or guardian may collaborate to develop a customized 1-year education plan for the student with the intent of helping the student return to grade level readiness by the end of the next academic year. Such plan may include, but need not be limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

(c) The parent or guardian's decision to promote or retain his or her student after discussing the retention request with the principal shall control.

(3) A middle school student who is retained under this section may be eligible to retake high school credits earned

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toward grade forgiveness pursuant to s. 1003.4282(5), Florida Statutes, only if he or she has earned a grade of "C", "D," or "F." in the class for which the credits were awarded.

(4) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 200
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; Senator Berman and others
SUBJECT:	Student Retention
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 200 authorizes a parent or guardian to request that his or her K-5 public school student be retained, for academic reasons, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year. Specifically, the bill:

- Requires parents or guardians to submit a retention request in writing to the school principal by June 30, 2021;
- Requires the principal to consider the retention request if timely filed;
- Requires that the principal inform the student's teacher and to collaboratively discuss the request with the parent or guardian;
- Requires the principal to disclose that the requested retention could impact the student's eligibility to participate in high school interscholastic sports due to the student's age;
- Allows, in lieu of retention, the development of an education plan with the intent of helping the student return to grade level readiness;
- Allows the parent or guardian to have the final decision regarding the promotion or retention of the student;
- Requires that for a student retained by request with an IEP in effect, the student's IEP team must convene to review and revise the student's IEP, as appropriate; and
- Requires school districts to report to the Department of Education the number of retained students under this act.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Student Progression

Each district school board must establish a plan for student progression from one grade to another based on the student's mastery of the Next Generation Sunshine State Standards.[1] The plan must, among other things:

- Emphasize student reading proficiency in grades K-3 and provide targeted instructional support for students with identified deficiencies.
- Use results of statewide, standardized assessments and end-of-course assessments to advise high school students of any identified deficiencies and to provide appropriate preparatory instruction.
- Provide for timely information to a student's teacher and parent evaluation results of progress monitoring in grades K-12.
- Provide requirements and notification procedures regarding student participation in whole-grade promotion, midyear promotion[2], or subject-matter acceleration.[3]

Statewide Standardized Assessments

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, and schools. The program is designed to, in part:

- Assess the achievement level and annual learning gains of each student in English Language Arts and mathematics and the achievement level in all other subjects assessed.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.[4]

Each student must participate in the statewide, standardized assessment program in grades 3 through 10.[5] Students who do not achieve a Level 3 or above on the statewide, standardized English Language Arts (ELA) assessment, the statewide, standardized Mathematics assessment, or the Algebra I EOC assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.[6]

[1] Sections 1003.41 and 1008.25, F.S. The plan must focus specifically on ELA, math, science, and social studies standards.
[2] Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level. Section 1008.25(5)(c)8., F.S.
[3] Section 1008.25(2), F.S.
[4] Section 1008.22(1), F.S.
[5] Sections 1008.22, F.S and 1008.25(4)(a), F.S.
[6] Section 1008.25(4)(a), F.S.

Any student in grades K-3 who exhibits a substantial deficiency[7] in reading must be provided interventions immediately following the identification of the reading deficiency.[8]

Student Retention

Florida law specifies that no student may be assigned to a grade level based solely on age or other factors that constitute social promotion.[9]

To be promoted to grade 4, a student must score a Level 2 or higher on the statewide, standardized ELA assessment required for grade 3. The student must be retained if the student's reading deficiency is not remedied by the end of grade 3, by scoring a Level 2 or higher on the statewide, standardized assessment required for grade 3.[10]

The district school board may only exempt students from mandatory retention in grade 3 for good cause. A student who is promoted to grade 4 with a good cause exemption must be provided intensive reading instruction and intervention. Good cause exemptions are limited to students in grade 3 and relate to limited English proficiency students, students with disabilities, the use of alternative assessments or portfolios, and students previously retained in grades K-3.[11]

In the 2018-2019 school year, 28,436 students were promoted to grade 4 based on a good cause exemption.[12]

Based on data from the Florida Department of Education (DOE),[13] there was an overall 43 percent reduction in statewide K-12 student retention rates for the 2019-20 school year compared to the previous 5-year average. The reduction in statewide K-8 retention rates for the same period was 50 percent. Students in grade 3 had the most significant reduction in retention rates, with a 77 percent reduction in grade 3 student retentions in 2019-20 compared to the previous 5-year average. See table below for a breakdown of the data provided form the DOE.

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[7] Determination of a substantial deficiency is based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations. Section 1008.25(5)(a), F.S. School districts are required determine the criteria used by the district to identify K-3 students with a substantial deficiency in reading. Fla. Admin. Code R. 6A-10.053(9)(c)3.
[8] Section 1008.25(5)(a), F.S.
[9] Section 1008.25(6)(a), F.S.
[10] Section 1008.25(5)(b), F.S.
[11] Section 1008.25(6)(b), F.S.
[12] Pursuant to Florida Department of Education Emergency (DOE) Order No. 2020-EO-01, spring K-12 statewide assessment test administrations for the 2019-20 school year were canceled. DOE, *Emergency Order No. 2020-EO-01, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf. Therefore, 3rd grade good cause exemption data are not available for the 2019-20 school year. Florida Department of Education, *3rd Grade Promotions: Good Cause Exemption 2018-19 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml, and DOE, *3rd Grade Promotions: Good Cause Exemption 2014-15 to 2017-18 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml (last visited Jan. 27, 2021).
[13] Senate staff analysis of DOE, *Retention Rates by District 2019-20 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.stml, and DOE, *Retention Rates by District 2014-15 to 2018-19 available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.stml (last visited Jan. 27, 2021).

Grade	Total Retained 5-year Average 2014-15 to 2018-19	Percent Retained 5-year Average 2014-15 to 2018-19	Total Retained 2019-20	Percent Retained 2019-20	Percent Reduction in Retained Students 2014-19 to 2019-20
K	6,894	3.40%	4,710	2.33%	32%
1	7,647	3.63%	4,830	2.34%	37%
2	4,941	2.31%	2,862	1.38%	42%
3	16,841	7.55%	3,805	1.74%	77%
4	2,289	1.06%	669	0.32%	71%
5	1,464	0.68%	521	0.24%	64%
6	2,621	1.25%	1,719	0.77%	34%
7	3,525	1.70%	2,370	1.09%	33%
8	5,445	2.61%	4,260	1.94%	22%
9	7,714	3.60%	4,670	2.14%	39%
10	8,776	4.21%	6,115	2.89%	30%
11	7,852	4.06%	4,651	2.36%	41%
12	11,351	5.83%	8,270	4.08%	27%
Total	**87,360**	**3.21%**	**49,452**	**1.80%**	**43%**

Exceptional Student Education

The Individuals with Disabilities Education Act (IDEA) requires school districts to make free appropriate public education (FAPE) available to such students ages three through 21.[14] A FAPE must include special education and related services[15] provided by the public school district at no cost to the parent, which meet the standards of the state and are in conformity with the student's Individualized Education Plan (IEP).[16] An IEP must be developed, reviewed, and revised for each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements.[17]

The student's IEP Team[18] is required to review the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved. The IEP must team must respond to the parent's right to ask for a revision to the IEP, and to revise the IEP, as appropriate, to address any lack of progress toward annual goals or consider anticipated needs.[19]

[14] 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.
[15] "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34(a).
[16] 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C. An individualized education plan means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA. 20 U.S.C. s. 1414(d).
[17] Rule 6A-03028(3), F.A.C.
[18] The membership of the IEP Team is specified in Rule 6A-6.03028(3)(c), F.A.C.
[19] Rule 6A-6.03028(3)(j), F.A.C.

COVID-19 Public Health Emergency

In response to the COVID-19 emergency, the DOE issued an Executive Order (EO),[20] which cancelled remaining K-12 state assessments for the 2019-2020 school year.[21] The EO also authorized school districts and other educational entities to evaluate students for promotion, graduation, and final course grades for the 2019-2020 school year, without consideration of the assessments that were cancelled.[22]

Resulting state guidance relating to the cancellation of state assessments specified that, because the Grade 3 ELA FSA was a key component districts used to make promotion decisions, and such data would not be available due to the cancellation of statewide assessments for the 2019-2020 school year, promotion decisions should be made in consultation with parents, teachers, and school leaders based on the students' classroom performance and progress monitoring data. The guidance also specified that parents should have the ability to request retention of their child in the current grade for the 2020-2021 year. [23]

III. Effect of Proposed Changes:

The bill authorizes a parent or guardian to request that his or her K-5 public school student be retained, for the 2021-2022 school year, in the grade level to which the student was assigned at the beginning of the 2020-21 school year.

A parent or guardian who wishes for his or her student to be retained must submit a retention request in writing to the school principal, specifying the academic reason for the retention. Only retention requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

The principal is required to inform the student's teacher and collaboratively discuss the request with the parent or guardian. As part of the discussion with the parent or guardian, the principal must disclose that the requested retention could impact the student's eligibility to participate in high school interscholastic sports due to the student's age.

In lieu of retention, a customized education plan may be developed for the student to return to grade level readiness by the end of the next academic year. Such plan may include, but is not limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

The parent or guardian has the final decision whether to retain the student and must sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the

[20] Florida Department of Education, *Emergency Order No. 2020-EO-01, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[21] *Id., Section 4. Assessment, Accountability and Promotion, March 23, 2020 available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[22] Florida Department of Education, Coronavirus (COVID-19), K-12 Public, Private & Charter Schools, Assessments, Accountability and Promotion http://www.fldoe.org/em-response/schools.stml (last visited Jan. 27, 2021).
[23] DOE, *Q&A Guidance*, http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-COVID-QAl.pdf at p. 2.

academic and athletic ramifications of their decision. This form must be retained in the student's record.

For a student retained by request with an IEP in effect, the student's IEP team must convene to review and revise the student's IEP, as appropriate.

School districts are required to report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

The bill may likely provide parents with greater authority to determine that their child should be retained in the 2021-2022 school year. However, this authority is granted only for the 2021-2022 school year, unless extended by legislative action.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 200 has no impact on state revenues or expenditures for fiscal year 2021-2022. However, to the extent the bill increases student retention, it could affect the number of FTE projected for funding as students may remain in the public K-12 system longer.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an unnumbered section of Florida Law.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute:

- Adds that in addition to a parent, a guardian may also make a retention request.
- Revises the grades from K-8 to K-5, for which a parent can request that their student be retained.
- Changes the request from being automatically granted by the superintendent to being a request that shall be considered by the school principal in consultation with the teachers.
- Adds that the submitted request must specify the academic reason for the retention.
- Adds a provision that in lieu of retention, the principal in consultation with the teacher and parent or guardian may develop an education plan for the student to return to grade level readiness by the end of the next academic year.
- As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.
- Retains the provision that the parent has final determination if their child is retained.
- The parent or guardian must sign a form provided by the principal indicating the parent or guardian's decision and acknowledging the academic and athletic ramifications of their decision. This form must be retained in the student's record.
- Adds that if the student is retained, the student's IEP team must convene to review and revise the student's IEP, as appropriate.
- Removes the prohibition that a student retained does not qualify for a midyear promotion.

CS by Education on February 3, 2021:
The committee substitute:

- Limits the retention request eligibility for K-8 students, rather than K-12 students.
- Modifies the request deadline from June 1, 2021 to June 30, 2021.
- Removes the requirement in the bill for school districts to administer midyear and annual statewide assessments to students retained under this act.
- Removes the option of midyear promotion eligibility for students retained under this act.
- Modifies from June 1, 2022 to June 30, 2022, the school district reporting date to the Department of Education.
- Omits the repeal of the act on June 30, 2022; however the act is created only within Florida Law.

B. Amendments:

None.

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

By the Committee on Education; and Senator Berman

581-01977-21 2021200c1

A bill to be entitled

An act relating to student retention; authorizing a parent to request that his or her student be retained in a grade level for a specified school year; requiring such a request to be submitted in a specified manner; requiring school district superintendents to grant such requests if they are timely received; authorizing school district superintendents to grant requests that are not timely received; requiring a retained student to remain in the grade in which he or she was retained in until the student qualifies for promotion at the end of the school year; requiring school districts to report certain data to the Department of Education by a specified date; providing an effective date.

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

Section 1. Notwithstanding s. 1008.25, Florida Statutes, a parent may request to retain his or her K-8 public school student in the grade level to which the student was assigned at the beginning of the 2020-2021 school year for the 2021-2022 school year.

(1) A parent who wishes for his or her student to be retained under this act shall submit a retention request in writing to the school district superintendent. Only requests received by the superintendent on or before June 30, 2021, must be considered. A school district superintendent who timely receives such a request shall grant the request. A school

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581-01977-21 2021200c1

district superintendent who receives such a written request after the deadline for receipt may grant the request upon his or her discretion.

(2) A student retained at the request of a parent pursuant to this act may not qualify for midyear promotion pursuant to s. 1002.3105, Florida Statutes, and shall remain in the grade in which he or she was retained until the student qualifies for promotion at the end of the school year.

(3) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/21
Meeting Date

200
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Student Retention

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy
Street

Orlando FL 32809
City *State* *Zip*

Phone 407 855 7604

Email vp.education@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

200
Bill Number (if applicable)

Topic Student Retention

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street
Street

Phone 850-425-1344

Tallahassee FL 32301
City *State* *Zip*

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 262
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Harrell
SUBJECT:	Dispensing Medicinal Drugs
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Brown	HP	**Favorable**
2.	Brown	Caldwell	MS	**Fav/CS**
3.	Howard	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 262 amends s. 465.019, Florida Statutes, to authorize medicinal drugs to be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible to the patient, geographically or otherwise.

If prescribing and dispensing occurs, the bill requires that a supply of the drug must be dispensed that will last for the greater of up to 48 hours or through the end of the next business day, and that during a declared state of emergency, a 72-hour supply may be dispensed by a hospital located in an area affected by the emergency.

Any of these new circumstances that authorize the prescription of a controlled substance must comply with existing regulations and restrictions on the prescribing of a controlled substance.

The bill has an insignificant fiscal impact on the Department of Health (department) that can be absorbed within existing resources.

The bill takes effect on July 1, 2021.

II. Present Situation:

Medicinal Prescribing and Dispensing Practitioners

There are several professions in Florida that have prescriptive authority at various levels, including:

- Allopathic physicians;
- Osteopathic physicians;
- Podiatrists;
- Dentists;
- Advanced practice registered nurses;[1]
- Physician assistants;[2] and
- Pharmacists.[3]

A person may not dispense medicinal drugs unless licensed as a pharmacist, except that a practitioner authorized by law to prescribe drugs may dispense medicinal drugs to patients in the regular course of practice.[4] A practitioner who dispenses medicinal drugs for human consumption for a fee or remuneration of any kind, whether directly or indirectly, must:

- Register with the professional licensing board as a dispensing practitioner and pay a board-established fee at the time of registration and upon renewal of his or her license;
- Comply with, and be subject to, all laws and rules applicable to pharmacists and pharmacies, including, chs. 456, 499, and 893, F.S., and all applicable federal laws and federal regulations; and
- Give each patient a written prescription and, orally or in writing, advise the patient that the prescription may be filled in the practitioner's office or at any pharmacy, before dispensing any drug.[5]

Pharmacy

The practice of pharmacy and the licensure of pharmacies are regulated under ch. 465, F.S. The "practice of the profession of pharmacy" includes:

- Compounding, dispensing, and consulting the consumer concerning the contents, therapeutic values, and uses of any medicinal (prescription)[6] drug; and
- Other pharmaceutical services.[7, 8]

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[1] Section 464.012(3)(a), F.S.
[2] *See* ss. 458.347(4)(e)4., and 459.022(4)(e)4., F.S.
[3] *See* s. 465.186, F.S., and Fla. Admin. Code R. 64B8-36.001 (2019).
[4] Section 465.0276(1)(a), F.S.
[5] Section 465.0276(2)(a), (b), and (c), F.S.
[6] Under s. 465.003(8), F.S., "medicinal drugs" means substances commonly known as "prescription" or "legend" drugs required by law to be dispensed by prescription only.
[7] Section 465.003(13), F.S.
[8] In the context of pharmacy practice, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. The "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or

The Board of Pharmacy

The Board of Pharmacy (BOP) is created within the department and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.[9] All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.[10]

The Practice of Pharmacy

Florida law recognizes seven types of pharmacies as eligible for various operating permits to be issued by the department:

- Community pharmacy;[11]
- Institutional pharmacy;[12]
- Nuclear pharmacy;[13]
- Special pharmacy;[14]
- Internet pharmacy;[15]
- Non-resident sterile compounding pharmacy;[16] and
- Special sterile compounding pharmacy.[17]

Institutional Pharmacies

An "institutional pharmacy" includes any pharmacy located in a health care institution, that includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.[18] Institutional pharmacy permits are required for any pharmacy located in any health care institution.[19]

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employing the science or art of any branch of the pharmaceutical profession, study, or training, expressly permits a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients, and includes the administration of vaccines to adults. *See* s. 465.003(13), F.S.

[9] *See ss.* 465.002, and 465.0155, F.S.

[10] Fla. Admin. Code R. 64B16-28.100(1) (2019).

[11] The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.

[12] *See* ss. 465.003(11)(a)2., and 465.019, F.S.

[13] The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.

[14] The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.

[15] The term "internet pharmacy" includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.

[16] The term "nonresident sterile compounding pharmacy" includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158(1), F.S.

[17] *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2019). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.

[18] Section 465.003(11)(a)2., F.S.

[19] Fla. Admin. Code R. 64B16-28.100(3) (2019).

All institutional pharmacies must designate a consultant pharmacist[20] who is responsible for maintaining all drug records required by law, and for establishing drug handling procedures for the safe handling and storage of drugs. The consultant pharmacist may also be responsible for ordering and evaluating any laboratory or clinical tests when these tests are necessary.[21] These laboratory or clinical tests may be ordered only for patients residing in a nursing home, when authorized by the facility's medical director. The consultant pharmacist must complete additional training and demonstrate additional qualifications in the practice of institutional pharmacy, as required by the BOP, and be licensed as a registered pharmacist.[22, 23]

Currently, there are four types of institutional pharmacy permits issued by the BOP to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.[24]

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy that all medicinal drugs are administered from individual prescription containers to an individual patient and that medicinal drugs are not dispensed on the premises, except that licensed nursing homes[25] may purchase medical oxygen for administration to residents.[26]

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of the institution, for use on the premises of the institution.[27] A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.[28] The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.[29] An institutional Class II pharmacy may elect to participate in the Cancer Drug Donation Program within the Department of Business and Professional Regulation.[30]

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[20] *See* ss. 465.003(11), and 465.0125, F.S.
[21] *Id*.
[22] Section 465.0125, F.S.
[23] As required by Fla. Admin. Code R. 64B16-28.501(1), (2), and (3) (2019), the consultant pharmacist must also "conduct Drug Regimen Reviews required by Federal or State law, inspect the facility and prepare a written report to be filed at the permitted facility at least monthly, . . . monitor the facility system for providing medication administration records and physician order sheets to ensure that the most current record of medications is available for the monthly drug regimen review, and may utilize additional consultant pharmacists to assist in this review and in the monthly facility inspection." A licensed consultant pharmacist may "remotely access a facility or pharmacy's electronic database from outside the facility or pharmacy to conduct any services additional or supplemental to regular drug regimen reviews, subject to the pharmacy or facility establishing policies and procedures to ensure the security and privacy of confidential patient records, including compliance with applicable Federal HIPAA regulations." The BOP must be notified in writing within ten days of any change in the consultant pharmacist of record, pursuant to Fla. Admin. Code R. 64B16-28.501(1)(b) (2019).
[24] Section 465.019, F.S.
[25] *See* part II, ch. 400, F.S., relating to nursing homes.
[26] Section 465.019(2)(a), F.S.
[27] *See* s. 465.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians in limited circumstances.
[28] Fla. Admin. Code R. 64B16-28.603 (2019).
[29] Section 465.019(5), F.S.
[30] *See* s. 499.029, F.S., relating to the Cancer Drug Donation Program Act.

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.[31] Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.[32]

All Modified Class II institutional pharmacies must be under the control and supervision of a certified consultant pharmacist. The consultant pharmacist of record is responsible for developing and maintaining a current policy and procedure manual. The permittee must make available the policy and procedure manual to the appropriate state or federal agencies upon inspection.[33]

Institutional Class III Pharmacies

Class III institutional pharmacies are pharmacies, including central distribution facilities, that are affiliated with a hospital that provide the same services authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may also:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies that hold an active health care clinic establishment permit.[34, 35]

A Class III institutional pharmacy must also maintain policies and procedures addressing the following:

- The consultant pharmacist responsible for pharmaceutical services;

---

[31] Section 465.019(2)(c), F.S.

[32] Fla. Admin. Code R. 64B16-28.702(2) (2019). Modified Class II Institutional Pharmacies provide the following pharmacy services: (1) Type "A" Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the BOP after review of the policy and procedure manual; (2) Type "B" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual; and (3) Type "C" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual.

[33] *See* Florida Board of Pharmacy, *Institutional Pharmacy Permit*, *available at* http://floridaspharmacy.gov/licensing/institutional-pharmacy-permit/ (last visited March 19, 2021).

[34] Section 465.019(2)(d)1., F.S.

[35] *See* s. 499.01(2)(r), F.S.

- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.[36]

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the department.[37] An individual licensed to prescribe medicinal drugs may dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided the physician treating the patient in such hospital's emergency department determines the following:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible, geographically or otherwise, to the patient.[38]

Such dispensing from the emergency department must be in accordance with the procedures of the hospital. For any patient for whom a medicinal drug is determined to be warranted by the treating emergency department physician for a period to exceed 24 hours, an individual licensed to prescribe the drug must dispense a 24-hour supply of the drug to the patient and provide the patient with a prescription for the drug for use after the initial 24-hour period.[39] The BOP is authorized to adopt rules necessary to carry out these provisions.

III. Effect of Proposed Changes:

The bill permits medicinal drugs to be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible to the patient, geographically or otherwise.

If such prescribing and dispensing occurs, the bill requires that a supply of the drug must be dispensed that will last for the greater of up to 48 hours or through the end of the next business day; however, a supply lasting up to 72 hours may be dispensed during a declared state of emergency by a hospital located in an area affected by the emergency.

[36] Section 465.019(2)(d)2., F.S.
[37] *See* s. 465.019(2)(a), F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.
[38] Section 465.019(4), F.S.
[39] *Id.*

A prescriber who prescribes medicinal drugs under the above circumstances may provide the patient with a prescription for such drug for use beyond the initial prescription period if the prescriber determines that use is warranted.

A prescription authorized under any of these conditions must comply with existing regulations on controlled substances provided in ss. 456.44 and 465.0276, F.S.[40]

The Board of Pharmacy is authorized to adopt rules to implement the bill.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[40] Sections 456.44 and 465.0276, F.S., impose restrictions and limitations on controlled substance prescribing, such as what may be prescribed and how often.

C. Government Sector Impact:

The Department of Health expects to incur a nonrecurring cost based on rulemaking, and anticipates that the cost can be absorbed within existing resources.[41]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.019 of the Florida Statutes.

IX. Additional Information:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on March 23, 2021:
The committee substitute provides that the new conditions that authorize the prescribing of a controlled substance are subject to ss. 456.44 and 465.0276, F.S., that regulate the prescribing of controlled substances.

B. Amendments:

None.

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

[41] Department of Health, *2021 Agency Legislative Bill Analysis, SB 262* (Jan. 25, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Harrell

583-03273-21 2021262c1

A bill to be entitled

An act relating to dispensing medicinal drugs; amending s. 465.019, F.S.; authorizing certain hospitals to dispense supplies of prescribed medicinal drugs in a specified amount to emergency department patients or inpatients upon discharge under certain circumstances; authorizing a greater specified supply of medicinal drugs to be prescribed and dispensed in areas in which a state of emergency has been declared and is in effect; authorizing a prescriber to provide a patient with a prescription for medicinal drugs beyond the initial prescription period under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(4)(a) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, ~~an individual licensed to prescribe~~ medicinal drugs ~~in this state~~ may be dispensed by ~~dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of~~ a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber, as defined in s. 465.025(1), ~~provided that the physician~~ treating the

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583-03273-21 2021262c1

patient in such hospital ~~hospital's emergency department~~ determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing ~~from the emergency department must be in accordance with the procedures of the hospital~~ must be for a supply of the drug that will last for the greater of the following:

1. Up to 48 hours; or

2. Through the end of the next business day.

(b) Notwithstanding subparagraph (a)1., if a state of emergency has been declared and is in effect for an area of this state pursuant to s. 252.36, a supply of a medicinal drug which will last up to 72 hours may be prescribed and dispensed under paragraph (a) in that area ~~For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-hour supply of such drug to the patient and must provide the patient with a prescription for such drug for use after the initial 24-hour period~~.

(c) A prescriber as defined in s. 465.025(1) who prescribes medicinal drugs under this subsection may provide the patient with a prescription for such drug for use beyond the initial prescription period if the prescriber determines that such use is warranted. Any prescribing or dispensing of a controlled substance under this subsection must comply with the applicable requirements of ss. 456.44 and 465.0276.

(d) The board may adopt rules ~~necessary~~ to implement ~~carry out the provisions of~~ this subsection.

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

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 24, 2021

Senator Kelli Stargel
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 262 – Dispensing Medicinal Drugs** be placed on the next available agenda for the Appropriations Committee Meeting. SB 262 has passed unanimously its previous two Committee references.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

19 April 2021
Meeting Date

262
Bill Number (if applicable)

Topic Dispensing Medicinal Drugs

Amendment Barcode (if applicable)

Name DIEGO Echeverri

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

262
Bill Number (if applicable)

Topic _____
Amendment Barcode (if applicable)

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____ Phone 682-276-5245
Street

_____ Email claym@fha.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19//21
Meeting Date

262
Bill Number (if applicable)

Topic Dispensing Medicinal Drugs

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 352
INTRODUCER:	Health Policy Committee and Senator Rodriguez
SUBJECT:	Massage Therapy
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	**Fav/CS**
2.	Harmsen	McKay	CM	**Favorable**
3.	Howard	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 352 makes multiple changes to the regulation of the practice of massage. The bill:

- Replaces the term "massage" with "massage therapy" throughout chapter 480, Florida Statutes, and revises the chapter title from "Massage Practice" to "Massage Therapy Practice;"
- Specifies that massage therapy is a therapeutic health care practice;
- Amends the definitions of "massage" and "massage therapist" to expand the scope of practice of massage therapists; and
- Defines "massage therapy assessment" and includes the performance of such assessment, for compensation, in the scope of practice of massage therapy.

The bill has an insignificant fiscal impact on the Department of Health (department) that can be absorbed within existing resources.

The bill takes effect on July 1, 2021.

II. Present Situation:

The Department of Health

The Legislature created the Department of Health (department) to protect and promote the health of all residents and visitors in the state.[1] The department is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards[2] and professions within the department.[3]

Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the department to license and regulate the practice of massage. The BMT also specifies the licensing procedures for practitioners who desire to practice in Florida.[4]

Massage

"Massage" is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.[5]

Chapter 480, F.S., the "Massage Practice Act," governs the practice of massage in Florida. A massage therapist is a health care practitioner licensed under ch. 480, F.S.[6] According to the department, there are 176 approved, licensed massage schools in Florida. In Fiscal Year 2019-2020, there were 32,435 in-state, active licensed massage therapists and 96 licensed massage apprentices licensed under the Florida apprenticeship program.[7]

Massage Licensure

An individual who seeks licensure to practice massage in Florida must:[8]

- Submit an application and fee to the department;
- Be at least 18 years of age or have a high school diploma or high school equivalency diploma;
- Submit to background screening, and be found to not have been convicted or found guilty of, or to have pled nolo contendere to specific crimes and felonies; and
- Meet specific training and education requirements, as discussed below.

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[1] Section 20.43, F.S.
[2] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the MQA.
[3] Section 20.43, F.S.
[4] Section 480.041(5)(c), F.S.
[5] Section 480.033, F.S.
[6] Section 456.001(4), F.S.
[7] Florida Department of Health, Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, pg. 14 *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/2019-2020-annual-report.pdf (last visited Mar. 8, 2021).
[8] Section 480.041, F.S. *See also*, Rule 64B7-25, F.A.C

Education and Training Requirements

Individuals may meet their education and training requirements to earn their Florida massage license in one of three manners:

- Attend a BMT-approved massage school and pass a BMT-approved examination;[9]
- Complete a BMT-approved massage apprenticeship program by July 1, 2023, and pass a BMT-approved examination.[10] This option is only available to those who had a massage apprentice license before July 1, 2020;[11] or
- Obtain a license by endorsement, if the applicant is currently licensed in a different state and meets additional requirements.[12]

Massage Therapy Schools

The BMT requires applicants for licensure to practice massage therapy to complete at least 500 classroom hours that the student must complete at a rate of no more than six hours per day and no more than 30 classroom hours per calendar week.[13] Classroom education must include:[14]

- 150 hours of anatomy and physiology;
- 100 hours of basic massage theory and history;
- 125 hours of clinical practicum;
- 76 hours of allied modalities;
- 15 hours of business;
- 15 hours of theory and practice of hydrotherapy;
- 10 hours of Florida laws and rules;
- 4 hours of professional ethics;
- 3 hours of HIV/AIDS education; and
- 2 hours on reducing medical errors.

Apprenticeships

Previously, individuals could complete a massage apprenticeship in lieu of attending and graduating from a BMT-approved massage therapy school.[15] In 2020, however, the Legislature removed this path to licensure by redefining the term "apprentice" in the Massage Practice

[9] Rule 64B7-25.001, F.A.C. *See also*, Florida Board of Massage Therapy, Requirements for all Applicants, *Additional Requirements for Examination Applicants, available at* https://floridasmassagetherapy.gov/licensing/licensed-massage-therapist-lmt/ (last visited Mar. 8, 2021).
[10] Rule 64B7-29.003, F.A.C. (2020). During the apprenticeship, the sponsor is required to file quarterly reports and the apprentice must complete the following courses of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of BMP-approved HIV/AIDS instruction.
[11] *See* ss. 480.033(5) and 480.041(8), F.S., (2020). After June 30, 2020, the department no longer issues massage apprentice licenses.
[12] Section 480.041(5)(c), F.S.
[13] Rule 64B7-32.003, F.A.C.
[14] *Id.*
[15] Section 480.041(1)(b), F.S. (2019).

Act.[16,17] Only individuals who were issued a license as a massage apprentice before July 1, 2020, are permitted to continue under their apprenticeship until it expires. If the individual chooses to apply for licensure to practice massage in Florida, he or she may do so before July 1, 2023, and be granted a license, if he or she meets all other licensing requirements, e.g., exam passage.[18]

Apprenticeship training must be conducted by a fully-licensed sponsor at a qualified massage establishment. The apprentice must complete his or her training within a 12-month period, and the training must include:[19]

- 300 hours of anatomy;
- 300 hours of physiology;
- 20 hours of basic massage theory and history;
- 50 hours of theory and practice of hydrotherapy;
- 25 hours of Florida laws and rules regulating the practice of massage therapy;
- 50 hours of allied modalities;
- 700 hours of clinical practicum; and
- 3 hours of HIV/AIDS instruction.

Apprentices are also required to successfully complete an approved exam, and meet the other general licensure requirements found in s. 480.041, F.S. (2019), to become fully licensed massage practitioners.

Licensure by Endorsement

Individuals who hold an active license in another state that has licensing requirements that are equivalent to, or that exceed, Florida's licensing requirements are eligible to receive a Florida massage practitioner license if he or she has also completed 10 hours of Florida Laws and Rules as part of their BMT-approved massage education program or with an approved continuing education (CE) provider.[20]

Health Coverage and Billing for Massage Services

The Florida Insurance Code[21] requires any health insurance policy or health maintenance organization (HMO) contract that provides coverage for massage to also cover the services of a licensed massage therapist in cases where an allopathic, osteopathic, chiropractic, or podiatric

[16] Section 480.033(5), F.S.
[17] Chapter 2020-133, s. 38, Laws of Fla., CS/CS/CS/HB 713 (2020) was signed into law on June 29, 2020, and took effect on July 1, 2020.
[18] Section 480.041(8), F.S.
[19] Rule 64B7-29.003, F.A.C.
[20] Rule 64B7-25.004, F.A.C. Florida-approved Massage Therapy programs are required to have 10 hours of Florida laws and rules as a part of their curriculum. Graduates from out of state programs must show that they have met the same course requirements as students who attend Florida schools. Out-of-state programs do not typically teach Florida laws and rules. By including a course as a separate requirement in the board's checklist, the board has reduced confusion among out-of-state applicants and given them notice that if they did not take this class during their schooling they will need to take it before they are licensed. *See* e-mail of Kama Monroe, Executive Director, Department of Health, Division of Medical Quality Assurance, Bureau of Health Care Practitioner Regulation, Board of Massage Therapy (Jan. 27, 2021) (on file with the Senate Health Policy Committee).
[21] *See* s. 624.01, F.S.

physician has prescribed massage as medically necessary, and the prescription specifies the number of treatments.[22] Medical benefits under personal injury protection coverage, however, specifically exclude massage.[23]

All medical billing by health care practitioners in the United States is done using standardized diagnosis ICD-10 codes[24] and standardized procedure CPT codes[25] or HCPCS codes,[26] with or without modifiers." The CPT codes are generally preferred for office and outpatient settings, as well as for Medicare, Medicaid, and by private insurers.[27] The CPT codes are evidence-based codes that have been created by the American Medical Association (AMA) and designated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) as the national coding set for physicians and other health care professional services. The 2021 CPT codes were released September 1, 2020.[28]

Massage therapists, like other health care practitioners, bill Medicare, Medicaid, private insurers or private-pay patients for the procedures and services they provide. At the AMA's invitation, the American Massage Therapy Association (AMTA) is part of the Physical Medicine and Rehabilitation workgroup that was tasked to develop language that appropriately describes the services of massage therapists across the country.[29] Massage therapists may not use any CPT codes from any area of the CPT code manual outside of the physical medicine and rehabilitation pages.[30] According to the AMTA, the following are some of the more common CPT codes currently billed by massage therapists that are paid by Medicare, Medicaid, and private insurers:[31]

- CPT Code 97124 Massage Therapy;
- CPT Code 97140 Manual Therapy;
- CPT Code 97112 Neuromuscular Re-education;
- CPT Code 97010 Hot/Cold Packs; and

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[22] Sections 627.6407, 627.6619, and 641.31(37), F.S.
[23] Section 627.736(1)(a)5., F.S.
[24] ICD-10 codes refers to the 77,000 diagnosis codes listed in the 10th edition of the International Statistical Classification of Diseases and Related Health Problems, a medical classification list produced by the World Health Organization. World Health Organization, International Statistical Classification of Diseases and Related Health Problems (ICD), *ICD-11*, *available at* https://www.who.int/standards/classifications/classification-of-diseases (last visited Mar. 8, 2021). (Note: ICD-11 was adopted by the 72 World Health Assembly, May, 2019, and comes into effect on January 1, 2022.)
[25] CPT codes refer to the Current Procedural Terminology (CPT) codes, and are produced by the American Medical Association (AMA), Board of Trustees, CPT® Editorial Panel. American Medical Association, *CPT® overview and code approval*, https://www.ama-assn.org/practice-management/cpt/cpt-overview-and-code-approval (last visited Mar. 8, 2021).
[26] HCPCS codes refer to Healthcare Common Procedure Coding System (HCPCS) codes, developed by Centers for Medicare and Medicaid Services and maintained by the AMA. Both CPT and HCPCS codes are the primary medical language used by health care providers to bill for the procedures and services they provide. Center for Medicare and Medicaid Services, Medicare, Coding, HCPCS Coding Questions, *Do You Have A Coding Question?* https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Mar. 8, 2021).
[27] *Id.*
[28] *Supra*, note 25.
[29] American Massage Therapy Association, *Insurance Reimbursement: What Are CPT Codes and Who Develops Them?*, https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/ (last visited Mar. 8, 2021).
[30] Ed Denning, *CPT Codes*, MassageToday.com (Sept. 2, 2020), https://www.massagetoday.com/articles/12049/CPT-Codes (last visited Mar. 8, 2021).
[31] American Massage Therapy Association, *Insurance Reimbursement*, https://www.amtamassage.org/resources/business-financial-tools/insurance-reimbursement/ (last visited Mar. 8, 2021).

- CPT Code 97110 Therapeutic Exercise.

Typically, health care providers who provide medical evaluations and management (E/M) services also bill Medicare, Medicaid, and private insurers for the initial office visit using CPT codes 99201 through 99215 depending on whether the patient is a new or established patient and the complexity of the visit. The practitioner would follow the E/M documentation guidelines in the CPT manual for all E/M services. The E/M CPT code requirements and average reimbursement rates for a new patient office visit are as follows:[32]

CPT Code	Description	Services Provided	Average Fee
99201	10 Minute - Problem Focused Exam & Plan	Requires Problem Focused: • History; • Examination; and • Straightforward Decision Making.	$30-$40
99202	20 Minute - Expanded Problem Focused Exam & Plan	Requires Expanded Problem Focused: • History; • Examination; and • Straightforward Decision Making.	$70-$80
99203	30 Minute - Detailed Exam & Plan	Requires Detailed: • History; • Examination; and • Decision Making of Low Complexity.	$80-$110
99204	45 Minute - Exam of Moderate Complexity & Plan	Requires Comprehensive: • History; • Examination; and • Decision Making of Moderate Complexity.	$130-$170
99205	60 Minutes - Exam of High Complexity & Plan	Requires Comprehensive: •History; •Examination; and •Decision Making of High Complexity.	$180-$210

Currently, the scope of practice of a massage therapist in Florida does not include the patient evaluation and management required for the utilization of the CPT codes 99201 through 99215, and massage therapists are not currently reimbursed by Medicare, Medicaid, or private insurers for those services.[33]

[32] Medical Billing, *CPT Code 99201, 99202, 99203, 99204, 99205 - Which code to USE,* http://www.whatismedicalinsurancebilling.org/p/cpt-99201-99202-99203-99204-99205-which.html (last visited Mar. 8, 2021).

[33] Centers for Medicare and Medicaid Services *National Correct Coding Initiative Policy Manual for Medicare Services, Current Procedural Terminology (CPT) Codes, Descriptions and Other Data: Ch. 11- CPT Codes 90000-99999*, (Rev'd Jan. 1, 2021), *available at* https://www.cms.gov/Medicare/Coding/NationalCorrectCodInitEd (last visited Mar. 8, 2021). E/M services for specific non-physician practitioners, i.e. nurse practitioner (NP), clinical nurse specialist (CNS) and certified nurse midwife (CNM) whose Medicare benefit permits them to bill these services. A physician assistant (PA) may also provide a physician service; however, the physician collaboration and general supervision rules as well as all billing rules, apply to all the above non-physician practitioners. The service provided must be medically necessary and the service must be within the scope of practice for a non-physician practitioner in the state in which he or she practices. Medicare, Medicaid, and

The CPT code modifiers (also called Level I modifiers) are two-digit numeric codes used to supplement information and adjust care descriptions to provide extra details concerning a procedure or service provided by a health care provider.[34] Some are informational and some can enhance the amount of reimbursement as much as 110 percent to 150 percent. The federal Centers for Medicare & Medicaid Services lists the following as some common billing modifiers:

- Modifier 25 = The medical provider performs a significant, separately identifiable evaluation and management service on the same day of a procedure or other service;
- Modifier 51 = Multiple procedures by the same provider at the same session; and
- Modifier 59 = Linked services by the medical provider; providing two wholly-separate and distinct services during the same treatment period.[35]

Under the current definition of massage practice in Florida, the use of CPT code modifiers in billing Medicare, Medicaid, or private insurers for massage therapy is seldom necessary or appropriate.[36]

III. Effect of Proposed Changes:

Massage Practice

This bill makes multiple changes to statutes governing the practice of massage in Florida. The bill:

- Replaces the term "massage" with "massage therapy" throughout ch. 480, F.S.;
- Specifies that massage therapy is a therapeutic health care practice;
- Revises the legislative purpose for the necessity of regulating massage practice under ch. 480, F.S. Under current law, the Legislature recognizes the practice of massage as being potentially dangerous to the public. Under the bill, the Legislature recognizes that unregulated massage therapy poses a danger to the public;
- Expands the scope of practice of massage therapy to include:
  - Manipulation of the soft tissues of the human body with the knee; and
  - "Massage therapy assessments," defined as the massage therapist's determination of the course of a patient's massage therapy treatment, for compensation; and
- Makes technical and conforming changes.

Insurance and Health Maintenance Coverage of Massage Therapy

The bill replaces the term "massage" with "massage therapy" in the Florida Insurance Code. Additionally, the bill provides an avenue for a massage therapist to bill health insurers and HMOs for massage-related services that are not applicable under current law.

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most private insurers will not pay for CPT evaluation and management codes billed by massage therapists, physical therapists, or occupational therapists in independent practice.

[34] *Id*. at Ch. I-E.

[35] *Id*. *See also*, Center for Medicare and Medicaid Services, *HCPCS Coding Questions: Do You Have A Coding Question?* https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCS_Coding_Questions (last visited Mar. 8, 2021).

[36] Ed Denning, *supra* note 30.

The bill's expansion of a massage therapist's scope of practice to include massage therapy assessment, for compensation, for the determination of the course of a patient's massage therapy treatment, could have the effect of increasing costs borne by health insurers and HMOs that cover massage therapy. Under the bill, massage therapists may seek payment from insurers and HMOs using CPT billing codes 99201 through 99215 for initial assessment of a new patient and for periodic reevaluation of preexisting patents.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill might result in increased costs borne by private health insurers and HMOs that cover massage therapy services.

C. Government Sector Impact:

The bill might result in increased costs for massage therapy services under state group health insurance, Medicaid,[37] and the Children's Health Insurance Program, to the extent

[37] Massage therapy is not specified in the Florida Statutes as a benefit that Medicaid managed care plans must cover. *See* s. 409.973(1), F.S. However, the Agency for Health Care Administration (AHCA) requires such plans to provide medical massage therapy services to enrollees diagnosed with AIDS, and who have had a history of an AIDS-related opportunistic

massage therapy is covered and provided under those respective benefit packages. The fiscal impact is indeterminate at this time.

The Department of Health (department) cites a need to amend a majority of the rules in ch. 64B7 of the Florida Administrative Code to update the term "massage" to "massage therapy," in accordance with the term's replacement by this bill. The department states that it will be able to absorb any nonrecurring cost associated with this rulemaking.[38]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 480.031, 480.032, 480.033, 477.013, 477.0135, 477.0265, 480.034, 480.035, 480.041, 480.043, 480.046, 480.0465, 480.047, 480.052, 480.0535, 627.6407, 627.6619, 627.736, 641.31, and 823.05.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on February 4, 2021:
The CS removes from the underlying bill the authorization for a massage therapist to apply over-the-counter topical agents, or prescription topical agents prescribed by a third-party health care practitioner, to the body of a massage client. The CS reverts to current law regarding which substances may be applied to the human body by a massage therapist.

B. Amendments:

None.

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infection, for the treatment of peripheral neuropathy or severe neuromuscular pain and lymphedema. *See*, Agency for Health Care Administration, *2018-2023 Model Health Plan Contract*, p. 21 (Oct. 1, 2020) *available at* https://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2020-10-01/Exhibit_II_A_MMA-2020-10-01.pdf (last visited Mar. 8, 2021). Medicaid managed care plans are also allowed to customize their benefit packages and offer additional services beyond the minimum they are required to cover. *See* s. 409.973(2), F.S., Massage therapy has been approved by the AHCA as an additional service that plans may offer, and, according to the AHCA, 14 Medicaid managed care plans are currently covering massage therapy. See also, Agency for Health Care Administration, *Florida Medicaid Health Plan Expanded Benefits*, a*vailable at* https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/EB_by_Plan_October_2019.pdf (last visited Mar. 8, 2021).

[38] Florida Department of Health, *SB 352 Agency Analysis* (Jan. 2021) (on file with the Senate Committee on Commerce and Tourism).

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

By the Committee on Health Policy; and Senator Rodriguez

588-01986-21 2021352c1

A bill to be entitled

An act relating to massage therapy; renaming ch. 480, F.S., as "Massage Therapy Practice"; amending s. 480.031, F.S.; revising a short title; amending s. 480.032, F.S.; revising the purpose of ch. 480, F.S.; reordering and amending s. 480.033, F.S.; revising and defining terms; amending ss. 477.013, 477.0135, 477.0265, 480.034, 480.035, 480.041, 480.043, 480.046, 480.0465, 480.047, 480.052, 480.0535, 627.6407, 627.6619, 627.736, 641.31, and 823.05, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Chapter 480, Florida Statutes, entitled "Massage Practice," is renamed "Massage Therapy Practice."

Section 2. Section 480.031, Florida Statutes, is amended to read:

480.031 Short title.—This act ~~shall be known and~~ may be cited as the "Massage Therapy Practice Act."

Section 3. Section 480.032, Florida Statutes, is amended to read:

480.032 Purpose.—The Legislature recognizes that the unregulated practice of massage therapy poses a danger ~~is potentially dangerous~~ to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of

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

588-01986-21 2021352c1

the body. Massage therapy is a therapeutic health care practice, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage therapy in this state and, therefore~~,~~ ~~however~~, restrictions must ~~shall~~ be imposed to the extent necessary to protect the public from significant and discernible danger to health ~~and yet not~~ in ~~such~~ a manner that does not ~~which will~~ unreasonably affect the competitive market. Further, consumer protection for both health and economic matters must ~~shall~~ be afforded the public through legal remedies provided for in this act.

Section 4. Section 480.033, Florida Statutes, is reordered and amended to read:

480.033 Definitions.—As used in this act:

(2)~~(1)~~ "Board" means the Board of Massage Therapy.

(5)~~(2)~~ "Department" means the Department of Health.

(11)~~(3)~~ "Massage therapy" means the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, regardless of whether ~~or not~~ such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

(10)~~(4)~~ "Massage therapist" means a person licensed as required by this act~~,~~ who performs ~~administers~~ massage therapy, including massage therapy assessment, for compensation.

(1)~~(5)~~ "Apprentice" means a person approved by the board to study colonic irrigation under the instruction of a licensed massage therapist practicing colonic irrigation.

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

(4) ~~(6)~~ "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.

(7) "Establishment" or "massage establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage therapy.

(9) ~~(8)~~ "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage therapy or to operate an establishment.

(3) ~~(9)~~ "Board-approved massage therapy school" means a facility that meets minimum standards for training and curriculum as determined by rule of the board and that is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state or a college or university that is eligible to participate in the William L. Boyd, IV, Effective Access to Student Education Grant Program.

(8) ~~(10)~~ "Establishment owner" means a person who has ownership interest in a massage establishment. The term includes an individual who holds a massage establishment license, a general partner of a partnership, an owner or officer of a corporation, and a member of a limited liability company and its subsidiaries who holds a massage establishment license.

(6) ~~(11)~~ "Designated establishment manager" means a massage therapist who holds a clear and active license without restriction, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at

the establishment.

(12) "Massage therapy assessment" means the determination of the course of massage therapy treatment.

Section 5. Subsection (13) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(13) "Skin care services" means the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon, and such services may not involve massage therapy, as defined in s. 480.033 ~~s. 480.033(3)~~, through manipulation of the superficial tissue.

Section 6. Paragraph (a) of subsection (1) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(1) This chapter does not apply to the following persons when practicing pursuant to their professional or occupational responsibilities and duties:

(a) Persons authorized under the laws of this state to practice medicine, surgery, osteopathic medicine, chiropractic medicine, massage therapy, naturopathy, or podiatric medicine.

Section 7. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033 ~~s. 480.033(3)~~, except those practices or activities defined in s. 477.013.

Section 8. Subsection (4) of section 480.034, Florida Statutes, is amended to read:

480.034 Exemptions.—

(4) An exemption granted is effective to the extent that an exempted person's practice or profession overlaps with the practice of massage therapy.

Section 9. Subsection (2) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

(2) Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage therapy for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a high school equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments are ~~will be~~ subject to confirmation by the Senate.

Section 10. Subsections (1) and (4) and paragraph (b) of subsection (5) of section 480.041, Florida Statutes, are amended to read:

480.041 Massage therapists; qualifications; licensure;

endorsement.—

(1) Any person is qualified for licensure as a massage therapist under this act who meets all of the following requirements:

(a) Is at least 18 years of age or has received a high school diploma or high school equivalency diploma.~~;~~

(b) Has completed a course of study at a board-approved massage therapy school that meets standards adopted by the board.~~; and~~

(c) Has received a passing grade on a national examination designated by the board.

(4) Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage therapy.

(5) The board shall adopt rules:

(b) Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033 ~~s. 480.033(6)~~, by massage therapists.

Section 11. Subsection (14) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.—

(14) Except for the requirements of subsection (13), this section does not apply to a physician licensed under chapter 457, chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage therapy on the physician's patients at the physician's place of practice. This subsection does not restrict investigations by the department

for violations of chapter 456 or this chapter.

Section 12. Paragraphs (a), (b), (c), (f) through (i), and (o) of subsection (1) of section 480.046, Florida Statutes, are amended to read:

480.046 Grounds for disciplinary action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to procure a license to practice massage therapy by bribery or fraudulent misrepresentation.

(b) Having a license to practice massage therapy revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(f) Aiding, assisting, procuring, or advising any unlicensed person to practice massage therapy contrary to ~~the provisions of~~ this chapter or to department or board ~~a~~ rule ~~of the department or the board~~.

(g) Making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(h) Being unable to practice massage therapy with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department ~~shall have~~, upon

probable cause, may ~~authority to~~ compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, constitutes ~~shall constitute~~ an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage therapy with reasonable skill and safety to clients.

(i) Gross or repeated malpractice or the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.

(o) Practicing massage therapy at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by ~~rules adopted by the~~ board rule, may provide massage therapy services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade show.

Section 13. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage establishment licensed under ~~the provisions of~~ this act shall include the number of the license in any advertisement of

massage therapy services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment pursuant to ~~the provisions of~~ s. 480.043(7), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 14. Paragraphs (a), (b), and (c) of subsection (1) of section 480.047, Florida Statutes, are amended to read:

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a massage therapist or to practice massage therapy unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage therapy in this state at a board-approved massage therapy school.

(c) Permit an employed person to practice massage therapy unless duly licensed as provided herein.

Section 15. Section 480.052, Florida Statutes, is amended to read:

480.052 Power of county or municipality to regulate massage therapy.—A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation may ~~shall~~ not exceed the powers of the state under this act or be inconsistent with this act. This section may ~~shall~~ not be construed to prohibit a county or municipality

from enacting any regulation of persons or establishments not licensed pursuant to this act.

Section 16. Subsections (1) and (2) of section 480.0535, Florida Statutes, are amended to read:

480.0535 Documents required while working in a massage establishment.—

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therapy therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. Any of the following is a valid government identification for the purposes of this section ~~is~~:

(a) A valid, unexpired driver license issued by any state, territory, or district of the United States.~~;~~

(b) A valid, unexpired identification card issued by any state, territory, or district of the United States.~~;~~

(c) A valid, unexpired United States passport.~~;~~

(d) A naturalization certificate issued by the United States Department of Homeland Security.~~;~~

(e) A valid, unexpired alien registration receipt card (green card).~~; or~~

(f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

(2) A person operating a massage establishment must:

(a) Immediately present, upon the request of an investigator of the department or a law enforcement officer:

1. Valid government identification while in the establishment.

2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage therapy in the establishment.

(b) Ensure that each employee and any person performing massage therapy in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

Section 17. Section 627.6407, Florida Statutes, is amended to read:

627.6407 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of treatments.

Section 18. Section 627.6619, Florida Statutes, is amended to read:

627.6619 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of

treatments.

Section 19. Paragraph (a) of subsection (1) of section 627.736, Florida Statutes, is amended to read:

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

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

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

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123

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

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

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

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

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

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

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

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

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

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

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse

licensed under chapter 464 has determined that the injured person had an emergency medical condition.

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

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

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

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

liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 20. Subsection (37) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(37) All health maintenance contracts that provide coverage for massage must also cover the services of persons licensed to practice massage therapy pursuant to chapter 480 if the massage is prescribed by a contracted physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 as medically necessary and the prescription specifies the number of treatments. Such massage services are subject to the same terms, conditions, and limitations as those of other covered services.

Section 21. Subsection (3) of section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.—

(3) A massage establishment as defined in s. 480.033 ~~s. 480.033(7)~~ which operates in violation of s. 480.0475 or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 22. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #352**, relating to Massage Therapy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 402 (933750)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senator Rodrigues
SUBJECT:	Legal Notices
DATE:	April 17, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Forbes	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 402 gives a government agency the option to publish legal notices on a newspaper website instead of only in a print based newspaper. An agency exercising this option must provide an *additional* notice in a print edition of a local newspaper to inform the general public that additional legal notices may be found on the statewide legal notice website maintained by the Florida Press Association. Any legal notice published in print or through a website must also be published on the statewide legal notice website: www.FloridaPublicNotices.com.

Additionally, the bill expands the types of publications that qualify for the posting of legal notices. Currently, a newspaper must, among other requirements, be "for sale to the general public" and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in smaller publications that are free to the public.

The bill amends several sections of the Florida Statutes to conform the ability of a government agency to post legal advertisements and notices on the Internet.

The bill is effective July 1, 2021.

II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be "open and noticed to the public."[1] Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" [2] and "must be of such nature as reasonably to convey the required information."[3]

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.[4] Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.[5] Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;[6] and
- Has been in existence for at least 1 year at the time the notice is published.[7]

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted

[1] Art. I, s. 24(b), Fla. Const.
[2] *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950).
[3] *Id.*
[4] "Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled." *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).
[5] "Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served." *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual's "usual place of abode." Section 48.031, F.S.
[6] Section 50.011, F.S.
[7] Section 50.031, F.S.

at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.[8]

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.[9] This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.[10] This provision of Florida law is similar to statewide legal notice websites established in Alabama,[11] Colorado,[12] Illinois,[13] Louisiana,[14] Maine,[15] Massachusetts,[16] North Dakota,[17] Ohio,[18] Tennessee,[19] Utah,[20] Virginia,[21] and Wisconsin.[22] The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

Newspaper Website

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.[23] The newspaper's website must contain a search function to facilitate searching for legal notices.[24] Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.[25]

Fees

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that

[8] Section 50.021, F.S.
[9] Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at https://www.floridapublicnotices.com/.
[10] *Id.*
[11] Ala. Code § 6-8-62.
[12] Colo. Rev. Stat. Ann. § 24-70-103.
[13] 715 Ill. Comp. Stat. Ann. 5/2.1.
[14] La. Stat. Ann. § 43:111E.
[15] Me. Rev. Stat. tit. 1, § 603(2).
[16] Mass. Gen. Laws Ann. ch. 4, § 13.
[17] N.D. Cent. Code Ann. § 46-05-09.
[18] Ohio Rev. Code Ann. § 125.182(a).
[19] Tenn. Code Ann. § 1-3-120(a)(2).
[20] Utah Code Ann. § 45-1-101(2)(b).
[21] Va. Code Ann. § 8.01-324(g).
[22] Wis. Stat. Ann. § 985.01(7).
[23] Section 50.0211(2), F.S.
[24] *Id.*
[25] *Id.*

notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.[26]

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges $200 for a "full run" of a notice of a foreclosure action.[27] If the notice needs to be up for more than 2 days, the charge increases to $400. Additionally, the per-line cost above the included 165 line limit is $6.45.

Proof of Publication

If an affidavit of proof of publication is required for a legal notice, the affidavit must comply with certain standards. Specifically, the affidavit must:

- Be printed upon white paper;
- Be 8.5 inches in width and at least 5.5 inches in length; and
- Contain a margin of at least 2.5 inches at the right side of the affidavit form with a clipping of a true copy of the public notice or legal advertisement which was executed.[28]

The affidavit may be provided electronically so long is it complies with the electronic notarization requirements.[29]

If the proof of publication is in a county having a population in excess of 450,000 according to the latest decennial census, the publication may charge a maximum fee of $2 for the preparation and execution of each of proof of publication.[30]

III. Effect of Proposed Changes:

Legal Notice Website

The bill provides an option for government agencies required by law to publish legal notices to publish those notices on a newspaper's website in lieu of a paper based publication. Legal notice may be satisfied upon the publication of the legal notice in a newspaper of general circulation. To qualify as a newspaper of general circulation, the bill requires the newspaper to be:

- Printed and published at least once a week;
- Contain at least 25 percent of its words in the English language;
- Have a net distribution of at least 1,000 net print copies per week;
- Have a website averaging at least 1,000 unique users per week;

[26] Section 50.061, F.S.
[27] For the Tampa Bay Times, a "full run" includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs $135 for Pasco County, and $155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates,* https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf (Last visited January 21, 2021)
[28] Section 50.041(2), F.S.
[29] Section 117.021, F.S., contains additional requirements for documents notarized electronically.
[30] Section 50.041(3), F.S.

Have its distribution and website readership audited and certified biannually by an independent, accredited third-party auditor; and Be available to the public generally in the counties where the legal notice pertains and that publishes official notices and customarily dedicates at least 25 percent of its content to local and regional news and information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

Under current law, a newspaper must additionally be "for sale to the general public" and entered as a periodical matter at the local post office in the county where the newspaper is published. By removing these two requirements, the bill allows for legal notices to be published using non-subscription based publications and publications that may not be recognized as periodical matter by the local post office.

The bill also allows legal notices to be published by internet publication on the website of any newspaper of general circulation in the county or nearby counties where the legal notice pertains that meets the criteria specified above and on the statewide legal notice website. For counties with a published newspaper, the advertisement may be posted on the website of any newspaper of general circulation in an adjoining county.
For legal notices posted on the internet, The Florida Press Association is required to consult with the Black Press Association of Florida to ensure that minority populations throughout the state have equitable access.

A governmental agency may opt for Internet-only publications with newspapers of general circulation within the jurisdiction of the affected governmental agency, as long as it is determined not to unreasonably restrict public access. Internet only publications must be placed in the legal notices section of the newspaper's website and the statewide legal notice website.

The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the statewide legal notice website. The newspaper's website legal notice section must include a similar disclaimer related to the print edition.

The bill allows for a newspaper to charge for publication of a legal notice on the newspaper's website without rebate, commission, or refund. However, the newspaper may not charge a higher rate for publication than the amount that would be authorized if the legal notice were publicized in print.[31] Prescribes penalties for accepting rebates, commissions, or refunds in connection to the amounts charged for publication that are published on the internet.

If a government agency exercises the option to publish legal notices on a newspaper website, the agency must provide an *additional* notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.[32] . Currently, a $2 charge may be levied for a proof of publication executed in

[31] *See* "Fees" subsection under "Present Situation" of this analysis for further discussion of print based fees.

a county with a population in excess of 450,000. The bill allows the maximum $2 charge to be levied for any proof of publication regardless of the population of the county.

The bill revises several sections of the Florida Statutes to conform to the option to publish certain notices in a newspaper website. Specifically, the bill revises the following sections of the Florida Statutes to provide an option to publish a notice in a newspaper website:

- Section 11.02, F.S., providing notice of special or location legislation or any relief acts pursuant to s. 50.0211(5), F.S.
- Section 45.031, F.S., to provide that a publication of a sale in a judicial sales procedure may be published by Internet publication pursuant to s. 50.0211(5), F.S., if it is published for at least 2 consecutive weeks.
- Section 120.81, F.S., to provide that a notice relating to the rules regarding an educational unit, such as a district school board, may be issued by Internet publication pursuant to s. 50.0211(5).
- Section 121.055, F.S., to provide that a Notice of Intent to designate certain positions as "Senior Management Services Class" under the Florida Retirement System may be publicized through an Internet publication pursuant to s. 50.0211(5), F.S. The notice must be published for at least 2 consecutive weeks.
- Section 125.66, F.S., to provide that the board of county commissioners may issue a notice of intent to consider an ordinance by publication as specified in ch. 50, F.S., as amended by the bill.
- Section 162.12, F.S., to provide that a code enforcement board, or local government, may issue a notice by Internet publication by publishing the notice for 4 consecutive weeks on the newspaper's website and the statewide legal notice website as provided in s. 50.0211(5), F.S., as amended by the bill.
- Section 166.041, F.S., to require the governing body to provide public notice and hearings by publishing weekly in the print edition of a newspaper any proposed ordinance changes, or changes to the actual zoning map designation of a parcel of land involving 10 contiguous acres or more.
- Section 189.015, F.S., to provide that the governing body of each special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in ch. 50, F.S., as revised by the bill.
- Section 190.005, F.S., to provide that a notice of a hearing for the establishment of a community development district with the size of 2,500 acres or more shall published for 4 consecutive weeks on a newspaper's website and the statewide legal notice website if published in print.
- Section 190.046, F.S., to provide that a notice of intent to amend an ordinance establishing a community development district must be published as provided in ch. 50, F.S., as revised by the bill.
- Section 194.037, F.S, to provide that the findings of the Tax Impact of Value Adjustment Board be published as provided in ch. 50, F.S., as revised by the bill.
- Section 197.402, F.S., provides that advertisements of real or personal property with delinquent taxes are to be advertised as provided in ch. 50, F.S., as revised by the bill.
- Section 200.065, F.S., to provide that the assessment conducted by the property appraiser shall be published as provided in ch. 50, F.S. Additionally, the bill revises this section to

allow notices for certain millage increases that may lead to tax increases, such as ad-valorem taxes, to be advertised pursuant to ch. 50, F.S., as revised by the bill.

- Section 338.223, F.S., to require the Department of Transportation to publish public notices related to proposed turnpike projects on a weekly basis in accordance with chapter 50.
- Section 348.038, F.S., to provide that public private transportation projects may publish request for proposals in the Florida Administrative Register, as specified in ch. 50, F.S., as amended by the bill. Sections 348.0308, F.S., 348.635, F.S., and 348.7605, F.S., authorizes these projects be publicized through an Internet publication pursuant to chapter 50, F.S.
- Sections 373.0397, F.S. and 373.146, F.S., to require the water management district to publish a legal notice, public hearing or publication of notices on the designated areas for the Florida and Biscayne aquifers, pursuant to chapter 50, F.S.
- Section 403.722, F.S., to provide that applications for construction permits, shall be noticed and publish pursuant to ch. 50, F.S.
- Section 712.06, F.S., to require the publishing of a notice for claims of interest in land or other rights may provide notice by internet publication in accordance with s. 50.0211 (5) or printed once a week for 2 consecutive weeks pursuant to ch. 50, F.S.
- Section 849.38, F.S., to provide that when certain property seized by the sheriff's office has an appraisal value of $1,000 or less, the notice must be posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S.
- Section 865.08, F.S., provides that if a registrant is a business entity that is required to file incorporation or similar documents when it was organized, the business must be registered and in active status and provide its Florida document registration number and federal employer identification number. Certification by at least one registrant that the intention to register a fictitious name has been advertised as provided in chapter 50 in the county in which the principal place of business of the registrant is or will be located.
- Section 932.704, F.S., to provide that the notice required for a forfeiture complaint must be published for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S., or if published in print, once each week for 2 consecutive weeks.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice "to apprise interested parties of the pendency of" an action that may affect life, liberty, or property.[33] For example, notice is required for termination of parent rights proceedings,[34] certain local county initiatives,[35] and civil judgements based on litigation.[36] On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.[37]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice.

C. Government Sector Impact:

The impact of this bill is indeterminate since it is unknown how governmental entities will be impacted based on the volume of legal notices to be published. This is especially true in counties where there are no newspapers available for general circulation and the only option will now be internet publication.

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[33] 339 U.S. 306, 314 (1950).

[34] *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice).

[35] *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth*., 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that "constructive notice by publication is appropriate in bond validation proceedings").

[36] "To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance." *Pennoyer v. Neff,* 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

[37] For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail "provide[s] an 'efficient and inexpensive means of communication' upon which prudent men will ordinarily rely in the conduct of important affairs").

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the fee for an online publication of a legal notice cannot exceed the fee charged for a print edition of that notice. The current fee structure is based on the size of the notice and can be more costly depending on how many copies of the newspaper are printed and distributed. This is meant to encourage pricing based on how much space is taken up in the print edition newspaper as well as how large that newspapers audience is. A website publication does not have these same logistical structures to base a fee on the statutory mechanism.

Several sections of the bill permit publication pursuant to s. 50.0211(5), F.S., or as otherwise provided under ch. 50, F.S. Other sections of the bill, such as section 14, include language such as "on a newspaper's website and the statewide legal notice website as provided in s. 50.0211(5)."

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.041, 50.051, 83.806, 11.02, 45.031, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09 and 932.704.

IX. Additional Information:

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

PCS 304210 by Appropriations (Recommended by Subcommittee on Criminal and Civil Justice):
The committee substitute:

- Requires that the publishing of legal notice in a newspaper, the newspaper must:
- Have a net distribution of at least 1,000 net print copies per week;
- Have a website averaging at least 1,000 unique users per week;
- Have its distribution and website readership audited and certified biannually by an independent, accredited third-party auditor; and
- Be available to the public generally in the counties where the legal notice pertains and which publishes official notices and customarily dedicates at least 25 percent of t its content to local and regional news and information.
- The bill revises the additional fee that may be charged by a newspaper if a proof of publication is required for public notices or legal advertisements.

Removes the option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

CS by Judiciary on March 22, 2021:
The committee substitute:

- Allows a government agency to publish legal notices on a newspaper website in lieu of a print based publication.
- Allows legal notices to be published using a non-subscription based publisher.
- Removes the requirement that the Supreme Court establish a legal notice website and a restitution, fines, and fees website.
- Provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 50.011, Florida Statutes, is amended to read:

50.011 Publication of ~~Where and in what language~~ legal notices ~~to be published~~.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu

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of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been the following:~~,~~

(1) A publication in a newspaper that meets all of the following:

(a) Is printed and published periodically at least once a week.

(b) Contains ~~or oftener, containing~~ at least 25 percent of its words in the English language.

(c) Satisfies one of the following criteria:

1. Has an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal or public notice is being published or posted, by calculating the combination of the total of the number of print copies reflecting the day of highest print circulation, of which at least 25 percent of such print copies must be delivered to individuals' home or business addresses, as certified biennially by a certified independent third-party auditor, and the total number of online unique monthly visitors to the newspaper's website from within the state, as measured by industry-accepted website analytics software. For legal and public notices published by nongovernmental entities, the newspaper's audience in the county or municipality where the project, property, or other primary

subject of the notice is located must meet the 10 percent threshold.

2. Holds a periodicals permit as of March 1, 2021, and accepts legal notices for publication as of that date. Any such newspaper may continue to publish legal notices through December 31, 2023, so long as the newspaper meets all other requirements of this chapter and continues to hold a periodicals permit. Beginning January 1, 2024, and thereafter, any such newspaper must meet the criteria under subparagraph 1.

3. For newspapers publishing legal notices in a fiscally constrained county, holds a periodicals permit and meets all other requirements of this chapter. A newspaper qualified under this subparagraph does not need to meet the criteria under subparagraph 1. so long as the newspaper continues to hold a periodicals permit. For purposes of this subparagraph, the term "fiscally constrained county" means a county within a rural area of opportunity designated by the Governor pursuant to s. 288.0656 or a county for which the value of a mill will raise no more than $5 million in revenue, based on the certified taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(d) Is sold, or otherwise available to the public, at least at 10 publicly accessible outlets and~~, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally,~~ available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising and customarily containing information of a public character or of interest or of value to

the residents or owners of property in the county where published, or of interest or of value to the general public.

(e) Continually publishes in a prominent manner the name, street address, phone number, website URL of the newspaper's approved print auditor, the newspaper's most recent statement of ownership, and a statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper's website's monthly unique visitors, or the newspaper's periodicals permit, if applicable, within the first five pages of the print edition and the bottom portion of the homepage of the newspaper's website.

(2) Internet publication for governmental agency notices under s. 50.0211(1)(b) on the website of any newspaper in the county or nearby counties to which the legal notice pertains which otherwise meets the criteria specified in subsection (1) and on the statewide legal notice website as provided in s. 50.0211(5).

Section 2. Section 50.021, Florida Statutes, is amended to read:

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, directs ~~shall direct~~ advertisements to be made in a ~~any~~ county and there is ~~be~~ no newspaper published in the ~~said~~ county, the advertisement may be made by publication in any newspaper qualified under chapter 50 in an adjoining county or on the website of any such newspaper for governmental agency notices under s. 50.0211(1)(b), and on the statewide legal notice website as provided in s. 50.0211(5) or by posting three copies thereof in three different places in the ~~said~~ county, one of which shall be at the front door of the

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courthouse, and by publication in the nearest county in which a newspaper is published.

Section 3. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

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

(a) "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state.

(b) "Governmental agency notice" includes any of the following notices required by law to be published in a newspaper:

1. Notices related to special or legal legislation pursuant to s. 11.02.

2. Educational unit notices pursuant to s. 120.81.

3. Retirement system notices pursuant to s. 121.0511.

4. Notices related to inclusion of positions in the Senior Management Service Class of the Florida Retirement System pursuant to s. 121.055.

5. Notices proposing the enactment of county ordinances pursuant to s. 125.66.

6. Code enforcement notices published pursuant to s. 162.12.

7. Notices proposing the enactment of municipal ordinances pursuant to s. 166.041.

8. Special district meeting notices pursuant to s. 189.015.

9. Establishment and termination notices for community development districts pursuant to s. 190.005 and s. 190.046, respectively.

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10. Disclosures of tax impact by value adjustment boards pursuant to s. 194.037.

11. Advertisements of real or personal property with delinquent taxes pursuant to s. 197.402.

12. Advertisements of hearing notices, millage rates, and budgets pursuant to s. 200.065.

13. Turnpike project notices pursuant to s. 338.223.

14. Public-private partnership notices pursuant to ss. 348.0308 and 348.7605.

15. Notices of prime recharge area designations for the Floridan and Biscayne aquifers pursuant to s. 373.0397.

16. Water management district notices pursuant to s. 373.146.

17. Hazardous waste disposal notices pursuant to s. 403.722.

18. Forfeiture notices pursuant to ss. 849.38 and 932.704.

(2) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(3) ~~(2)~~ If a governmental agency publishes a legal notice in the print edition of a newspaper, each legal notice must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on

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the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.

(4)(a) ~~(3)(a)~~ If a legal notice is published in the print edition of a newspaper or on a newspaper's website, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website ~~on or after October 1, 2014,~~ for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(d) The Florida Press Association shall seek to ensure that minority populations throughout the state have equitable access to legal notices posted on the statewide legal notice website

located at: www.floridapublicnotices.com. The Florida Press Association shall publish a report listing all newspapers that have placed notices on www.floridapublicnotices.com in the preceding calendar quarter. At a minimum, the reports for the 4 preceding calendar quarters shall be available on the website.

(5)(a) In lieu of publishing a legal notice in the print edition of a newspaper of general circulation, a governmental agency may opt for Internet-only publication of governmental agency notices with any newspaper of general circulation within the jurisdiction of the affected governmental agency so long as the governmental agency, after a public hearing noticed in a print edition of a newspaper in accordance with this chapter, makes a determination by a majority of the members of the governing body of the governmental agency that the Internet publication of such governmental agency notices is in the public interest and that the residents within the jurisdiction of the governmental agency have sufficient access to the Internet by broadband service as defined in s. 364.02 or through other means such that Internet-only publication of governmental agency notices would not unreasonably restrict public access. Any such Internet-only publication published in accordance with this subsection must be placed in the legal notices section of the newspaper’s website and the statewide legal notice website established under subsection (4). All requirements regarding the format and accessibility of legal notices placed on the newspaper’s website and the statewide legal notice website in subsections (3) and (4) also apply to Internet-only publication of legal notices published in accordance with this subsection.

(b) The legal notices section of the print edition of a

newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the statewide legal notice website. The legal notices section of the newspaper's website must also include a disclaimer stating that legal notices are also published in the print edition of the newspaper and on the statewide legal notice website.

(c) A newspaper may charge for the publication of any governmental agency notice that is published only on the newspaper's website, without rebate, commission, or refund; however, the newspaper may not charge any higher rate for publication than the amount that would be authorized under s. 50.061 if the governmental agency notice had been printed in the newspaper. The penalties prescribed in s. 50.061(7) for allowing or accepting any rebate, commission, or refund in connection to the amounts charged for publication also apply to any governmental agency notices that are published only on the Internet in accordance with this subsection.

(d) If a governmental agency exercises the option to publish Internet-only governmental agency notices in accordance with this subsection, such agency must provide notice at least once per week in the print edition of a newspaper of general circulation within the region in which the governmental agency is located which states that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that additional legal notices may be accessed on the newspaper's website and that a full listing of any legal notices may be accessed on the statewide legal notice website located at www.floridapublicnotices.com. Additionally, any such governmental agency must post a link on its website homepage to

a webpage that lists all of the newspapers in which the governmental agency publishes legal notices.

(6)~~(4)~~ Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are published ~~printed~~ in the newspaper or on ~~and added to~~ the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.

(7) Notwithstanding the authorization of Internet-only publication for certain governmental agency notices in accordance with subsection (5), any other statute requiring the publication of an official legal notice in the print edition of a newspaper may not be construed to be superseded.

Section 4. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in the print edition of a newspaper or on a newspaper's website, if authorized, in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county,

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municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper or on a newspaper's website which at the time of such publication shall have been in existence for 2 years and meets the requirements set forth in s. 50.011 ~~1 year and shall have been entered as periodicals matter at a post office in the county where published~~, or in a newspaper which is a direct successor of a newspaper which has ~~together have~~ been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section or s. 50.0211(5). Proof of such publication shall be made by uniform affidavit.

Section 5. Section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits ~~of publishers of newspapers (or their official representatives)~~ made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white paper and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2

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inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

(3) ~~In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement,~~ There may be a charge not to exceed $2 levied for the preparation and execution of each such proof of publication or ~~publisher's~~ affidavit.

Section 6. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF COUNTY ~~NEWSPAPER~~
~~Published (Weekly or Daily)~~
~~(Town or City) (County) FLORIDA~~

STATE OF FLORIDA

COUNTY OF ....:

Before the undersigned authority personally appeared ...., who on oath says that he or she is .... of the ...., a .... newspaper published at .... in .... County, Florida; that the

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attached copy of advertisement, being a .... in the matter of .... in the .... Court, was published in said newspaper by print in the issues of .... or by publication on the newspaper's website, if authorized, on ...(date)....

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes ~~said .... is a newspaper published at ...., in said .... County, Florida, and that the said newspaper has heretofore been continuously published in said .... County, Florida, each .... and has been entered as periodicals matter at the post office in ...., in said .... County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper~~.

Sworn to and subscribed before me this .... day of ...., ...(year)..., by ...., who is personally known to me or who has produced (type of identification) as identification.

...(Signature of Notary Public)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

...(Notary Public)...

Section 7. Subsection (12) is added to section 90.902, Florida Statutes, to read:

90.902 Self-authentication.—Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for:

(12) A legal notice published in accordance with the requirements of chapter 50 in the print edition or on the website of a qualified newspaper.

Section 8. Section 11.02, Florida Statutes, is amended to read:

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice ~~in each county involved in some newspaper~~ as provided ~~defined~~ in chapter 50 ~~published in~~ or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not made by Internet publication as provided in s. 50.0211(5) and there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's

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revenue-sharing trust fund.

Section 9. Paragraph (d) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper qualified under chapter 50 ~~of general circulation~~ in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Section 10. Subsection (2) of section 121.0511, Florida Statutes, is amended to read:

121.0511 Revocation of election and alternative plan.—The governing body of any municipality or independent special district that has elected to participate in the Florida Retirement System may revoke its election in accordance with the following procedure:

(2) At least 7 days, but not more than 15 days, before the hearing, notice of intent to revoke, specifying the time and place of the hearing, must be published as provided in chapter

50 ~~in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031~~. Proof of publication of the notice must be submitted to the Department of Management Services.

Section 11. Paragraphs (b) and (h) of subsection (1) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published for at least 2 consecutive weeks if published by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 that is ~~of general circulation~~ published in the county or counties affected~~, as provided in chapter 50~~.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly

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established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the capital collateral

regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 ~~of general circulation published~~ in the county or counties affected~~, as provided in chapter 50~~.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

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(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 12. Paragraph (a) of subsection (2) and paragraph (b) of subsection (4) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)(a) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special

meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance is given at least 10 days before such ~~prior to said~~ meeting by publication as provided in chapter 50 ~~in a newspaper of general circulation in the county~~. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

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1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. If published in the print edition of a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community pursuant to chapter 50~~, not one of limited subject matter~~. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the community is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of

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ordinance or resolution)....

A public hearing on the ordinance or resolution will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

Section 13. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published in print or on a newspaper’s website and the statewide legal notice website as

provided in s. 50.0211(5) for 4 consecutive weeks. If published in print, the notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper ~~of general circulation~~ in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

Section 14. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The

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notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. <u>If published in the print edition of a newspaper,</u> the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no

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smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the municipality and of general interest and readership in the municipality~~, not one of limited subject matter,~~ pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the municipality is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must also be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this

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paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 15. Subsection (1) of section 189.015, Florida Statutes, is amended to read:

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually ~~in a newspaper of general paid circulation~~ in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50~~, in a newspaper of general paid circulation~~ in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The notice shall be posted as provided in ~~advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear~~

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~~in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to~~ chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 by Internet publication or by publication in a newspaper ~~of general paid circulation~~ in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 16. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in

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paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published for 4 successive weeks on a newspaper's website and the statewide legal notice website provided in s. 50.0211(5) or, if published in print, in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing as provided in chapter 50. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. If published in the print edition of a newspaper, the advertisement may ~~shall~~ not be placed in the ~~that~~ portion of the newspaper where legal notices and classified advertisements appear. The advertisement must ~~shall~~ be published in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community~~, not one of limited subject matter,~~ pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~, unless the only newspaper in the community is published less than weekly ~~fewer than 5 days a week~~. If the notice is ~~In addition to being~~ published in the print edition of the newspaper, the map ~~referenced above~~ must also be included in any ~~part of the~~ online advertisement ~~required~~ pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the

petition.

Section 17. Paragraph (h) of subsection (1) of section 190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10 years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was

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a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.

4. The petitioner shall cause to be published in a newspaper qualified to publish legal notices ~~of general circulation~~ in the proposed district a notice of the intent to amend the ordinance that establishes the district. The notice must be in addition to any notice required for adoption of the

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ordinance amendment. Such notice must be published as provided in chapter 50 at least 10 days before the scheduled hearing on the ordinance amendment ~~and may be published in the section of the newspaper reserved for legal notices~~. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

Section 18. Subsection (1) of section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board as provided in chapter 50. If published in the print edition of a newspaper, the notice must be in at least

a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county. The newspaper selected shall be one of general interest and readership in the community~~, and not one of limited subject matter,~~ pursuant to chapter 50. For all advertisements published pursuant to this section, the headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board’s consideration.

(e) In the fifth column, the number of parcels for which

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petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

Section 19. Subsection (1) of section 197.402, Florida Statutes, is amended to read:

197.402 Advertisement of real or personal property with delinquent taxes.—

(1) If advertisements are required, the board of county commissioners shall make such notice ~~select the newspaper~~ as provided in chapter 50. The tax collector shall pay all ~~newspaper~~ charges, and the proportionate cost of the advertisements shall be added to the delinquent taxes collected.

Section 20. Subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be published as provided in

chapter 50. If the advertisement is published in the print edition of a newspaper, the advertisement must be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the county is published less than weekly ~~5 days a week~~, or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community ~~and not one of limited subject matter,~~ pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of the taxing authority)... has tentatively adopted a measure to increase its property tax levy.

Last year’s property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year’s proposed tax levy.....$XX,XXX,XXX

All concerned citizens are invited to attend a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of taxing authority)... has tentatively adopted a budget for ...(fiscal year).... A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

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The ...(name of school district)... will soon consider a measure to increase its property tax levy.

Last year’s property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year’s proposed tax levy.....$XX,XXX,XXX

A portion of the tax levy is required under state law in order for the school board to receive $...(amount A)... in state education grants. The required portion has ...(increased or decreased)... by ...(amount B)... percent and represents approximately ...(amount C)... of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

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3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $...(amount A)... in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of school district)... will soon consider a budget for ...(fiscal year).... A public hearing to make a DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice

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to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate in a newspaper ~~of paid general circulation~~n within that county which meets the requirements of chapter 50, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on ...(date and time)... at ...(meeting place)....

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a

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map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In addition, if published in the print edition of the newspaper or only published on the Internet in accordance with s. 50.0211(5), the map must be included in ~~part of~~ the online advertisement required by s. 50.0211. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent" with the phrase "impose a new property tax levy of $...(amount)... per $1,000 value."

(l) Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary

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in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF ...(name of taxing authority)... ARE ...(percent rounded to one decimal place)... MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 21. Paragraph (c) of subsection (1) of section 338.223, Florida Statutes, is amended to read:

338.223 Proposed turnpike projects.—

(1)

(c) Prior to requesting legislative approval of a proposed turnpike project, the environmental feasibility of the proposed project shall be reviewed by the Department of Environmental Protection. The department shall submit its Project Development and Environmental Report to the Department of Environmental

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Protection, along with a draft copy of a public notice. Within 14 days of receipt of the draft public notice, the Department of Environmental Protection shall return the draft public notice to the Department of Transportation with an approval of the language or modifications to the language. Upon receipt of the approved or modified draft, or if no comments are provided within 14 days, the Department of Transportation shall publish the notice as provided in chapter 50 ~~in a newspaper~~ to provide a 30-day public comment period. If published in the print edition of a newspaper, the headline of the required notice shall be in a type no smaller than 18 point, ~~. The notice~~ shall be placed in that portion of the newspaper where legal notices appear, and ~~.~~ ~~The notice~~ shall be published in a newspaper qualified to publish legal notices ~~of general circulation~~ in the county or counties of general interest and readership in the community as provided in s. 50.031~~, not one of limited subject matter~~. Whenever possible, the notice shall appear in a newspaper that is published at least weekly ~~5 days a week~~. All notices published pursuant to this section ~~The notice~~ shall include, at a minimum ~~but is not limited to~~, the following information:

1. The purpose of the notice is to provide for a 30-day period for written public comments on the environmental impacts of a proposed turnpike project.

2. The name and description of the project, along with a geographic location map clearly indicating the area where the proposed project will be located.

3. The address where such comments must be sent and the date such comments are due.

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After a review of the department's report and any public comments, the Department of Environmental Protection shall submit a statement of environmental feasibility to the department within 30 days after the date on which public comments are due. The notice and the statement of environmental feasibility shall not give rise to any rights to a hearing or other rights or remedies provided pursuant to chapter 120 or chapter 403, and shall not bind the Department of Environmental Protection in any subsequent environmental permit review.

Section 22. Subsection (3) of section 348.0308, Florida Statutes, is amended to read:

348.0308 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The agency may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by Internet publication or by print in a newspaper qualified to publish legal notices ~~of general circulation~~ in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public

notification period has expired, the agency shall rank the proposals in order of preference. In ranking the proposals, the agency shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the agency is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the agency may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the agency may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The agency may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 23. Subsection (3) of section 348.635, Florida Statutes, is amended to read:

348.635 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public’s interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in ~~and~~ a newspaper ~~of general~~

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~~circulation~~ in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 24. Subsection (3) of section 348.7605, Florida Statutes, is amended to read:

348.7605 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public’s interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical

transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in a newspaper ~~of general circulation~~ in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 25. Section 373.0397, Florida Statutes, is amended to read:

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373.0397 Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.—Upon preparation of an inventory of prime groundwater recharge areas for the Floridan or Biscayne aquifers, but prior to adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, as provided ~~in newspapers defined~~ in chapter 50 ~~as having general circulation within the area to be affected~~. The notice shall be at least one-fourth page and shall read as follows:

NOTICE OF PRIME RECHARGE
AREA DESIGNATION

The ...(name of taxing authority)... proposes to designate specific land areas as areas of prime recharge to the ...(name of aquifer)... Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on ...(date and time)... at ...(meeting place)....

A map of the affected areas follows.

The governing board of the water management district shall adopt a designation of prime groundwater recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

Section 26. Section 373.146, Florida Statutes, is amended to read:

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373.146 Publication of notices, process, and papers.—

(1) Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise provided by law, the publication thereof ~~in some newspaper or newspapers~~ as provided ~~defined~~ in chapter 50 is ~~having general circulation within the area to be affected shall be taken and~~ considered as being sufficient.

(2) Notwithstanding any other provision of law to the contrary, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 ~~in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed~~, no less than 7 days before such meeting.

Section 27. Subsection (12) of section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published as provided in chapter 50 ~~in a~~

~~newspaper of general circulation~~ in the county in which the facility is located or is proposed to be located. ~~Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county.~~ The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from ...(name of applicant)... to ...(brief description of project).... This proposed project will be located at ...(location)... in ...(county)... ...(city)....

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at ...(name and

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address of office)....

Section 28. Subsection (5) of section 849.38, Florida Statutes, is amended to read:

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of $1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than $1,000, the citation shall be published by print or posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5). If published in print, the citation shall appear at least once each week for 2 consecutive weeks in a ~~some~~ newspaper qualified to publish legal notices under chapter 50 that is ~~of general publication~~ published in the county, if there is ~~be~~ such a newspaper published in the county. ~~and~~ If there is no such newspaper ~~not~~, the ~~then said~~ notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication as provided in chapter 50 ~~in a newspaper~~, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

Section 29. Paragraph (a) of subsection (6) of section

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932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(6)(a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5) or, if published in print, once each week for 2 consecutive weeks in a newspaper qualified to publish legal notices under chapter 50 ~~of general circulation, as defined in s. 165.031,~~ in the county where the seizure occurred.

Section 30. This act shall take effect January 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to legal notices; amending s. 50.011, F.S.; revising construction as to the satisfaction of publication requirements for legal notices; revising requirements for newspapers that are qualified to

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publish legal notices; defining the term "fiscally constrained county"; authorizing the Internet publication of specified governmental agency notices on newspaper websites in lieu of print publication if certain requirements are met; amending s. 50.021, F.S.; conforming provisions to changes made by the act; amending s. 50.0211, F.S.; defining terms; requiring the Florida Press Association to seek to ensure equitable access for minority populations to legal notices posted on the statewide legal notice website; requiring the association to publish and maintain certain reports on the statewide legal notice website; authorizing a governmental agency to choose between print publication or Internet-only publication of specified governmental agency notices with specified newspapers if certain conditions are met; specifying requirements for the placement, format, and accessibility of any such notices; requiring the newspaper to display a specified disclaimer regarding the posting of legal notices; authorizing a newspaper to charge for Internet-only publication of governmental agency notices, subject to specified limitations; specifying applicable penalties for unauthorized rebates, commissions, or refunds in connection with publication charges; requiring a governmental agency that publishes governmental agency notices by Internet-only publication to publish a specified notice in the print edition of a local newspaper and on their website; providing for

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construction; amending s. 50.031, F.S.; conforming provisions to changes made by the act; amending ss. 50.041 and 50.051, F.S.; revising provisions governing the uniform affidavit establishing proof of publication to conform to changes made by the act; amending s. 90.902, F.S.; providing for the self-authentication of legal notices under the Florida Evidence Code; amending ss. 11.02, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 849.38, and 932.704, F.S.; conforming provisions to changes made by the act; providing an effective date.

490496

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	
	.	

The Committee on Appropriations (Rodrigues) recommended the following:

Senate Amendment to Amendment (443070)

Delete lines 37 - 82
and insert:
software. The newspaper must also be sold, or otherwise available to the public, at no less than 10 publicly accessible outlets. For legal and public notices published by nongovernmental entities, the newspaper's audience in the county or municipality where the project, property, or other primary subject of the notice is located must meet the 10 percent

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threshold.

2. Holds a periodicals permit as of March 1, 2021, and accepts legal notices for publication as of that date. Any such newspaper may continue to publish legal notices through December 31, 2023, so long as the newspaper continues to meet the requirements set forth in section 21 of ch. 99-2, Laws of Florida, and continues to hold a periodicals permit. Beginning January 1, 2024, and thereafter, any such newspaper must meet the criteria under subparagraph 1.

3. For newspapers publishing legal notices in a fiscally constrained county, holds a periodicals permit and meets all other requirements of this chapter. A newspaper qualified under this subparagraph does not need to meet the criteria under subparagraph 1. so long as the newspaper continues to hold a periodicals permit. For purposes of this subparagraph, the term "fiscally constrained county" means a county within a rural area of opportunity designated by the Governor pursuant to s. 288.0656 or a county for which the value of a mill will raise no more than $5 million in revenue, based on the certified taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(d) Is~~, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally,~~ available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest

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or of value to the general public.

(e) Continually publishes in a prominent manner the name, street address, phone number, website URL of the newspaper's approved print auditor, the newspaper's most recent statement of ownership, and a statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper's website's monthly unique visitors, or the newspaper's periodicals permit, if applicable, within the first five pages of the print edition and the bottom portion of the homepage of the newspaper's website.

(2) Internet publication for governmental agency notices under s. 50.0211(1)(b) on the website of any newspaper in the county to which the legal notice pertains

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to legal notices; amending s. 50.011, F.S.; revising requirements for newspapers that are qualified to publish legal notices; authorizing the Internet publication of legal notices on certain websites in lieu of print publication in a newspaper; amending s. 50.021, F.S.; conforming provisions to changes made by the act; amending s. 50.0211, F.S.; defining the term "governmental agency"; requiring the Florida Press Association to consult with the Black Press Association of Florida for a specified purpose; authorizing a governmental agency to choose between print publication or Internet-only publication of legal notices with specified newspapers if certain conditions are met; specifying requirements for the placement, format, and accessibility of any such legal notices; requiring the newspaper to display a specified disclaimer regarding the posting of legal notices; authorizing a newspaper to charge for Internet-only publication, subject to specified limitations; specifying applicable penalties for unauthorized rebates, commissions, or refunds in connection with publication charges; requiring a governmental agency that publishes certain legal notices by Internet-only publication to publish a specified notice in the print edition of a local newspaper; amending s. 50.031, F.S.; conforming

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provisions to changes made by the act; amending ss. 50.041 and 50.051, F.S.; revising provisions governing the uniform affidavit establishing proof of publication to conform to changes made by the act; amending ss. 11.02, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09, and 932.704, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 50.011, Florida Statutes, is amended to read:

50.011 Publication of ~~Where and in what language~~ legal notices ~~to be published~~.~~—~~Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been the following:~~,~~

(1) A publication in a newspaper printed and published periodically at least once a week~~;~~ which contains ~~or oftener,~~

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~~containing~~ at least 25 percent of its words in the English language; which has a net distribution of at least 1,000 net print copies per week; which has a website averaging at least 1,000 unique users per week; which has its distribution and website readership audited and certified biannually by an independent third-party auditor who is qualified and accredited; which is~~, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally,~~ available to the public generally in the county or nearby counties to which the legal notice pertains; and which publishes ~~for the publication of~~ official or other notices and customarily dedicates at least 25 percent of its content to local and regional news and ~~containing~~ information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public; or

(2) By Internet publication on the website of any newspaper of general circulation in the county or nearby counties to which the legal notice pertains which otherwise meets the criteria specified in subsection (1) and on the statewide legal notice website as provided under s. 50.0211(5).

Section 2. Section 50.021, Florida Statutes, is amended to read:

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, directs ~~shall direct~~ advertisements to be made in a ~~any~~ county and there is ~~be~~ no newspaper published in the ~~said~~ county, the advertisement may be made by posting on the website of any newspaper of general

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circulation in an adjoining county and on the statewide legal notice website as provided in s. 50.0211(5) or posting three copies thereof in three different places in the ~~said~~ county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

Section 3. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

(1) As used in this section, the term "governmental agency" means a county, municipality, district school board, or other unit of local government or political subdivision in this state.

(2) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(3)~~(2)~~ If a governmental agency publishes a legal notice in the print edition of a newspaper, each legal notice must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The

newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.

(4)(a) ~~(3)(a)~~ If a legal notice is published in the print edition of a newspaper or on a newspaper's website, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website ~~on or after October 1, 2014,~~ for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(d) In its operation of the statewide website, the Florida Press Association shall consult with the Black Press Association of Florida to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the Internet.

(5)(a) In lieu of publishing a legal notice in the print edition of a newspaper of general circulation, a governmental

agency may opt for Internet-only publication with any newspaper of general circulation within the jurisdiction of the affected governmental agency so long as the governmental agency determines that the Internet publication of such notice would not unreasonably restrict public access. Any such notice that is published only on the Internet in accordance with this subsection must be placed in the legal notices section of the newspaper's website and the statewide legal notice website established under subsection (4). All requirements regarding the format and accessibility of legal notices placed on the newspaper's website and the statewide legal notice website in subsections (3) and (4) also apply to legal notices that are published only on the Internet in accordance with this subsection.

(b) The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the statewide legal notice website. The legal notices section of the newspaper's website must also include a disclaimer stating that legal notices are also published in the print edition of the newspaper and on the statewide legal notice website.

(c) A newspaper may charge for the publication of any legal notice that is published only on the newspaper's website, without rebate, commission, or refund; however, the newspaper may not charge any higher rate for publication than the amount that would be authorized under s. 50.061 if the legal notice had been printed in the newspaper. The penalties prescribed in s. 50.061(7) for allowing or accepting any rebate, commission, or refund in connection to the amounts charged for publication also

apply to any legal notices that are published only on the Internet in accordance with this subsection.

(d) If a governmental agency exercises the option to publish legal notices on the Internet in accordance with this subsection, such agency must provide notice at least once per week in the print edition of a newspaper of general circulation within the region in which the governmental agency is located which states that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that additional legal notices may be accessed on the newspaper's website and that a full listing of any legal notices may be accessed on the statewide legal notice website located at www.floridapublicnotices.com.

(6)~~(4)~~ Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are published ~~printed~~ in the newspaper or on ~~and added to~~ the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.

Section 4. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in the print edition of a newspaper or on a newspaper's website in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming,

reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year ~~and shall have been entered as periodicals matter at a post office in the county where published,~~ or in a newspaper which is a direct successor of a newspaper which has ~~together have~~ been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section or s. 50.0211(5). Proof of such publication shall be made by uniform affidavit.

Section 5. Section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits ~~of publishers of newspapers (or their official representatives)~~ made for the purpose of establishing

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proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white paper and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

(3) ~~In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement,~~ There may be a charge not to exceed $2 levied for the preparation and execution of each such proof of publication or ~~publisher's~~ affidavit.

Section 6. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF COUNTY ~~NEWSPAPER~~
~~Published (Weekly or Daily)~~
~~(Town or City) (County) FLORIDA~~

STATE OF FLORIDA

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COUNTY OF ....:

Before the undersigned authority personally appeared ...., who on oath says that he or she is .... of the ...., a .... newspaper published at .... in .... County, Florida; that the attached copy of advertisement, being a .... in the matter of .... in the .... Court, was published in said newspaper by print in the issues of .... or by publication on the newspaper's website on ...(date)....

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes ~~said .... is a newspaper published at ...., in said .... County, Florida, and that the said newspaper has heretofore been continuously published in said .... County, Florida, each .... and has been entered as periodicals matter at the post office in ...., in said .... County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper~~.

Sworn to and subscribed before me this .... day of ...., ...(year)..., by ...., who is personally known to me or who has produced (type of identification) as identification.

...(Signature of Notary Public)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

...(Notary Public)...

Section 7. Section 11.02, Florida Statutes, is amended to read:

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice ~~in each county involved in some newspaper~~ as provided ~~defined~~ in chapter 50 ~~published in~~ or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not made by Internet publication as provided in s. 50.0211(5) and there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

Section 8. Paragraph (d) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in the print edition of a newspaper of general circulation in the affected area or by Internet publication in accordance with s. 50.0211(5);

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Section 9. Subsection (2) of section 121.0511, Florida Statutes, is amended to read:

121.0511 Revocation of election and alternative plan.—The governing body of any municipality or independent special district that has elected to participate in the Florida Retirement System may revoke its election in accordance with the following procedure:

(2) At least 7 days, but not more than 15 days, before the hearing, notice of intent to revoke, specifying the time and place of the hearing, must be published as provided in chapter 50 ~~in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031~~. Proof of publication of the

notice must be submitted to the Department of Management Services.

Section 10. Paragraphs (b) and (h) of subsection (1) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published for at least 2 consecutive weeks if published by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected~~,~~ as provided in chapter 50.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the

regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund

of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the capital collateral regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial

court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected~~,~~ as provided in chapter 50.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of

responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 11. Paragraph (a) of subsection (2) and paragraph (b) of subsection (4) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)(a) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance

is given at least 10 days before such ~~prior to said~~ meeting by publication as provided in chapter 50 ~~in a newspaper of general circulation in the county~~. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or

resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. If published in the print edition of a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community pursuant to chapter 50~~, not one of limited subject matter~~. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the community is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of ordinance or resolution)....

A public hearing on the ordinance or resolution will be

held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

Section 12. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published by print, or on a newspaper's website and the statewide legal notice website as provided in s. 50.0211(5) for 4 consecutive weeks. If published in print, the notice shall be published once during each week

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for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

Section 13. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for

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one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. <u>If published in the print edition of a newspaper,</u> the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified

advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the municipality and of general interest and readership in the municipality~~, not one of limited subject matter,~~ pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the municipality is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must also be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance.

Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 14. Subsection (1) of section 189.015, Florida Statutes, is amended to read:

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually ~~in a newspaper of general paid circulation~~ in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50~~, in a newspaper of general paid circulation~~ in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The notice shall be posted as provided in ~~advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days~~

~~a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to~~ chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 by Internet publication or by publication in a newspaper ~~of general paid circulation~~ in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 15. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development

district is to be located. The petitioner shall cause a notice of the hearing to be published for 4 successive weeks on a newspaper's website and the statewide legal notice website provided in s. 50.0211(5) or, if published in print, in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing as provided in chapter 50. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. If published in the print edition of a newspaper, the advertisement may ~~shall~~ not be placed in the ~~that~~ portion of the newspaper where legal notices and classified advertisements appear. The advertisement must ~~shall~~ be published in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community~~, not one of limited subject matter,~~ pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~, unless the only newspaper in the community is published less than weekly ~~fewer than 5 days a week~~. If the notice is ~~In addition to being~~ published in the print edition of the newspaper, the map ~~referenced above~~ must also be included in any ~~part of the~~ online advertisement ~~required~~ pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Section 16. Paragraph (h) of subsection (1) of section

190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10 years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such

petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.

4. The petitioner shall cause to be published in a newspaper of general circulation in the proposed district a notice of the intent to amend the ordinance that establishes the district. The notice must be in addition to any notice required for adoption of the ordinance amendment. Such notice must be published as provided in chapter 50 at least 10 days before the scheduled hearing on the ordinance amendment ~~and may be~~

~~published in the section of the newspaper reserved for legal notices~~. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

Section 17. Subsection (1) of section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board as provided in chapter 50. If published in the print edition of a newspaper, the notice must be in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller

than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county. The newspaper selected shall be one of general interest and readership in the community~~, and not one of limited subject matter,~~ pursuant to chapter 50. For all advertisements published pursuant to this section, the headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

Section 18. Subsection (1) of section 197.402, Florida Statutes, is amended to read:

197.402 Advertisement of real or personal property with delinquent taxes.—

(1) If advertisements are required, the board of county commissioners shall make such notice ~~select the newspaper~~ as provided in chapter 50. The tax collector shall pay all ~~newspaper~~ charges, and the proportionate cost of the advertisements shall be added to the delinquent taxes collected.

Section 19. Subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be published as provided in chapter 50. If the advertisement is published in the print edition of a newspaper, the advertisement must be no less than

one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the county is published less than weekly ~~5 days a week~~, or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community ~~and not one of limited subject matter,~~ pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of the taxing authority)... has tentatively adopted a measure to increase its property tax levy.
Last year's property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year's proposed tax levy.....$XX,XXX,XXX

All concerned citizens are invited to attend a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of taxing authority)... has tentatively adopted a budget for ...(fiscal year).... A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of school district)... will soon consider a

measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year's proposed tax levy.....$XX,XXX,XXX

A portion of the tax levy is required under state law in order for the school board to receive $...(amount A)... in state education grants. The required portion has ...(increased or decreased)... by ...(amount B)... percent and represents approximately ...(amount C)... of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded

to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $...(amount A)... in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of school district)... will soon consider a budget for ...(fiscal year).... A public hearing to make a DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate in a newspaper ~~of paid general circulation~~n within that county which meets the requirements of chapter 50, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on ...(date and time)... at ...(meeting place)....

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In

addition, if published in the print edition of the newspaper or only published on the Internet in accordance with s. 50.0211(5), the map must be included in ~~part of~~ the online advertisement required by s. 50.0211. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent" with the phrase "impose a new property tax levy of $...(amount)... per $1,000 value."

(l) Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF ...(name of taxing authority)... ARE ...(percent rounded to one decimal place)... MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 20. Paragraph (c) of subsection (1) of section 338.223, Florida Statutes, is amended to read:

338.223 Proposed turnpike projects.—

(1)

(c) Prior to requesting legislative approval of a proposed turnpike project, the environmental feasibility of the proposed project shall be reviewed by the Department of Environmental Protection. The department shall submit its Project Development and Environmental Report to the Department of Environmental Protection, along with a draft copy of a public notice. Within 14 days of receipt of the draft public notice, the Department of

Environmental Protection shall return the draft public notice to the Department of Transportation with an approval of the language or modifications to the language. Upon receipt of the approved or modified draft, or if no comments are provided within 14 days, the Department of Transportation shall publish the notice as provided in chapter 50 ~~in a newspaper~~ to provide a 30-day public comment period. If published in the print edition of a newspaper, the headline of the required notice shall be in a type no smaller than 18 point, ~~. The notice~~ shall be placed in that portion of the newspaper where legal notices appear, and ~~. The notice~~ shall be published in a newspaper of general circulation in the county or counties of general interest and readership in the community as provided in s. 50.031~~, not one of limited subject matter~~. Whenever possible, the notice shall appear in a newspaper that is published at least weekly ~~5 days a week~~. All notices published pursuant to this section ~~The notice~~ shall include, at a minimum ~~but is not limited to~~, the following information:

1. The purpose of the notice is to provide for a 30-day period for written public comments on the environmental impacts of a proposed turnpike project.

2. The name and description of the project, along with a geographic location map clearly indicating the area where the proposed project will be located.

3. The address where such comments must be sent and the date such comments are due.

After a review of the department's report and any public comments, the Department of Environmental Protection shall

submit a statement of environmental feasibility to the department within 30 days after the date on which public comments are due. The notice and the statement of environmental feasibility shall not give rise to any rights to a hearing or other rights or remedies provided pursuant to chapter 120 or chapter 403, and shall not bind the Department of Environmental Protection in any subsequent environmental permit review.

Section 21. Subsection (3) of section 348.0308, Florida Statutes, is amended to read:

348.0308 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The agency may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by Internet publication or by print in a newspaper of general circulation in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the agency shall rank the proposals in order of preference. In ranking the proposals, the agency shall consider professional

qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the agency is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the agency may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the agency may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The agency may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 22. Subsection (3) of section 348.635, Florida Statutes, is amended to read:

348.635 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in ~~and~~ a newspaper of general circulation in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the

proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 23. Subsection (3) of section 348.7605, Florida Statutes, is amended to read:

348.7605 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private

transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in a newspaper of general circulation in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 24. Section 373.0397, Florida Statutes, is amended to read:

373.0397 Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.—Upon preparation of an

inventory of prime groundwater recharge areas for the Floridan or Biscayne aquifers, but prior to adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, as provided ~~in newspapers defined~~ in chapter 50 ~~as having general circulation within the area to be affected~~. The notice shall be at least one-fourth page and shall read as follows:

NOTICE OF PRIME RECHARGE
AREA DESIGNATION

The ...(name of taxing authority)... proposes to designate specific land areas as areas of prime recharge to the ...(name of aquifer)... Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on ...(date and time)... at ...(meeting place)....

A map of the affected areas follows.

The governing board of the water management district shall adopt a designation of prime groundwater recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

Section 25. Section 373.146, Florida Statutes, is amended to read:

373.146 Publication of notices, process, and papers.—

(1) Whenever in this chapter the publication of any notice,

process, or paper is required or provided for, unless otherwise provided by law, the publication thereof ~~in some newspaper or newspapers~~ as provided ~~defined~~ in chapter 50 is ~~having general circulation within the area to be affected shall be taken and~~ considered as being sufficient.

(2) Notwithstanding any other provision of law to the contrary, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 ~~in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed~~, no less than 7 days before such meeting.

Section 26. Subsection (12) of section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published as provided in chapter 50 ~~in a newspaper of general circulation~~ in the county in which the facility is located or is proposed to be located.

~~Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county.~~ The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from ...(name of applicant)... to ...(brief description of project).... This proposed project will be located at ...(location)... in ...(county)... ...(city)....

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at ...(name and address of office)....

Section 27. Paragraph (b) of subsection (3) of section

712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(b) Publish the notice referred to in s. 712.05 by Internet publication as provided in s. 50.0211(5) or printed once a week, for 2 consecutive weeks, in a newspaper as defined in chapter 50, ~~the notice referred to in s. 712.05,~~ with the official record book and page number in which such notice was recorded~~,~~ ~~in a newspaper as defined in chapter 50~~ in the county in which the property is located.

Section 28. Subsection (5) of section 849.38, Florida Statutes, is amended to read:

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of $1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than $1,000, the citation shall be published by print or posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5). If published in print, the citation shall appear at least once each week for 2 consecutive weeks in a ~~some~~ newspaper of general publication published in the county, if there is ~~be~~ such a newspaper published in the county. ~~and~~ If there is no newspaper

of general circulation ~~not~~, the ~~then said~~ notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication as provided in chapter 50 ~~in a newspaper~~, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

Section 29. Paragraph (a) of subsection (3) of section 865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(3) REGISTRATION.—

(a) A person may not engage in business under a fictitious name unless the person first registers the name with the division by filing a registration listing:

1. The name to be registered.

2. The mailing address of the business.

3. The name and address of each registrant.

4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity has such a number.

5. Certification by at least one registrant that the intention to register such fictitious name has been advertised as provided ~~at least once in a newspaper as defined~~ in chapter

50 in the county in which the principal place of business of the registrant is or will be located.

6. Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant so conducting business.

Section 30. Paragraph (a) of subsection (6) of section 932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(6)(a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5) or, if published in print, once each week for 2 consecutive weeks in a newspaper of general circulation~~, as defined in s. 165.031,~~ in the county where the seizure occurred.

Section 31. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 402
INTRODUCER:	Appropriations Committee; Judiciary Committee; and Senator Rodrigues
SUBJECT:	Legal Notices
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Ravelo	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 402 gives a governmental agency the option to publish government agency notices on newspaper website instead of only in a print-based newspaper. An agency wishing to exercise this option may only do so upon the agency finding, pursuant to a publicly noticed hearing, that such an Internet-based publication is in the public interest and that residents have sufficient access to the Internet in order to review any legal notices published in this format. Any legal notice published in print or through a website must also be published on the statewide legal notice website: www.FloridaPublicNotices.com.

Additionally, the bill expands the types of publications that qualify for the posting of legal notices. Currently, a newspaper must, among other requirements, be "for sale to the general public" and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in some smaller publications that are free to the public.

The bill amends several sections of the Florida Statutes to conform the authority of a government agency to post legal advertisements and notices on the Internet.

The bill is effective January 1, 2022.

II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be "open and noticed to the public."[1] Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" [2] and "must be of such nature as reasonably to convey the required information."[3]

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.[4] Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.[5] Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;[6] and
- Has been in existence for at least 1 year at the time the notice is published.[7]

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted

[1] Art. I, s. 24(b), Fla. Const.
[2] *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950).
[3] *Id.*
[4] "Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled." *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).
[5] "Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served." *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual's "usual place of abode." Section 48.031, F.S.
[6] Section 50.011, F.S.
[7] Section 50.031, F.S.

at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.[8]

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.[9] This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.[10] This provision of Florida law is similar to statewide legal notice websites established in Alabama,[11] Colorado,[12] Illinois,[13] Louisiana,[14] Maine,[15] Massachusetts,[16] North Dakota,[17] Ohio,[18] Tennessee,[19] Utah,[20] Virginia,[21] and Wisconsin.[22] The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

Newspaper Website

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.[23] The newspaper's website must contain a search function to facilitate searching for legal notices.[24] Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.[25]

Fees

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that

[8] Section 50.021, F.S.
[9] Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at https://www.floridapublicnotices.com/.
[10] *Id.*
[11] Ala. Code § 6-8-62.
[12] Colo. Rev. Stat. Ann. § 24-70-103.
[13] 715 Ill. Comp. Stat. Ann. 5/2.1.
[14] La. Stat. Ann. § 43:111E.
[15] Me. Rev. Stat. tit. 1, § 603(2).
[16] Mass. Gen. Laws Ann. ch. 4, § 13.
[17] N.D. Cent. Code Ann. § 46-05-09.
[18] Ohio Rev. Code Ann. § 125.182(a).
[19] Tenn. Code Ann. § 1-3-120(a)(2).
[20] Utah Code Ann. § 45-1-101(2)(b).
[21] Va. Code Ann. § 8.01-324(g).
[22] Wis. Stat. Ann. § 985.01(7).
[23] Section 50.0211(2), F.S.
[24] *Id.*
[25] *Id.*

notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.[26]

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges $200 for a "full run" of a notice of a foreclosure action.[27] If the notice needs to be up for more than 2 days, the charge increases to $400. Additionally, the per-line cost above the included 165 line limit is $6.45.

Proof of Publication

If an affidavit of proof of publication is required for a legal notice, the affidavit must comply with certain standards. Specifically, the affidavit must:

- Be printed upon white paper;
- Be 8.5 inches in width and at least 5.5 inches in length; and
- Contain a margin of at least 2.5 inches at the right side of the affidavit form with a clipping of a true copy of the public notice or legal advertisement that was executed.[28]

The affidavit may be provided electronically so long is it complies with the electronic notarization requirements.[29]

If the proof of publication is in a county having a population in excess of 450,000 according to the latest decennial census, the publication may charge a maximum fee of $2 for the preparation and execution of each of proof of publication.[30]

III. Effect of Proposed Changes:

Newspapers Authorized to Publish Legal Notices

The bill provides an option for governmental agencies required by law to publish certain legal notices to publish those notices on a newspaper's website in lieu of a paper-based publication. A governmental agency may publish certain legal notices in an Internet-only publication with a newspaper of general circulation within the jurisdiction of the affected governmental agency. The bill requires governmental agencies to provide notice to the general public before using an Internet-only publication. Specifically, the governmental agency must give notice of its intent in a print edition of a newspaper and conduct a public hearing. The public hearing is meant to determine that an Internet-only publication is in the public interest and that the residents within

[26] Section 50.061, F.S.
[27] For the Tampa Bay Times, a "full run" includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs $135 for Pasco County and $155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates,* https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf (last visited January 21, 2021)
[28] Section 50.041(2), F.S.
[29] Section 117.021, F.S., contains additional requirements for documents notarized electronically.
[30] Section 50.041(3), F.S.

the jurisdiction of the governmental agency have sufficient access to the Internet. This determination must be made by a majority vote of the governing body.

To qualify as a newspaper of general circulation for the purpose of publishing legal notices in print or online only formats, the bill generally requires the newspaper to:

- Be printed and published at least once a week;
- Contain at least 25 percent of its words in the English language;
- Have an audience consisting of at least 10 percent of the households in the county, and if the notice is issued by a nongovernmental entity, the newspaper must have an audience of at least 10 percent of the households of the county or municipality in which the project, property or other subject of the notice is located;
- Be sold or otherwise available to the public at no less than 10 publicly accessible outlets;
- Be available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising; and
- Continually publish in a prominent manner the name, street address, phone number, website URL of the newspaper's approved print auditor, the newspaper's most recent statement of ownership, and a statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper's website's monthly unique visitors, or the newspaper's periodicals permit, if applicable, within the first five pages of the print edition and the bottom portion of the homepage of the newspaper's website.

A newspaper that holds a periodicals permit as of March 1, 2021 and accepts legal notices for publication may continue to publish legal notices through December 31, 2023 so long as the newspaper meets the requirements under current law, which were enacted through section 21 of chapter 99-2, Laws of Florida. Beginning January 1, 2024, such newspapers must meet the criteria listed above. Additionally, a newspaper that holds a periodicals permit and that publishes legal notices in a fiscally constrained county is not subjected to items 3 and 4 of the above requirements. The bill defines a fiscally constrained county as a county within a rural area of opportunity designated by the Governor or a county for which the value of a mill will raise no more than $5 million in revenue based on the certified taxable value of the previous July 1.

Under current law, a newspaper must additionally be "for sale to the general public" and entered as a periodical matter at the local post office in the county where the newspaper is published. By removing these two requirements, the bill allows for legal notices to be published using non-subscription based publications and publications that may not be recognized as periodical matter by the local post office.

The bill requires the Florida Press Association to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the statewide website. The Florida Press Association must publish a report listing all newspapers that have placed notices on the statewide legal notice website in the preceding calendar quarter. The reports for the four preceding calendar quarters must be available on the website.

Government Agency Legal Notices

The bill defines a governmental agency as a county, municipality, district school board, or other unit of a local government or political subdivision in this state. The bill provides that governmental agency notices that may be published in newspaper under the bill include:

- Notices related to special or legal legislation pursuant to s. 11.02, F.S.;
- Educational unit notices pursuant to s. 120.81, F.S.;
- Retirement system notices pursuant to s. 121.0511., F.S.;
- Notices related to inclusion of positions in the Senior Management Service Class of the Florida Retirement System pursuant to s. 121.055, F.S.;
- Notices proposing the enactment of county ordinances pursuant to s. 125.66, F.S.;
- Code enforcement notices published pursuant to s. 162.12, F.S.;
- Notices proposing the enactment of municipal ordinances pursuant to s. 166.041, F.S.;
- Special district meeting notices pursuant to s. 189.015, F.S.;
- Establishment and termination notices for community development districts pursuant to ss. 190.005 and 190.046, F.S., respectively;
- Disclosures of tax impact by value adjustment boards pursuant to s. 194.037, F.S.;
- Advertisements of real or personal property with delinquent taxes pursuant to s. 197.402, F.S.;
- Advertisements of hearing notices, millage rates, and budgets pursuant to s. 200.065, F.S.;
- Turnpike project notices pursuant to s. 338.223, F.S.;
- Public-private partnership notices pursuant to ss. 348.0308 and 348.7605, F.S.;
- Notices of prime recharge area designations for the Floridan and Biscayne aquifers pursuant to s. 373.0397, F.S.;
- Water management district notices pursuant to s. 373.146, F.S.;
- Hazardous waste disposal notices pursuant to s. 403.722, F.S.; and
- Forfeiture notices pursuant to ss. 849.38 and 932.704, F.S.

If a government agency exercises the option to publish legal notices on a newspaper website, the agency must provide an additional notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.

Publication Requirements and Fees

The bill allows for a newspaper to charge for the publication of a legal notice on the newspaper's website without rebate, commission, or refund. However, the newspaper may not charge a higher rate for publication than the amount that would be authorized if the legal notice were publicized in print.[31] The bill prescribes penalties for accepting rebates, commissions, or refunds in connection to the amounts charged for publication that are published on the Internet.

[31] *See* "Fees" subsection under "Present Situation" of this analysis for further discussion of print-based fees.

Internet-only publications must be placed in the legal notices section of the newspaper's website and the statewide legal notice website. [32] The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the statewide legal notice website. The newspaper's website legal notice section must include a similar disclaimer related to the print edition.

Currently, a $2 charge may be levied for a proof of publication executed in a county with a population in excess of 450,000. The bill allows the maximum $2 charge to be levied for any proof of publication regardless of the population of the county.

Conforming language

The bill revises several sections of the Florida Statutes to conform to the option to publish certain notices in a newspaper website. Specifically, the bill revises the following sections of the Florida Statutes to provide an option to publish a notice in a newspaper website:

- Section 11.02, F.S., providing notice of special or local legislation or any relief act pursuant to s. 50.0211(5), F.S.
- Section 120.81, F.S., to provide that a notice relating to the rules regarding an educational unit, such as a district school board, may be issued by newspaper qualified under s. 50.0211(5).
- Section 121.055, F.S., to provide that a Notice of Intent to designate certain positions as "Senior Management Services Class" under the Florida Retirement System may be published through an Internet publication pursuant to s. 50.0211(5), F.S. The notice must be published for at least 2 consecutive weeks.
- Section 125.66, F.S., to provide that the board of county commissioners may issue a notice of intent to consider an ordinance by publication as specified in ch. 50, F.S., as amended by the bill.
- Section 162.12, F.S., to provide that a code enforcement board, or local government, may issue a notice by Internet publication by publishing the notice for 4 consecutive weeks on the newspaper's website and the statewide legal notice website as provided in s. 50.0211(5), F.S., as amended by the bill.
- Section 189.015, F.S., to provide that the governing body of each special district must advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in ch. 50, F.S., as revised by the bill.
- Section 190.005, F.S., to provide that a notice of a hearing for the establishment of a community development district having a size of 2,500 acres or more must published for 4 consecutive weeks on a newspaper's website and the statewide legal notice website if not published in print.
- Section 190.046, F.S., to provide that a notice of intent to amend an ordinance establishing a community development district must be published as provided in ch. 50, F.S., as revised by the bill.

[32] *See* www.FloridaPublicNotices.com

- Section 194.037, F.S., to provide that the findings of the Tax Impact of Value Adjustment Board be published as provided in ch. 50, F.S., as revised by the bill.
- Section 197.402, F.S., provides that advertisements of real or personal property with delinquent taxes are to be advertised as provided in ch. 50, F.S., as revised by the bill.
- Section 200.065, F.S., to provide that the assessment conducted by the property appraiser must be published as provided in ch. 50, F.S. Additionally, the bill revises this section to allow notices for certain millage increases that may lead to tax increases, such as ad-valorem taxes, to be advertised pursuant to ch. 50, F.S., as revised by the bill.
- Section 849.38, F.S., to provide that when certain property seized by the sheriff's office has an appraisal value of $1,000 or less, the notice must be published by print or posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S. If published in print, the citation shall appear at least once each week for 2 consecutive weeks.
- Section 932.704, F.S., to provide that the notice required for a forfeiture complaint must be published for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S.

The bill takes effect January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, section 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice "to apprise interested parties of the pendency of" an action that may affect life, liberty, or property.[33]

[33] 339 U.S. 306, 314 (1950).

For example, notice is required for termination of parent rights proceedings,[34] certain local county initiatives,[35] and civil judgements based on litigation.[36] On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.[37]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice. Consumers may benefit from the market participation of smaller newspaper publications, especially those in fiscally constrained counties, who may not have otherwise met the requirements to publish legal notices prior to the authorization under the bill.

C. Government Sector Impact:

The impact of this bill is indeterminate since it is unknown how governmental entities will be impacted based on the volume of legal notices to be published. This is especially true in counties where there are no newspapers available for general circulation and the only option may be Internet publication.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the fee for an online publication of a legal notice cannot exceed the fee charged for a print edition of that notice. The current fee structure is based on the size of the notice and can be more costly depending on how many copies of the newspaper are printed and

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[34] *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice).

[35] *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth*., 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that "constructive notice by publication is appropriate in bond validation proceedings").

[36] "To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance." *Pennoyer v. Neff,* 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

[37] For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail "provide[s] an 'efficient and inexpensive means of communication' upon which prudent men will ordinarily rely in the conduct of important affairs").

distributed. This is meant to encourage pricing based on how much space is taken up in the print edition newspaper as well as how large that newspapers audience is. A website publication does not have these same logistical structures to base a fee on the statutory mechanism.

Several sections of the bill permit publication pursuant to s. 50.0211(5), F.S., or as otherwise provided under ch. 50, F.S. Other sections of the bill, such as section 13, include language such as "on a newspaper's website and the statewide legal notice website as provided in s. 50.0211(5)." The Legislature may wish to consider using consistent terminology.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.041, 50.051, 90.902, 11.02, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 849.38, , and 932.704.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Requires newspapers in non-fiscally constrained counties that publish legal notices to be available or sold in at least 10 public outlets.
- Requires newspapers published in non-fiscally constrained counties to have an audience consisting of at least 10 percent of the households in the county or municipality. If the newspaper does not meet the 10 percent requirement, the newspaper may continue to operate under the standards of s. 50.011, F.S., as currently permitted until January 1, 2024.
- Allows newspapers in fiscally constrained counties to publish legal notices so long as they have a periodicals permit.
- Removes the bill's application to the sale of the contents of a storage facility.
- Provides that legal notices as administered under the provisions of the bill are self-authenticating for the purpose of the Florida Evidence Code.

CS by Judiciary on March 22, 2021:
The committee substitute:

- Allows a government agency to publish legal notices on a newspaper website in lieu of a print based publication.
- Allows legal notices to be published using a non-subscription based publisher.
- Removes the requirement that the Supreme Court establish a legal notice website and a restitution, fines, and fees website.
- Provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Rodrigues

590-03199-21 2021402c1

A bill to be entitled

An act relating to legal notices; amending s. 50.011, F.S.; revising requirements for newspapers that are qualified to publish legal notices; authorizing the Internet publication of legal notices on certain websites in lieu of print publication in a newspaper; amending s. 50.021, F.S.; conforming provisions to changes made by the act; amending s. 50.0211, F.S.; defining the term "governmental agency"; requiring the Florida Press Association to consult with the Black Press Association of Florida for a specified purpose; authorizing a governmental agency to opt for Internet-only publication of legal notices with any newspaper of general circulation within the state if certain conditions are met; specifying requirements for the placement, format, and accessibility of any such legal notices; requiring the newspaper to display a specified disclaimer regarding the posting of legal notices; authorizing a newspaper to charge for Internet-only publication, subject to specified limitations; specifying applicable penalties for unauthorized rebates, commissions, or refunds in connection with publication charges; requiring a governmental agency that publishes certain legal notices by Internet-only publication to publish a specified notice in the print edition of a local newspaper; amending s. 50.031, F.S.; conforming provisions to changes made by the act; amending ss. 50.041 and 50.051, F.S.; revising provisions governing

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the uniform affidavit establishing proof of publication to conform to changes made by the act; amending s. 83.806, F.S.; providing that an advertisement of a sale or disposition of property may be published on certain websites for a specified time period; amending ss. 11.02, 45.031, 120.81, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09, and 932.704, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 50.011, Florida Statutes, is amended to read:

50.011 Publication of ~~Where and in what language~~ legal notices ~~to be published~~.~~—~~Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been the following:~~,~~

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(1) A publication in a newspaper printed and published periodically at least once a week ~~or oftener~~, containing at least 25 percent of its words in the English language, ~~entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally,~~ available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public; or

(2) By Internet publication on the website of any newspaper of general circulation in this state that otherwise meets the criteria specified in subsection (1) and on the statewide legal notice website as provided under s. 50.0211(5).

Section 2. Section 50.021, Florida Statutes, is amended to read:

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, directs ~~shall direct~~ advertisements to be made in a ~~any~~ county and there is ~~be~~ no newspaper published in the ~~said~~ county, the advertisement may be made by posting on the website of any newspaper of general circulation in this state and on the statewide legal notice website as provided in s. 50.0211(5) or posting three copies thereof in three different places in the ~~said~~ county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

Section 3. Section 50.0211, Florida Statutes, is amended to

read:

50.0211 Internet website publication.—

(1) As used in this section, the term "governmental agency" means a county, municipality, district school board, or other unit of local government or political subdivision in this state.

(2) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(3) ~~(2)~~ If a governmental agency publishes a legal notice in the print edition of a newspaper, each legal notice must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.

(4)(a) ~~(3)(a)~~ If a legal notice is published in the print edition of a newspaper or on a newspaper's website, the

newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website ~~on or after October 1, 2014,~~ for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(d) In its operation of the statewide website, the Florida Press Association shall consult with the Black Press Association of Florida to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the Internet.

(5)(a) In lieu of publishing a legal notice in the print edition of a newspaper of general circulation within the jurisdiction of the affected governmental agency, a governmental agency may opt for Internet-only publication with any newspaper of general circulation within this state so long as the governmental agency determines that the Internet publication of such notice would not unreasonably restrict public access. Any such notice that is published only on the Internet in accordance with this subsection must be placed in the legal notices section

of the newspaper's website and the statewide website established under subsection (4). All requirements regarding the format and accessibility of legal notices placed on the newspaper's website and the statewide website in subsections (3) and (4) also apply to legal notices that are published only on the Internet in accordance with this subsection.

(b) The legal notices section of the print edition of a newspaper and a newspaper's website must include a disclaimer stating that the listing of legal notices may not include all legal notices affecting the area of distribution of the newspaper and that additional legal notices may be accessed on the statewide legal notice website.

(c) A newspaper may charge for the publication of any legal notice that is published only on the newspaper's website, without rebate, commission, or refund; however, the newspaper may not charge any higher rate for publication than the amount that would be authorized under s. 50.061 if the legal notice had been printed in the newspaper. The penalties prescribed in s. 50.061(7) for allowing or accepting any rebate, commission, or refund in connection to the amounts charged for publication also apply to any legal notices that are published only on the Internet in accordance with this subsection.

(d) If a governmental agency exercises the option to publish legal notices on the Internet in accordance with this subsection, such agency must provide notice at least once per week in the print edition of a newspaper of general circulation within the region in which the governmental agency is located which states that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that

a full listing of any legal notices may be accessed on the statewide legal notice website located at www.floridapublicnotices.com.

(6)~~(4)~~ Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are published ~~printed~~ in the newspaper or on ~~and added to~~ the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.

Section 4. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in the print edition of a newspaper or on a newspaper's website in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such

publication, in a newspaper which at the time of such publication shall have been in existence for 1 year ~~and shall have been entered as periodicals matter at a post office in the county where published,~~ or in a newspaper which is a direct successor of a newspaper which has ~~together have~~ been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section or s. 50.0211(5). Proof of such publication shall be made by uniform affidavit.

Section 5. Section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits ~~of publishers of newspapers (or their official representatives)~~ made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white paper and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper

form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

(3) ~~In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement,~~ There may be a charge not to exceed $2 levied for the preparation and execution of each such proof of publication or ~~publisher's~~ affidavit.

Section 6. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF COUNTY ~~NEWSPAPER~~

~~Published (Weekly or Daily)~~

~~(Town or City) (County) FLORIDA~~

STATE OF FLORIDA

COUNTY OF ....:

Before the undersigned authority personally appeared ...., who on oath says that he or she is .... of the ...., a .... newspaper published at .... in .... County, Florida; that the attached copy of advertisement, being a .... in the matter of .... in the .... Court, was published in said newspaper by print in the issues of .... or by publication on the newspaper's website on ...(date)....

Affiant further says that the newspaper complies with all

legal requirements for publication in chapter 50, Florida Statutes ~~said .... is a newspaper published at ...., in said .... County, Florida, and that the said newspaper has heretofore been continuously published in said .... County, Florida, each .... and has been entered as periodicals matter at the post office in ...., in said .... County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper~~.

Sworn to and subscribed before me this .... day of ...., ...(year)..., by ...., who is personally known to me or who has produced (type of identification) as identification.

...(Signature of Notary Public)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

...(Notary Public)...

Section 7. Subsection (4) of section 83.806, Florida Statutes, is amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of

general circulation in the area where the self-service storage facility or self-contained storage unit is located or published continuously for 14 consecutive days on a public website that customarily conducts personal property auctions.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least 15 days after the first publication.

(c) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located or published continuously for 14 consecutive days on a public website that customarily conducts personal property auctions.

Section 8. Section 11.02, Florida Statutes, is amended to read:

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice ~~in each county involved in some newspaper~~ as provided ~~defined~~ in chapter 50 ~~published in~~ or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not made by Internet publication as provided in s. 50.0211(5) and there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

Section 9. Subsection (2) of section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed

as an alternative to any other sale procedure if so ordered by the court.

(2) PUBLICATION OF SALE.—Notice of sale shall be published by Internet publication in accordance with s. 50.0211(5) for at least 2 consecutive weeks before the sale or, if published in print, once a week for 2 consecutive weeks in a newspaper of general circulation~~,~~ as provided ~~defined~~ in chapter 50, published in the county where the sale is to be held. The second publication by print shall be at least 5 days before the sale. The notice shall contain:

(a) A description of the property to be sold.

(b) The time and place of sale.

(c) A statement that the sale will be made pursuant to the order or final judgment.

(d) The caption of the action.

(e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim before the clerk reports the surplus as unclaimed.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

Section 10. Paragraph (d) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter,

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educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in the print edition of a newspaper of general circulation in the affected area or by Internet publication in accordance with s. 50.0211(5);

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Section 11. Subsection (2) of section 121.0511, Florida Statutes, is amended to read:

121.0511 Revocation of election and alternative plan.—The governing body of any municipality or independent special district that has elected to participate in the Florida Retirement System may revoke its election in accordance with the following procedure:

(2) At least 7 days, but not more than 15 days, before the hearing, notice of intent to revoke, specifying the time and place of the hearing, must be published as provided in chapter 50 ~~in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031~~. Proof of publication of the notice must be submitted to the Department of Management Services.

Section 12. Paragraphs (b) and (h) of subsection (1) of

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section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published for at least 2 consecutive weeks if published by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected~~,~~ as provided in chapter 50.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject

to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the capital collateral regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public

defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks by Internet publication as provided in s. 50.0211(5) or, if published in print, once a week for 2 consecutive weeks in a newspaper of general circulation published in the county or counties affected~~,~~ as provided in chapter 50.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who

holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 13. Paragraph (a) of subsection (2) and paragraph (b) of subsection (4) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)(a) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance is given at least 10 days <u>before such</u> ~~prior to said~~ meeting by publication <u>as provided in chapter 50</u> ~~in a newspaper of general circulation in the county~~. A copy of such notice shall be kept

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available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of

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day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. If published in the print edition of a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the community is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of ordinance or resolution)....

A public hearing on the ordinance or resolution will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted,

conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

Section 14. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published for 4 consecutive weeks on a newspaper's website and the statewide legal notice website as provided in s. 50.0211(5) or, if published in print, once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under

chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

Section 15. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the

office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. If published in the print edition of a newspaper, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper ~~of general paid circulation~~ in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the

legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the municipality is published less than weekly ~~5 days a week~~. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. If ~~In addition to being~~ published in the print edition of the newspaper, the map must also be part of any ~~the~~ online notice made ~~required~~ pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 16. Subsection (1) of section 189.015, Florida

Statutes, is amended to read:

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually ~~in a newspaper of general paid circulation~~ in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50, ~~in a newspaper of general paid circulation in the county or counties in which the special district is located,~~ unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The notice shall be posted as provided in ~~advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to~~ chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of

emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 by Internet publication or by publication in a newspaper ~~of general paid circulation~~ in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

Section 17. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published for 4 successive weeks on a newspaper's website and the statewide legal notice website provided in s. 50.0211(5) or, if published in print, in a

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newspaper at least once a week for the 4 successive weeks immediately prior to the hearing as provided in chapter 50. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. If published in the print edition of a newspaper, the advertisement may ~~shall~~ not be placed in the ~~that~~ portion of the newspaper where legal notices and classified advertisements appear. The advertisement must ~~shall~~ be published in a newspaper ~~of general paid circulation~~ in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least weekly ~~5 days a week~~, unless the only newspaper in the community is published less than weekly ~~fewer than 5 days a week~~. If the notice is ~~In addition to being~~ published in the print edition of the newspaper, the map ~~referenced above~~ must also be included in any ~~part of the~~ online advertisement ~~required~~ pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Section 18. Paragraph (h) of subsection (1) of section 190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or

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expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10 years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the

district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.

4. The petitioner shall cause to be published in a newspaper of general circulation in the proposed district a notice of the intent to amend the ordinance that establishes the district. The notice must be in addition to any notice required for adoption of the ordinance amendment. Such notice must be published as provided in chapter 50 at least 10 days before the scheduled hearing on the ordinance amendment ~~and may be published in the section of the newspaper reserved for legal notices~~. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall

deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

Section 19. Subsection (1) of section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board as provided in chapter 50. If published in the print edition of a newspaper, the notice must be in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county. The

newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. For all advertisements published pursuant to this section, the headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to

parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

Section 20. Subsection (1) of section 197.402, Florida Statutes, is amended to read:

197.402 Advertisement of real or personal property with delinquent taxes.—

(1) If advertisements are required, the board of county commissioners shall make such notice ~~select the newspaper~~ as provided in chapter 50. The tax collector shall pay all ~~newspaper~~ charges, and the proportionate cost of the advertisements shall be added to the delinquent taxes collected.

Section 21. Subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be published as provided in chapter 50. If the advertisement is published in the print edition of a newspaper, the advertisement must be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and

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classified advertisements appear. The advertisement shall be published in a newspaper ~~of general paid circulation~~ in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly ~~5 days a week~~ unless the only newspaper in the county is published less than weekly ~~5 days a week~~, or that the advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(a) For taxing authorities other than school districts which have tentatively adopted a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of the taxing authority)... has tentatively adopted a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year's proposed tax levy.....$XX,XXX,XXX

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All concerned citizens are invited to attend a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A FINAL DECISION on the proposed tax increase and the budget will be made at this hearing.

(b) In all instances in which the provisions of paragraph (a) are inapplicable for taxing authorities other than school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of taxing authority)... has tentatively adopted a budget for ...(fiscal year).... A public hearing to make a FINAL DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(c) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed pursuant to subsection (1) and which propose to levy nonvoted millage in excess of the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be in the following form:

NOTICE OF PROPOSED TAX INCREASE

The ...(name of school district)... will soon consider a measure to increase its property tax levy.

Last year's property tax levy:

A. Initially proposed tax levy.....$XX,XXX,XXX

B. Less tax reductions due to Value Adjustment Board and

other assessment changes.....($XX,XXX,XXX)

C. Actual property tax levy.....$XX,XXX,XXX

This year's proposed tax levy.....$XX,XXX,XXX

A portion of the tax levy is required under state law in order for the school board to receive $...(amount A)... in state education grants. The required portion has ...(increased or decreased)... by ...(amount B)... percent and represents approximately ...(amount C)... of the total proposed taxes.

The remainder of the taxes is proposed solely at the discretion of the school board.

All concerned citizens are invited to a public hearing on the tax increase to be held on ...(date and time)... at ...(meeting place)....

A DECISION on the proposed tax increase and the budget will be made at this hearing.

1. AMOUNT A shall be an estimate, provided by the Department of Education, of the amount to be received in the current fiscal year by the district from state appropriations for the Florida Education Finance Program.

2. AMOUNT B shall be the percent increase over the rolled-back rate necessary to levy only the required local effort in the current fiscal year, computed as though in the preceding fiscal year only the required local effort was levied.

3. AMOUNT C shall be the quotient of required local-effort millage divided by the total proposed nonvoted millage, rounded to the nearest tenth and stated in words; however, the stated amount shall not exceed nine-tenths.

(d) For school districts which have proposed a millage rate in excess of 100 percent of the rolled-back rate computed

pursuant to subsection (1) and which propose to levy as nonvoted millage only the minimum amount required pursuant to s. 1011.60(6), the advertisement shall be the same as provided in paragraph (c), except that the second and third paragraphs shall be replaced with the following paragraph:

This increase is required under state law in order for the school board to receive $...(amount A)... in state education grants.

(e) In all instances in which the provisions of paragraphs (c) and (d) are inapplicable for school districts, the advertisement shall be in the following form:

NOTICE OF BUDGET HEARING

The ...(name of school district)... will soon consider a budget for ...(fiscal year).... A public hearing to make a DECISION on the budget AND TAXES will be held on ...(date and time)... at ...(meeting place)....

(f) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(g) In the event that the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a

tentative budget and millage rate in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c) not less than 2 days or more than 5 days thereafter, and not later than September 18. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on ...(date and time)... at ...(meeting place)....

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In addition, if published in the print edition of the newspaper or only published on the Internet in accordance with s. 50.0211(5), the map must be included in ~~part of~~ the online advertisement required by s. 50.0211. The advertisements required herein shall

not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

(i) The advertisements required pursuant to paragraphs (b) and (e) need not be one-quarter page in size or have a headline in type no smaller than 18 point.

(j) The amounts to be published as percentages of increase over the rolled-back rate pursuant to this subsection shall be based on aggregate millage rates and shall exclude voted millage levies unless expressly provided otherwise in this subsection.

(k) Any taxing authority which will levy an ad valorem tax for an upcoming budget year but does not levy an ad valorem tax currently shall, in the advertisement specified in paragraph (a), paragraph (c), paragraph (d), or paragraph (g), replace the phrase "increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent" with the phrase "impose a new property tax levy of $...(amount)... per $1,000 value."

(l) Any advertisement required pursuant to this section shall be accompanied by an adjacent notice meeting the budget summary requirements of s. 129.03(3)(b). Except for those taxing authorities proposing to levy ad valorem taxes for the first time, the following statement shall appear in the budget summary in boldfaced type immediately following the heading, if the applicable percentage is greater than zero:

THE PROPOSED OPERATING BUDGET EXPENDITURES OF ...(name of taxing authority)... ARE ...(percent rounded to one decimal place)... MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

For purposes of this paragraph, "proposed operating budget expenditures" or "operating expenditures" means all moneys of the local government, including dependent special districts, that:

1. Were or could be expended during the applicable fiscal year, or

2. Were or could be retained as a balance for future spending in the fiscal year.

Provided, however, those moneys held in or used in trust, agency, or internal service funds, and expenditures of bond proceeds for capital outlay or for advanced refunded debt principal, shall be excluded.

Section 22. Paragraph (c) of subsection (1) of section 338.223, Florida Statutes, is amended to read:

338.223 Proposed turnpike projects.—

(1)

(c) Prior to requesting legislative approval of a proposed turnpike project, the environmental feasibility of the proposed project shall be reviewed by the Department of Environmental Protection. The department shall submit its Project Development and Environmental Report to the Department of Environmental Protection, along with a draft copy of a public notice. Within 14 days of receipt of the draft public notice, the Department of Environmental Protection shall return the draft public notice to the Department of Transportation with an approval of the language or modifications to the language. Upon receipt of the approved or modified draft, or if no comments are provided

within 14 days, the Department of Transportation shall publish the notice as provided in chapter 50 ~~in a newspaper~~ to provide a 30-day public comment period. If published in the print edition of a newspaper, the headline of the required notice shall be in a type no smaller than 18 point, ~~. The notice~~ shall be placed in that portion of the newspaper where legal notices appear, and ~~.~~ ~~The notice~~ shall be published in a newspaper of general circulation in the county or counties of general interest and readership in the community as provided in s. 50.031, not one of limited subject matter. Whenever possible, the notice shall appear in a newspaper that is published at least weekly ~~5 days a week~~. All notices published pursuant to this section ~~The notice~~ shall include, at a minimum ~~but is not limited to~~, the following information:

1. The purpose of the notice is to provide for a 30-day period for written public comments on the environmental impacts of a proposed turnpike project.

2. The name and description of the project, along with a geographic location map clearly indicating the area where the proposed project will be located.

3. The address where such comments must be sent and the date such comments are due.

After a review of the department's report and any public comments, the Department of Environmental Protection shall submit a statement of environmental feasibility to the department within 30 days after the date on which public comments are due. The notice and the statement of environmental feasibility shall not give rise to any rights to a hearing or

other rights or remedies provided pursuant to chapter 120 or chapter 403, and shall not bind the Department of Environmental Protection in any subsequent environmental permit review.

Section 23. Subsection (3) of section 348.0308, Florida Statutes, is amended to read:

348.0308 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The agency may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by Internet publication or by print in a newspaper of general circulation in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the agency shall rank the proposals in order of preference. In ranking the proposals, the agency shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the agency is not satisfied with the results of the negotiations, it may, at its sole

discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the agency may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the agency may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The agency may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 24. Subsection (3) of section 348.635, Florida Statutes, is amended to read:

348.635 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in ~~and~~ a newspaper of general circulation in the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has

expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 25. Subsection (3) of section 348.7605, Florida Statutes, is amended to read:

348.7605 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, by either Internet publication or by print in a newspaper of general circulation in

the county in which the project ~~it~~ is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 26. Section 373.0397, Florida Statutes, is amended to read:

373.0397 Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.—Upon preparation of an inventory of prime groundwater recharge areas for the Floridan or Biscayne aquifers, but prior to adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the

Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, as provided ~~in newspapers defined~~ in chapter 50 ~~as having general circulation within the area to be affected~~. The notice shall be at least one-fourth page and shall read as follows:

NOTICE OF PRIME RECHARGE
AREA DESIGNATION

The ...(name of taxing authority)... proposes to designate specific land areas as areas of prime recharge to the ...(name of aquifer)... Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on ...(date and time)... at ...(meeting place)....

A map of the affected areas follows.

The governing board of the water management district shall adopt a designation of prime groundwater recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

Section 27. Section 373.146, Florida Statutes, is amended to read:

373.146 Publication of notices, process, and papers.—

(1) Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise provided by law, the publication thereof ~~in some newspaper or newspapers~~ as provided ~~defined~~ in chapter 50 is ~~having general circulation within the area to be affected shall be taken and~~

considered as being sufficient.

(2) Notwithstanding any other provision of law to the contrary, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication as provided in chapter 50 ~~in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed~~, no less than 7 days before such meeting.

Section 28. Subsection (12) of section 403.722, Florida Statutes, is amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published as provided in chapter 50 ~~in a newspaper of general circulation in the county in which the facility is located or is proposed to be located~~. ~~Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which has the largest daily circulation in~~

~~that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county.~~

The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from ...(name of applicant)... to ...(brief description of project).... This proposed project will be located at ...(location)... in ...(county)... ...(city)....

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at ...(name and address of office)....

Section 29. Paragraph (b) of subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community

covenant or restriction, shall:

(b) Publish the notice referred to in s. 712.05 by Internet publication as provided in s. 50.0211(5) or printed once a week, for 2 consecutive weeks, in a newspaper as defined in chapter 50~~, the notice referred to in s. 712.05,~~ with the official record book and page number in which such notice was recorded~~, in a newspaper as defined in chapter 50~~ in the county in which the property is located.

Section 30. Subsection (5) of section 849.38, Florida Statutes, is amended to read:

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of $1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than $1,000, the citation shall be posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5) or published in print at least once each week for 2 consecutive weeks in a ~~some~~ newspaper of general publication published in the county, if there is ~~be~~ such a newspaper published in the county. ~~and~~ If there is no newspaper of general circulation ~~not~~, the ~~then said~~ notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication as provided in chapter 50 ~~in a newspaper~~, which affidavit or certificate shall

be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

Section 31. Paragraph (a) of subsection (3) of section 865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(3) REGISTRATION.—

(a) A person may not engage in business under a fictitious name unless the person first registers the name with the division by filing a registration listing:

1. The name to be registered.

2. The mailing address of the business.

3. The name and address of each registrant.

4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity has such a number.

5. Certification by at least one registrant that the intention to register such fictitious name has been advertised as provided ~~at least once in a newspaper as defined~~ in chapter 50 in the county in which the principal place of business of the registrant is or will be located.

6. Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant so conducting business.

Section 32. Paragraph (a) of subsection (6) of section 932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(6)(a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5) or, if published in print, once each week for 2 consecutive weeks in a newspaper of general circulation~~, as defined in s. 165.031,~~ in the county where the seizure occurred.

Section 33. This act shall take effect July 1, 2022.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

SB402
Bill Number (if applicable)

Topic Legal Ads

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 West Jefferson
Street

TLH Fla 32301
City *State* *Zip*

Phone 850-224-3427

Email ron@RLBookPA.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Gannet News Chain and Florida Press Assoc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 16, 2021
Meeting Date

SB 402
Bill Number (if applicable)

4/43070 ~~304210~~
Amendment Barcode (if applicable)

Topic Legal Notices

Name ~~Robert~~ Boukari Bryan Boukari 443070

Job Title

Address 14804 Main Street
Street

Phone 386-462-7529

Alachua Florida 32615
City *State* *Zip*

Email ads@alachuatoday.com

Speaking: ☑ For ☑ ~~Against~~ ☐ Information

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

Representing Alachua County Today Newspaper

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 16, 2021
Meeting Date

SB 402
Bill Number (if applicable)

Topic Legal Notices

Amendment Barcode (if applicable)

Name ~~Robert~~ Bryan Boukari

Job Title

Address 14804 Main Street
Street

Phone 386-462-7529

Alachua — Florida — 32615
City — *State* — *Zip*

Email ads@alachuatoday.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Alachua County Today Newspaper

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

	SB 402
Meeting Date	*Bill Number (if applicable)*
	Amendment Barcode (if applicable)

Topic: Public Notice

Name: Douglas Ray

Job Title: Executive Editor

Address: 2700 SW 13th St — Phone: 352-538-3087

Street

Gainesville — FL — 32608 — Email: doug.ray@starbanner.com

City — *State* — *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against

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

Representing: Gainesville Sun, Ocala Star-Banner, Daily Commercial

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Legal Notices

Name DIEGO Echeverri

Job Title Legislative Liaison

Address _____ Phone _____
Street

Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 402

Meeting Date | *Bill Number (if applicable)*

Topic PUBLIC NOTICES

Amendment Barcode (if applicable)

Name WILLIAM SNOWDEN

Job Title EDITOR

Address P.O. BOX 307 (*Street*)

CRAWFORDVILLE FL 32326 (*City* | *State* | *Zip*)

Phone (850) 926-7152

Email EDITOR@THEWAKULLANEWS.NET

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing THE WAKULLA NEWS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

402
Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Glen Nickerson

Job Title Publisher

Address 200 East Venice Ave.
Street

Phone 941-205-6400

Venice FL 34285
City *State* *Zip*

Email glen.nickerson@yoursun.com

Speaking: ~~For~~ or ☐ Against ☐ Information

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

Representing The Daily Sun & Venice Gondolier

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ~~☒~~ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/19/2024
Meeting Date

4/02
Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Jamie Wachter

Job Title Editor

Address 218 SW Dunkp Glen
Street

Phone 601-227-8511

Lake City FL 32024
City *State* *Zip*

Email jwachter@lakecityreporter.c

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lake City Reporter

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

APRIL 14, 2021
Meeting Date

SB 402
Bill Number (if applicable)

Topic PUBLIC NOTICES

Amendment Barcode (if applicable)

Name WM HATFIELD

Job Title EXECUTIVE EDITOR

Address 4743 STONEY TRACE
Street

TALLAHASSEE FL 32309
City *State* *Zip*

Phone 850-228-6463

Email WHATFIELD@TALLAHASSEE.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TALLAHASSEE DEMOCRAT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

SB 402
Bill Number (if applicable)

Topic Public Notices

Amendment Barcode (if applicable)

Name Todd Wilson

Job Title Publisher

Address 126 NW Irish Gln.
Street

Phone 386-752-1293

Lake City FL 32055
City *State* *Zip*

Email twilson@lakecityreporter.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lake City Reporter

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr. 19, 2024
Meeting Date

402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Notice

Name John Murphy

Job Title General Manager

Address 1624 N Meadowcrest Blvd
Street

Crystal River Fl. 34450
City *State* *Zip*

Phone (352) 563-6363

Email

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

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

Representing Citrus County Chronicle

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

SB 402
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Notices

Name Emerald Greene

Job Title Owner / Publisher

Address 1695 S SR 53
Street

Madison FL 32340
City *State* *Zip*

Phone 850-973-4141

Email emerald@greenepublishing.com

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

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

Representing Greene Publishing, Inc.

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

SB 402
Bill Number (if applicable)

Strike all
Amendment Barcode (if applicable)
443070

Topic Public Notice

Name Jim Fogler

Job Title President Florida Press Association

Address College St
Street

Tallahassee
City *State* *Zip*

Phone 845-219-9400

Email JFogler@FLPress.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Press Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 404
INTRODUCER:	Health Policy Committee and Senator Rouson
SUBJECT:	Office of Minority Health and Health Equity
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	Howard	Kidd	AHS	**Recommend: Favorable**
3.	Howard	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 404 creates section 381.735, F.S., to assign duties and responsibilities to the Office of Minority Health and Health Equity (office) within the Department of Health (department), which currently administers the Closing the Gap grant program. The bill requires the office to develop and promote the statewide implementation of policies, programs, and practices that increase health equity in this state, including increased access to and quality of health care services for racial and ethnic minority populations. The bill also requires the office to coordinate with agencies, organizations, and providers across the state to perform certain tasks, including gathering and analyzing data relating to health disparities.

The bill establishes that a representative from each county health department will serve as a liaison to the office and that the office will serve as a liaison to the federal Offices of Minority Health and Regional Health Operations. The bill requires the department to update information on its website at least annually and authorizes the department to adopt rules to implement the provisions of the bill.

The bill requires the office to use all available resources and pursue opportunities for increased funding to implement its duties and responsibilities.

The bill is projected to increase the department's workload and operational costs. The total projected fiscal impact is $6,079,202 in the General Revenue Fund including $5,728,124 in

recurring and $351,078 in nonrecurring. The workload increase is projected to require 11 full time equivalent (FTE) positions and 67 other personal services (OPS) staff.

The bill takes effect on July 1, 2021.

II. Present Situation:

History of the Office of Minority Health and Health Equity

In 1993, Florida's Minority Health Improvement Act authorized the Minority Health Commission. In 1995, the Commission sunset.[1] In 1998, the department established the Office of Equal Opportunity and Minority Health.[2] In 2004, the Legislature established the Office of Minority Health within the department, pursuant to s. 20.43(9), F.S.[3] In 2016, the Legislature renamed it as the Office of Minority Health and Health Equity (office).[4]

Currently, under s. 20.43, F.S., the office must be headed by a senior health equity officer who administers the Closing the Gap grant program in a manner that maximizes the impact of the grants in achieving health equity. The senior health equity officer must evaluate the grants awarded by the program and assess the effectiveness and efficiency of the use of funds to determine best practices. The senior health equity officer is also responsible for disseminating information on best practices to stakeholders and for ensuring that the assessments inform future grant award decisions.

The office currently has five FTE staff positions: one senior health equity officer, one grants administrator, two Florida-certified contract managers, and one administrative assistant. The office also has four OPS staff positions: one program evaluator, two program analysts, and one senior clerk.

Closing the Gap Grant Program

In 2000, the Florida Legislature created the Reducing the Racial and Ethnic Health Disparities: "Closing the Gap" (CTG) grant program.[5] The program is administered through the office and its implementation is subject to a specific appropriation in the General Appropriations Act.[6] The purposes of the grant program is to improve health outcomes of racial and ethnic populations and promote disease prevention activities in the following priority areas:

- Maternal and infant mortality;
- Cancer;
- HIV/AIDS;
- Cardiovascular disease;
- Diabetes;
- Adult and child immunization;

[1] Florida Department of Health, History of the Office of Minority Health and Health Equity, *available at* http://www.floridahealth.gov/programs-and-services/minority-health/about-us.html (last visited Feb. 2, 2021).
[2] *Id.*
[3] Chapter 2004-350, s. 2, Laws of Fla.
[4] Chapter 2016-230, Laws of Fla.
[5] Chapter 2000-256, ss. 31-32, Laws of Fla.
[6] Section 381.7356(7), F.S.

- Oral health care;
- Sickle cell disease;
- Lupus; and
- Alzheimer's disease and dementia.[7]

Closing the Gap grants are intended to stimulate the development of community and neighborhood-based projects that impact health outcomes of racial and ethnic populations and stimulate partnerships between state and local governments, faith-based organizations, private sector organizations, and other non-traditional partners.[8] Priority is given to grant proposals that:

- Represent areas with the greatest documented ethnic and racial health status disparities;
- Exceed the statutory local match requirement;[9]
- Demonstrate broad-based local community support from entities representing racial and ethnic populations;
- Demonstrate high levels of participation by the heath care community in clinical preventive services and health promotion activities;
- Have been submitted by counties with high levels of residents living in poverty and with poor health status indicators;
- Demonstrate a coordinated community approach to addressing racial and ethnic health disparities within existing publicly financed health care programs;
- Incorporate intervention mechanisms that have a high probability of improving the targeted populations health status;
- Demonstrate a commitment to quality management in all aspects of project administration and implementation; and
- Incorporate policy approaches that will lead to long-term sustainability and improvement.[10]

The office is responsible for:

- Publicizing the availability of funds and establishing an application process for submitting a grant proposal;
- Providing technical assistance and training, including a statewide meeting promoting best practice programs, as requested, to grant recipients;
- Developing uniform data reporting requirements for the purpose of evaluating the performance of the grant recipients and demonstrating improved health outcomes;
- Developing a monitoring process to evaluate progress toward meeting grant objectives; and
- Coordinating with existing community-based programs, such as chronic disease community intervention programs, cancer prevention and control programs, diabetes control programs, the Healthy Start program, the Florida Kidcare Program, the HIV/AIDS program, immunization programs, and other related programs at the state and local levels, to avoid duplication of effort and promote consistency.[11]

[7] Section 381.7355(2)(a), F.S.
[8] Section 381.7352, F.S.
[9] Section 381.7356, F.S.
[10] Section 381.7355(3), F.S.
[11] Department of Health, *Senate Bill CS/404 Fiscal Analysis* (March 9, 2021) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

III. Effect of Proposed Changes:

Section 1 creates s. 381.735, F.S., to assign duties and responsibilities to the Office of Minority Health and Health Equity (office) within the department. The bill specifies that one representative from each county health department will serve as a minority health liaison to assist the office. The bill tasks the office with:

- Developing and promoting the statewide implementation of policies, programs, and practices that increase health equity in this state, including increased access to and quality of health care services for racial and ethnic minority populations.
- Coordinating with agencies, organizations, and providers across the state to:
  - Gather and analyze data regarding disparities in health status, health outcomes, quality of care, and access to services;
  - Develop mechanisms to improve information dissemination and education;
  - Support minority health liaisons in their outreach endeavors;
  - Develop and promote synergistic initiatives between programs, including, but not limited to, programs related to maternal and child health and human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) to mitigate health disparities for racial and ethnic minority populations;
  - Promote evaluations of demonstration projects and disseminate the evaluation findings to enhance the success and sustainability of policies, programs, and practices that increase health equity in this state;
  - Promote the use of community health workers; and
  - Promote the development of programs that improve access to health care services for individuals with limited proficiency in the English language, including persons with disabilities.
- Serving as a liaison to and assisting the federal Offices of Minority Health and Regional Health Operations, as appropriate. There is an Office of Regional Operations within the Health Resources and Services Administration.[12] Offices of Minority Health are established within six federal Department of Health and Human Services agencies and the National Institutes of Health[13]:
  - Agency for Healthcare Research and Quality;
  - Centers for Disease Control and Prevention;
  - Centers for Medicare & Medicaid Services;
  - Food and Drug Administration;
  - Health Resources and Services Administration;
  - Substance Abuse and Mental Health Services Administration; and
  - NIH National Institute on Minority Health and Health Disparities.
- Using all available resources and pursuing opportunities for funding.

The bill tasks the department with maintaining and annually updating all of the following on its website:

[12] Health Resources and Services Administration, Office of Regional Operations, *available at* https://www.hrsa.gov/about/organization/bureaus/oro/index.html (last visited Feb. 25, 2021).
[13] U.S. Department of Health and Human Services Office of Minority Health, Offices of Minority Health at HHS, *available at* https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=7 (last visited Feb. 25, 2021).

- Data on health disparities and issues affecting racial and ethnic minority populations in Florida;
- Information about racial and ethnic minority populations in Florida and links to resources;
- Resources for health care providers to improve cultural competency, understand health disparities, and increase access to and the quality of care provided to racial and ethnic minority populations in Florida. These resources must include literature, research, referrals, capacity-building and technical assistance services, and training materials for implementing nationally recognized evidence-based best practices for culturally and linguistically appropriate health care services; and
- Contact information for local minority health liaisons.

The bill authorizes the department to adopt rules to implement s. 381.735, F.S.

Section 2 of the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 404 is projected to increase the Department of Health's workload and operational costs. The total projected fiscal impact is $6,079,202 in the General Revenue Fund including $5,728,124 in recurring and $351,078 in nonrecurring. The workload increase is projected to require 11 FTE and 67 OPS staff. [14] The bill requires the office to "use *all available resources* and pursue opportunities for increased funding to achieve the purpose of" s. 381.735, F.S., as created by the bill and described in Section III of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.735 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 3, 2021:
The CS requires the office to coordinate with agencies, organizations, and providers across the state to gather and analyze specified data, as did the underlying bill. The CS further requires that the data and its analysis must include disparities in health outcomes.

The CS deletes provisions in the underlying bill that would have required the office to coordinate with agencies, organizations, and providers across the state to:

- Conduct demonstration projects or evaluations to ensure the success and sustainability of policies, programs, and practices that increase health equity;
- Gather and analyze data regarding the prevalence of racial and ethnic minority populations at risk of involvement with the criminal justice system, the juvenile justice system, and the foster care system or at risk for homelessness, and any disparities in such involvement or access to appropriate behavioral health services by those populations when compared to other populations in this state;
- Promote the creation of or participation in programs that divert individuals with mental health and substance use disorders from the criminal justice system and ensure the availability of quality behavioral health services; and

[14] Supra note 11.

- Develop and implement programs for specified purposes that improve access to health care services for individuals with limited proficiency in the English language by providing access to bilingual providers or interpretive services.

Instead, the CS requires the office to coordinate with agencies, organizations, and providers across the state to develop and promote synergistic initiatives between programs and to promote the evaluations of demonstration projects (developed and implemented by other organizations).

The CS requires the department, rather than the office, to maintain and annually update specified information on its website.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Rouson

588-02374-21 2021404c1

A bill to be entitled

An act relating to the Office of Minority Health and Health Equity; creating s. 381.735, F.S.; requiring the Office of Minority Health and Health Equity to develop and promote the statewide implementation of certain policies, programs, and practices; requiring one representative from each county health department to serve as a minority health liaison for a specified purpose; requiring the office to use all available resources and pursue funding opportunities to achieve this purpose; specifying duties for the office; requiring the Department of Health to maintain specified information on its website; requiring the office to serve as a liaison to and assist certain federal offices; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 381.735, Florida Statutes, is created to read:

381.735 Office of Minority Health and Health Equity.—

(1) The Office of Minority Health and Health Equity established under s. 20.43(9) shall develop and promote the statewide implementation of policies, programs, and practices that increase health equity in this state, including, but not limited to, increased access to and quality of health care services for racial and ethnic minority populations. One representative from each county health department shall serve as

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

588-02374-21 2021404c1

a minority health liaison to assist the office in implementing this section. The office shall use all available resources and pursue opportunities for increased funding to achieve the purpose of this section.

(2) The office shall coordinate with agencies, organizations, and providers across this state to do all of the following:

(a) Gather and analyze data regarding disparities in health status, health outcomes, quality of health care, and access to health care services for racial and ethnic minority populations in this state.

(b) Develop mechanisms that support better information dissemination and education about health disparities which lead to improved access to and delivery of health care services for racial and ethnic minority populations in this state.

(c) Support minority health liaisons by facilitating access to and the exchange of information related to health promotion, preventive health services, and education in the appropriate use of care.

(d) Develop and promote synergistic initiatives between programs, including, but not limited to, programs related to maternal and child health and human immunodeficiency virus and acquired immune deficiency syndrome, to mitigate health disparities for racial and ethnic minority populations in this state.

(e) Promote evaluations of demonstration projects and disseminate the evaluation findings to enhance the success and sustainability of policies, programs, and practices that increase health equity in this state.

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

(f) Promote the use of community health workers to improve the cultural competency of services and build individual and community self-sufficiency.

(g) Promote the development of programs that improve access to health care services for individuals with limited proficiency in the English language, including persons with disabilities.

(3) The department shall maintain all of the following on its website, updated at least annually:

(a) Current data on health disparities and issues affecting racial and ethnic minority populations in this state.

(b) Information about and links to resources available to racial and ethnic minority populations in this state.

(c) Resources for providers who wish to improve cultural competency, understand health disparities, and increase the quality of and access to health care services for racial and ethnic minority populations in this state. These resources must include, but need not be limited to, minority health literature, research, and referrals; capacity-building and technical assistance services; and training materials for implementing nationally recognized evidence-based practices for culturally and linguistically appropriate health care services.

(d) Contact information for local minority health liaisons.

(4) The office shall serve as a liaison to and assist the federal Offices of Minority Health and Regional Health Operations, as appropriate.

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

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #404**, relating to the Office of Minority Health and Health Equity, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Darryl Ervin Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

SB 404
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic Office of Minority Health and Health Equity

Name Tonnette Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850.509.5333

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

404
Bill Number (if applicable)

Topic Minority Health and Health Equity

Amendment Barcode (if applicable)

Name Barbara J DeVane

Job Title

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 251-4280

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

404
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Minority Health

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-321-9386

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 404
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____ Phone 682-276-5245
Street

_____ Email claym@fha.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 406 (244934)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Rodrigues
SUBJECT:	Big Cypress Basin
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 406 revises provisions relating to the Big Cypress Basin within the South Florida Water Management District (SFWMD). The bill:

- Revises the membership of the Big Cypress Basin governing board;
- Requires the governing board of the SFWMD to establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary; and
- Requires that the SFWMD ensure that basin ad valorem taxes that are levied in counties within the Big Cypress Basin are used within the counties in which they were collected, and for local projects that improve flood protection, water quality, or natural systems.

The bill has no impact on state funds. The SFWMD states the bill will reduce available annual funding by $8.9 million for future operation and maintenance of the Central & Southern Florida (C&SF) Project flood control system, the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

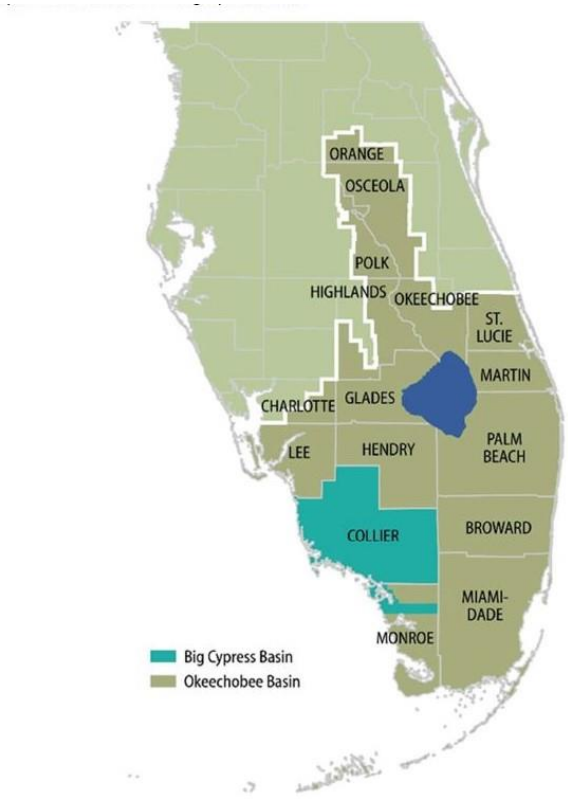
The bill takes effect July 1, 2022.

II. Present Situation:

South Florida Water Management District (SFWMD)

The SFWMD is a regional governmental agency that manages the water resources in the southern half of the state, covering 16 counties from Orlando to the Florida Keys and serving a population of 8.7 million residents.[1] The SFWMD is responsible for managing and protecting South Florida's water resources by balancing and improving flood control, water supply, water quality, and natural systems.

Water management district governing boards may designate sub-districts or basins within the district and may revise the boundaries by resolution.[2] The SFWMD encompasses two major watershed basins, the Okeechobee Basin and the Big Cypress Basin. The Big Cypress Basin includes Collier County and part of Monroe County.[3] The rest of the geographic area within the SFWMD boundaries comprises the Okeechobee Basin, as indicated in the map below.[4]



[1] South Florida Water Management District (SFWMD), *Who We Are*, https://www.sfwmd.gov/who-we-are (last visited Feb. 2, 2021).
[2] Section 373.0693(1), F.S.
[3] SFWMD, *Big Cypress Basin*, https://www.sfwmd.gov/who-we-are/bcb (last visited Feb. 2, 2021). The initial boundaries of the basin are provided in s. 373.0693(9), F.S.
[4] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 79 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf.

Big Cypress Basin

The Big Cypress Basin was established in 1977 and was charged with providing conservation, preservation, and enhancement of water resources in the region.[5] In 1979, an agreement with Collier County transferred the primary flood control system operation and maintenance responsibilities to the Big Cypress Basin. This agreement has been renewed every 10 years, and today the Big Cypress Basin provides flood control in cooperation with Collier County.[6]

The Big Cypress Basin is responsible for operating and maintaining 153 miles of primary canals, 45 water control structures, and four back pumps providing flood control during the wet season and protecting regional water supplies and environmental resources from over-drainage during the dry season.[7] The Big Cypress Basin also provides capital improvements to water management infrastructure and assists local governments and water utilities in developing alternative water supplies and implementing stormwater management programs.[8]

The Big Cypress Basin board sets the basin's regional policy, budget, and millage rate.[9] The SFWMD governing board has the authority to revise the boundaries of the Big Cypress Basin, but may not abolish the basin.[10] Members of the Big Cypress Basin board are appointed by the Governor and must be approved by the Florida Senate.[11] The Big Cypress Basin board must have at least five members.[12] The SFWMD governing board member appointed to represent the Southwest region also serves as the chairman of the Big Cypress Basin board.[13]

Ad Valorem Taxation

Water management district activities are partly financed by ad valorem property taxes paid by those who reside within the district.[14] Property tax, or millage, rates are set by each taxing authority and vary throughout the state. Water management district governing boards adopt the budget and millage rates. Article VII, Section 9 of the Florida Constitution prescribes maximum millage rates for water management districts and additional limits are imposed by statute.[15] The maximum millage for the SFWMD is 0.8 mill,[16] but district policy is to levy rolled-back rates.[17]

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[5] Chapter 76-243, Laws of Fla. *See also* SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, *available at* https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf.
[6] *Id*.
[7] SFWMD, *Big Cypress Basin 2019-2020 Budget*, *available at* https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf.
[8] SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, *available at* https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf.
[9] SFWMD, *Big Cypress Basin Board*, https://www.sfwmd.gov/who-we-are/governing-board/big-cypress-basin-board (last visited Feb. 2, 2021).
[10] Section 373.0693(9)(c), F.S.
[11] Section 373.0693(4), F.S.
[12] Section 373.0693(9), F.S.
[13] SFWMD, *Big Cypress Basin*, https://www.sfwmd.gov/who-we-are/bcb (last visited Feb. 2, 2021).
[14] Section 373.503(1), F.S.
[15] Section 373.503(3)(a), F.S.
[16] *Id*.
[17] Section 200.065(1), F.S.

The total millage rate for the Big Cypress Basin in the 2020-2021 Fiscal Year was 0.2255, which applies to Collier County and the portion of mainland Monroe County that is in the Big Cypress Basin.[18] The total millage rate is comprised of the district-wide millage rate of 0.1103 and the Big Cypress Basin millage rate of 0.1152. The millage rate for the Okeechobee Basin in the 2020-2021 Fiscal Year was 0.2675, which applies to 15 of the SFWMD's 16 counties.[19] The total millage rate is comprised of the district-wide millage rate of 0.1103, the Okeechobee Basin millage rate of 0.1192, and the Everglades Construction Project millage rate of 0.0380.[20]

For the 2020-2021 Fiscal Year, $288.3 million of the SFWMD's budget is provided by ad valorem taxes.[21] The apportionment of ad valorem tax revenues within the SFWMD is a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes.[22] The Big Cypress Basin budget approved by the SFWMD governing board was $14.3 million for the 2020-2021 Fiscal Year.[23] Approximately 76 percent of the revenue that funds the Big Cypress Basin budget comes from ad valorem taxes.[24]

Big Cypress Basin Boundary Delineation Study

Pursuant to Specific Appropriation 1606 in the 2020 General Appropriations Act, the SFWMD was instructed to conduct a study to recommend the most appropriate geographic boundaries for the Big Cypress Basin. The Legislature required that the proposed boundaries be based solely upon the common watershed within the Big Cypress Basin and be scientifically supported.[25] The completed study and recommendations were due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2021.[26] The map below shows the proposed boundaries recommended in the study.[27]

[18] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 80 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf. This tax rate represents $22.55 per $100,000 of taxable value.
[19] *Id*. This tax rate represents $26.95 per $100,000 of taxable value.
[20] *Id*.
[21] *Id.* at 56.
[22] Section 373.503(3)(b), F.S.
[23] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 257 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf.
[24] SFWMD, *Big Cypress Basin 2019-2020 Budget*, *available at* https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf.
[25] The study states that a science-based approach to watershed delineation establishes the boundary lines based on physical laws and environmental features of the landscape, including land elevation, land use, man-made improvements to drainage features, animal habitats, and subsurface properties of aquifers. SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 2 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).
[26] Ch. 2020-111, Laws of Fla. *See* p. 240, *available at* http://laws.flrules.org/files/Ch_2020-111.pdf.
[27] SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 25 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).

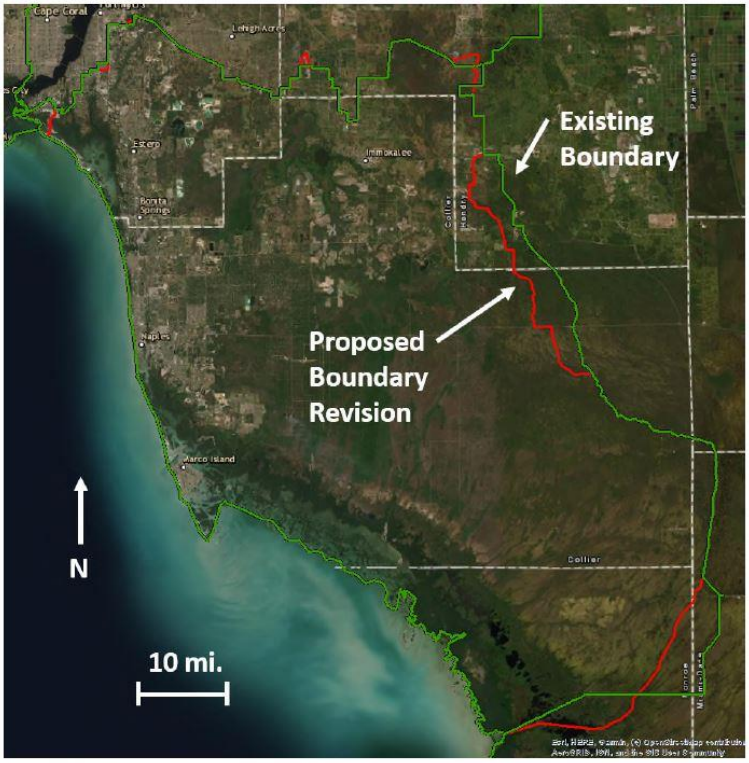


Figure 19. Full set of proposed revisions to existing Big Cypress Basin sub-basin boundary delineation. The green line represents the existing BCS sub-basin boundary, and the red line represents the proposed revisions to the boundary.

III. Effect of Proposed Changes:

Section 1 revises the membership of the Big Cypress Basin governing board. The bill requires the Governor to appoint four persons from Collier County and one person from Lee County who reside within the Big Cypress Basin. The bill deletes language that required the Governor to appoint at least five persons who reside in the Big Cypress Basin area.

The bill requires that at 11:59 p.m. on July 1, 2022, the governing board of the SFWMD establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the SFWMD completed pursuant to the 2020 General Appropriations Act.[28] The bill provides an exception that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary.

The bill also deletes obsolete language.

Section 2 revises ad valorem taxation within the SFWMD to require the district to ensure that:

- Apportionment of ad valorem tax revenue within the district meets existing statutory requirements that state that a maximum of 40 percent of revenues are used for district purposes and a maximum of 60 percent of revenues are used for basin purposes; and

[28] Ch. 2020-111, Laws of Fla. *See* p. 240, *available at* http://laws.flrules.org/files/Ch_2020-111.pdf.

- Basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used for projects that improve flood protection, water quality, or natural systems within the counties in which they were collected.

Section 3 reenacts s. 373.0697, F.S., relating to basin taxes, to incorporate the amendments made in section 2 of the bill.

Section 4 states that the act takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that any areas of land are transferred from the Okeechobee Basin to the Big Cypress Basin under the bill, residents in those areas will see decreased property tax rates. If any areas of land are transferred from the Big Cypress Basin to the Okeechobee Basin under the bill, residents in those areas will see increased property tax rates.

C. Government Sector Impact:

According to the SFWMD, the bill results in the reduction of ad valorem collections and narrows the statutorily authorized usage of ad valorem revenue. The SFWMD states the bill reduces $8.9 million in annual recurring ad valorem revenue necessary for operation

and maintenance of the Central & Southern Florida (C&SF) Project flood control system, the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.0693 and 373.503.

This bill reenacts section 373.0697 of the Florida Statutes.

IX. Additional Information:

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

PCS (244934) by Appropriations (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Revises the membership of the Big Cypress Basin governing board from five persons from Collier and Lee Counties to four persons from Collier County and one person from Lee County;
- Revises the date the governing board of the SFWMD establishes the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study from July 1, 2021, to July 1, 2022, at 11:59 p.m.
- Clarifies that ad valorem revenue is to be used within the counties in which they were collected, and for local projects that improve flood protection, water quality, or natural systems.
- Changes the effective date of the bill to July 1, 2022, from July 1, 2021.

CS by Environment and Natural Resources on February 15, 2021:
The committee substitute:

- Revises the bill to reflect the actual date the Big Cypress Boundary Delineation study was presented to the Legislature.
- Provides that the new Big Cypress Basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary, revised from 50 percent in the underlying bill.
- Requires the South Florida Water Management District to ensure that the basin ad valorem taxes that are levied in the Big Cypress Basin be used for flood control

operations and maintenance, as well as projects, within the counties in which the taxes were collected.

B. Amendments:

None.

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

244934

576-03932-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to the Big Cypress Basin amending s. 373.0693, F.S.; revising the membership of the Big Cypress Basin governing board; requiring the South Florida Water Management District to revise the boundaries of the Big Cypress Basin based on a specified study at a specified time; removing obsolete language; amending s. 373.503, F.S.; requiring the South Florida Water Management District to ensure that the distribution of basin ad valorem taxes collected within the Big Cypress Basin be used for specified purposes within the counties in which they were collected; reenacting s. 373.0697, F.S., relating to basin taxes, to incorporate the amendment made to s. 373.503, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (9) of section 373.0693, Florida Statutes, is amended to read:

373.0693 Basins; basin boards.—

(9) At 11:59 p.m. on December 31, 1976, a portion of the Big Cypress Basin of the Ridge and Lower Gulf Coast District which is being annexed into the South Florida Water Management District by change of boundaries pursuant to chapter 76-243,

244934

576-03932-21

Laws of Florida, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such portion shall be designated as the Big Cypress Basin. ~~On or before December 31, 1976,~~ The Governor shall appoint four ~~not fewer than five~~ persons from Collier County and one person from Lee County who reside within the Big Cypress Basin ~~residing in the area~~ to serve as members of the governing board of the basin, ~~effective at the time of transfer and~~ subject to confirmation by the Senate as provided in subsection (4).

(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) At 11:59 p.m. on July 1, 2022, the governing board of the South Florida Water Management District shall establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the district presented to the Legislature on January 12, 2021, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary ~~If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District~~.

~~(c)~~ The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

Section 2. Paragraph (b) of subsection (3) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(3) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. If appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695.

(b) ~~The apportionment in~~ The South Florida Water Management District shall ensure that:

1. The apportionment within the district is ~~be~~ a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes; and

2. The basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used as specified in s. 373.0695 within the counties in which they were collected, and for local projects improving flood protection, water quality, or natural systems~~, respectively~~.

Section 3. For the purpose of incorporating the amendment made by this act to section 373.503, Florida Statutes, in a reference thereto, section 373.0697, Florida Statutes, is reenacted to read:

373.0697 Basin taxes.—The respective basins may, pursuant

to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed 1 mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

Section 4. This act shall take effect July 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 406
INTRODUCER:	Environment and Natural Resources Committee and Senator Rodrigues
SUBJECT:	Big Cypress Basin
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 revises provisions relating to the Big Cypress Basin within the South Florida Water Management District (SFWMD). The bill:

- Revises the membership of the Big Cypress Basin governing board;
- Requires the governing board of the SFWMD to establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary; and
- Requires that the SFWMD ensure that basin ad valorem taxes that are levied in counties within the Big Cypress Basin are used for projects and flood control operations and maintenance within the counties in which they are collected.

The bill has no impact on state funds. The SFWMD states the bill will reduce available annual funding by $8.9 million for future operation and maintenance of the Central & Southern Florida (C&SF) Project flood control system, the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

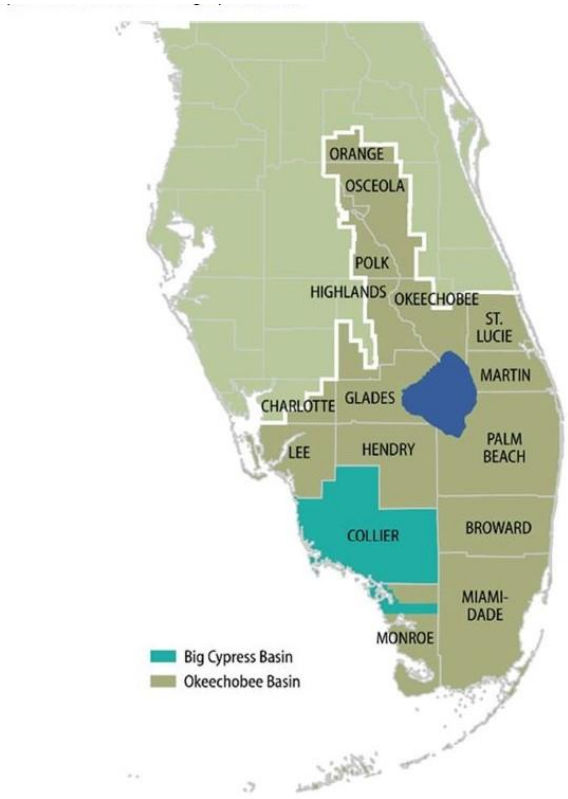
The bill takes effect July 1, 2021.

II. Present Situation:

South Florida Water Management District (SFWMD)

The SFWMD is a regional governmental agency that manages the water resources in the southern half of the state, covering 16 counties from Orlando to the Florida Keys and serving a population of 8.7 million residents.[1] The SFWMD is responsible for managing and protecting South Florida's water resources by balancing and improving flood control, water supply, water quality, and natural systems.

Water management district governing boards may designate sub-districts or basins within the district and may revise the boundaries by resolution.[2] The SFWMD encompasses two major watershed basins, the Okeechobee Basin and the Big Cypress Basin. The Big Cypress Basin includes Collier County and part of Monroe County.[3] The rest of the geographic area within the SFWMD boundaries comprises the Okeechobee Basin, as indicated in the map below.[4]



[1] South Florida Water Management District (SFWMD), *Who We Are*, https://www.sfwmd.gov/who-we-are (last visited Feb. 2, 2021).
[2] Section 373.0693(1), F.S.
[3] SFWMD, *Big Cypress Basin*, https://www.sfwmd.gov/who-we-are/bcb (last visited Feb. 2, 2021). The initial boundaries of the basin are provided in s. 373.0693(9), F.S.
[4] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 79 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf.

Big Cypress Basin

The Big Cypress Basin was established in 1977 and was charged with providing conservation, preservation, and enhancement of water resources in the region.[5] In 1979, an agreement with Collier County transferred the primary flood control system operation and maintenance responsibilities to the Big Cypress Basin. This agreement has been renewed every 10 years, and today the Big Cypress Basin provides flood control in cooperation with Collier County.[6]

The Big Cypress Basin is responsible for operating and maintaining 153 miles of primary canals, 45 water control structures, and four back pumps providing flood control during the wet season and protecting regional water supplies and environmental resources from over-drainage during the dry season.[7] The Big Cypress Basin also provides capital improvements to water management infrastructure and assists local governments and water utilities in developing alternative water supplies and implementing stormwater management programs.[8]

The Big Cypress Basin board sets the basin's regional policy, budget, and millage rate.[9] The SFWMD governing board has the authority to revise the boundaries of the Big Cypress Basin, but may not abolish the basin.[10] Members of the Big Cypress Basin board are appointed by the Governor and must be approved by the Florida Senate.[11] The Big Cypress Basin board must have at least five members.[12] The SFWMD governing board member appointed to represent the Southwest region also serves as the chair of the Big Cypress Basin board.[13]

Ad Valorem Taxation

Water management district activities are partly financed by ad valorem property taxes paid by those who reside within the district.[14] Property tax, or millage, rates are set by each taxing authority and vary throughout the state. Water management district governing boards adopt the budget and millage rates. Article VII, Section 9 of the Florida Constitution prescribes maximum millage rates for water management districts and additional limits are imposed by statute.[15] The maximum millage for the SFWMD is 0.8 mill,[16] but district policy is to levy rolled-back rates.[17]

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[5] Chapter 76-243, Laws of Fla. *See also* SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, *available at* https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf.
[6] *Id*.
[7] SFWMD, *Big Cypress Basin 2019-2020 Budget*, *available at* https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf.
[8] SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, *available at* https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf.
[9] SFWMD, *Big Cypress Basin Board*, https://www.sfwmd.gov/who-we-are/governing-board/big-cypress-basin-board (last visited Feb. 2, 2021).
[10] Section 373.0693(9)(c), F.S.
[11] Section 373.0693(4), F.S.
[12] Section 373.0693(9), F.S.
[13] SFWMD, *Big Cypress Basin*, https://www.sfwmd.gov/who-we-are/bcb (last visited Feb. 2, 2021).
[14] Section 373.503(1), F.S.
[15] Section 373.503(3)(a), F.S.
[16] *Id*.
[17] Section 200.065(1), F.S.

The total millage rate for the Big Cypress Basin in the 2020-2021 Fiscal Year was 0.2255, which applies to Collier County and the portion of mainland Monroe County that is in the Big Cypress Basin.[18] The total millage rate is comprised of the district-wide millage rate of 0.1103 and the Big Cypress Basin millage rate of 0.1152. The millage rate for the Okeechobee Basin in the 2020-2021 Fiscal Year was 0.2675, which applies to 15 of the SFWMD's 16 counties.[19] The total millage rate is comprised of the district-wide millage rate of 0.1103, the Okeechobee Basin millage rate of 0.1192, and the Everglades Construction Project millage rate of 0.0380.[20]

For the 2020-2021 Fiscal Year, $288.3 million of the SFWMD's budget is provided by ad valorem taxes.[21] The apportionment of ad valorem tax revenues within the SFWMD is a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes.[22] The Big Cypress Basin budget approved by the SFWMD governing board was $14.3 million for the 2020-2021 Fiscal Year.[23] Approximately 76 percent of the revenue that funds the Big Cypress Basin budget comes from ad valorem taxes.[24]

Big Cypress Basin Boundary Delineation Study

Pursuant to Specific Appropriation 1606 in the 2020 General Appropriations Act, the SFWMD was instructed to conduct a study to recommend the most appropriate geographic boundaries for the Big Cypress Basin. The Legislature required that the proposed boundaries be based solely upon the common watershed within the Big Cypress Basin and be scientifically supported.[25] The completed study and recommendations were due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2021.[26] The map below shows the proposed boundaries recommended in the study.[27]

[18] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 80 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf. This tax rate represents $22.55 per $100,000 of taxable value.
[19] *Id*. This tax rate represents $26.95 per $100,000 of taxable value.
[20] *Id*.
[21] *Id.* at 56.
[22] Section 373.503(3)(b), F.S.
[23] SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 257 (Jan. 15, 2021), *available at* https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf.
[24] SFWMD, *Big Cypress Basin 2019-2020 Budget*, *available at* https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf.
[25] The study states that a science-based approach to watershed delineation establishes the boundary lines based on physical laws and environmental features of the landscape, including land elevation, land use, man-made improvements to drainage features, animal habitats, and subsurface properties of aquifers. SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 2 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).
[26] Ch. 2020-111, Laws of Fla. *See* p. 240, *available at* http://laws.flrules.org/files/Ch_2020-111.pdf.
[27] SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 25 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).

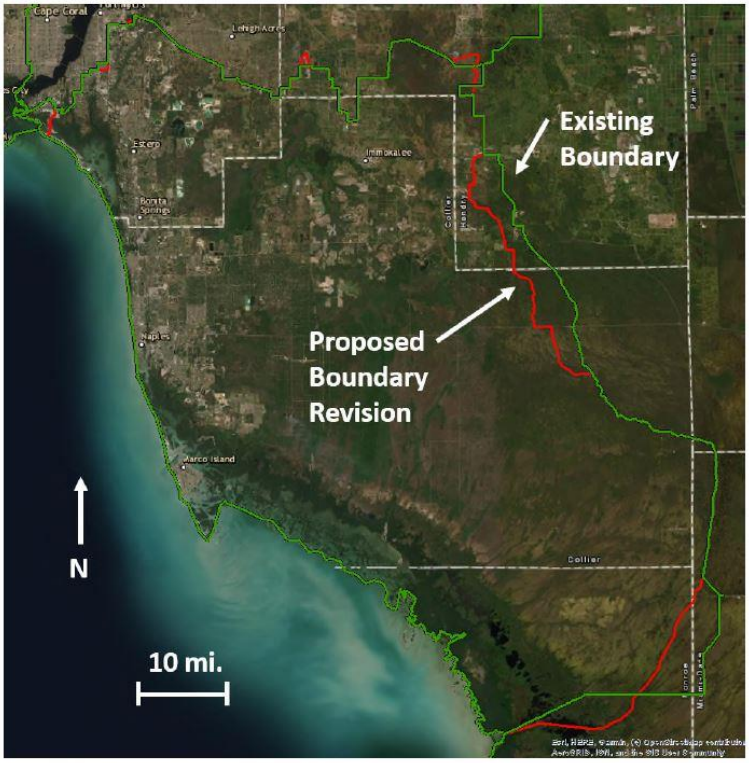

Figure 19. Full set of proposed revisions to existing Big Cypress Basin sub-basin boundary delineation. The green line represents the existing BCS sub-basin boundary, and the red line represents the proposed revisions to the boundary.

III. Effect of Proposed Changes:

Section 1 revises the membership of the Big Cypress Basin governing board. The bill requires the Governor to appoint five persons from Collier and Lee County who reside within the Big Cypress Basin. The bill deletes language that required the Governor to appoint at least five persons who reside in the Big Cypress Basin area.

The bill requires that at 11:59 p.m. on July 1, 2021, the governing board of the SFWMD establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the SFWMD completed pursuant to the 2020 General Appropriations Act.[28] The bill provides an exception that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary.

The bill also deletes obsolete language.

Section 2 revises ad valorem taxation within the SFWMD to require the district to ensure that:

- Apportionment of ad valorem tax revenue within the district meets existing statutory requirements that state that a maximum of 40 percent of revenues are used for district purposes and a maximum of 60 percent of revenues are used for basin purposes; and

[28] Ch. 2020-111, Laws of Fla. *See* p. 240, *available at* http://laws.flrules.org/files/Ch_2020-111.pdf.

- Basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used for projects and flood control operations and maintenance within the counties in which they were collected.

Section 3 reenacts s. 373.0697, F.S., relating to basin taxes, to incorporate the amendments made in section 2 of the bill.

Section 4 states that the act takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that any areas of land are transferred from the Okeechobee Basin to the Big Cypress Basin under the bill, residents in those areas will see decreased property tax rates. If any areas of land are transferred from the Big Cypress Basin to the Okeechobee Basin under the bill, residents in those areas will see increased property tax rates.

C. Government Sector Impact:

According to the SFWMD, the bill results in the reduction of ad valorem collections and narrows the statutorily authorized usage of ad valorem revenue. The SFWMD states the bill reduces $8.9 million in annual recurring ad valorem revenue necessary for operation

and maintenance of the Central & Southern Florida (C&SF) Project flood control system; the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.0693 and 373.503.

This bill reenacts section 373.0697 of the Florida Statutes.

IX. Additional Information:

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

CS by Environment and Natural Resources on February 15, 2021:
The committee substitute:

- Revises the bill to reflect the actual date the Big Cypress Boundary Delineation study was presented to the Legislature.
- Provides that the new Big Cypress Basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary, revised from 50 percent in the underlying bill.
- Requires the South Florida Water Management District to ensure that the basin ad valorem taxes that are levied in the Big Cypress Basin be used for flood control operations and maintenance, as well as projects, within the counties in which the taxes were collected.

B. Amendments:

None.

By the Committee on Environment and Natural Resources; and
Senator Rodrigues

592-02133-21 2021406c1

A bill to be entitled

An act relating to the Big Cypress Basin; amending s. 373.0693, F.S.; revising the membership of the Big Cypress Basin governing board; requiring the South Florida Water Management District to revise the boundaries of the Big Cypress Basin based on a specified study at a specified time; removing obsolete language; amending s. 373.503, F.S.; requiring the South Florida Water Management District to ensure that the distribution of basin ad valorem taxes collected within the Big Cypress Basin be used for projects and flood control operations and maintenance within the counties in which they were collected; reenacting s. 373.0697, F.S., relating to basin taxes, to incorporate the amendment made to s. 373.503, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (9) of section 373.0693, Florida Statutes, is amended to read:

373.0693 Basins; basin boards.—

(9) At 11:59 p.m. on December 31, 1976, a portion of the Big Cypress Basin of the Ridge and Lower Gulf Coast District which is being annexed into the South Florida Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such portion shall be designated as the Big Cypress Basin. ~~On or before December~~

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

592-02133-21 2021406c1

~~31, 1976,~~ The Governor shall appoint ~~not fewer than~~ five persons from Collier and Lee Counties who reside within the Big Cypress Basin ~~residing in the area~~ to serve as members of the governing board of the basin, ~~effective at the time of transfer and~~ subject to confirmation by the Senate as provided in subsection (4).

(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) At 11:59 p.m. on July 1, 2021, the governing board of the South Florida Water Management District shall establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the district presented to the Legislature on January 12, 2021, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary ~~If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District~~.

~~(c)~~ The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

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

Section 2. Paragraph (b) of subsection (3) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(3) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. If appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695.

(b) ~~The apportionment in~~ The South Florida Water Management District shall ensure that:

1. The apportionment within the district is ~~be~~ a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes; and

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Section 3. For the purpose of incorporating the amendment made by this act to section 373.503, Florida Statutes, in a reference thereto, section 373.0697, Florida Statutes, is reenacted to read:

373.0697 Basin taxes.—The respective basins may, pursuant to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to

finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed 1 mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

Section 4. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

April 9, 2021

The Honorable Kelli Stargel
Senate Appropriations Committee, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 406- Big Cypress Basin

Dear Madam Chair:

Please allow this letter to serve as my respectful request to place CS/SB 406, relating to Big Cypress Basin, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Ray Rodrigues

Ray Rodrigues
Senate District 27

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
❒ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Big Cypress Basin

Name Lisa Hurley

Job Title

Address 311 E. Park Ave.
Street

Tallahassee | Fl | 32301
City | *State* | *Zip*

Phone 850.224.5081

Email lhurley@smithbryanandmyers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Collier County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 486
INTRODUCER:	Education Committee and Senator Bradley
SUBJECT:	Juvenile Justice Education Programs
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 486 modifies how juvenile justice education programs are operated and funded. These modifications include how instructional time is defined and how funds are allocated between school districts and educational providers. Specifically, the bill:

- Provides for equivalent hours of instruction in the definition of "juvenile justice education programs or schools" for nonresidential programs.
- Requires that at least 95 percent of Florida Education Finance Program (FEFP) funds generated by a student in Department of Juvenile Justice programs or specified education program for juveniles must be spent on instructional costs.
- Requires all contracts between district school boards and juvenile justice education programs to be in writing.
- Requires timely satisfaction of invoices by district school boards, with a penalty for late payments.
- Specifies that district school boards may not delay payment of funds owed to juvenile justice education programs pending receipt of local funds.

The bill has no impact on state revenues or expenditures. However districts will be required to spend an additional 5% of the FEFP funds generated by the Department of Juvenile Justice students on instructional costs. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

Juvenile Justice Education Programs and Schools

Juvenile justice education programs or schools operate for the purpose of providing educational services to youth in Department of Juvenile Justice (DJJ) programs, for a school year comprised of 250 days of instruction distributed over 12 months. At the request of the provider, a district school board may decrease the minimum number of days of instruction by up to 10 days for teacher planning for residential programs and up to 20 days for teacher planning for nonresidential programs, subject to the approval of the DJJ and the Department of Education (DOE).[1]

A juvenile justice provider is the DJJ, the sheriff, or a private, public, or other governmental organization under contract with the DJJ or the sheriff that provides treatment, care and custody, or educational programs for youth in juvenile justice intervention, detention, or commitment programs.[2]

Educational Services in DJJ Programs

The DOE acts as the lead agency for juvenile justice education programs and sets the standards for curriculum and other support services.[3]

Students who do not attend a local public school due to their placement in a DJJ detention, prevention, residential, or day treatment program are provided high-quality and effective educational programs by the local school district in which the DJJ facility is located or by an education provider through a contract with the local school district.[4] Each program must be conducted according to applicable law providing for the operation of public schools and rules of the State Board of Education.[5]

The district school board must make provisions for each student to participate in basic, Career and Professional Education (CAPE), and exceptional student programs, as appropriate. Students served in DJJ education programs must have access to the appropriate courses and instruction to prepare them for the high school equivalency examination. School districts must provide the high school equivalency examination exit option for all juvenile justice education programs.[6]

With the assistance of the school districts and juvenile justice education providers, the DOE must select a common student assessment instrument and protocol for measuring student learning gains and student progression while a student is in a juvenile justice education program.[7]

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[1] Section 1003.01(11)(a), F.S.
[2] Section 1003.01(11)(b), F.S.
[3] Section 1003.52(1), F.S.
[4] Rule 6A-6.05281(2), F.A.C.
[5] Section 1003.52(3)(a), F.S.
[6] *Id.*
[7] Section 1003.52(3)(b), F.S.

Funding of Students Enrolled in Juvenile Justice Education Programs

Funding for eligible students enrolled in juvenile justice education programs is provided through the Florida Education Finance Program (FEFP).[8] Students participating in high school equivalency examination preparation programs are funded at the basic program cost factor for DJJ programs in the FEFP.[9]

Funding of instruction in a standard school is limited to 900 hours for a student in Grade 4 through Grade 12 and 720 hours for a student in Kindergarten through Grade 3. DJJ programs are permitted to receive funding for instruction provided beyond the 180 day limit. DJJ students, both residential and nonresidential, are funded for one FTE (900 hours or 180 days of instruction during the regular school year) and up to an additional 45 days (or 350 hours) of instruction during the summer, for a total of 250 days of instruction. DJJ programs are the only exception to the summer school earning and reporting of FTE because their programs are year-round.[10]

An hourly equivalent for the 250 days of instruction has not been established in statute, administrative rule, or through DOE guidelines. Flexibility within the 25-hour week was provided to DJJ programs through an October 2010 DOE technical assistance paper. However, when rule 6A-6.05281 of the Florida Administrative Code, was amended, the flexibility was removed.[11]

At least 90 percent of the FEFP funds generated by students in DJJ programs or in an education program for juveniles must be spent on instructional costs for those students.[12]

One hundred percent of the formula-based categorical funds[13] generated by students in DJJ programs must be spent on appropriate categoricals, such as instructional materials and public school technology for those students.[14]

Contracts with Providers

Each school district that provides educational services to students in a DJJ facility must negotiate a cooperative agreement with DJJ and may negotiate educational service contracts with private education service providers if they do not directly provide the education services.[15] The district school board of the county in which the juvenile justice education prevention, day treatment, residential, or detention program is located must provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.[16] Such contracts must include the following:

[8] Section 1011.62, F.S.
[9] Section 1003.52(3)(a), F.S.
[10] Section 1011.61, F.S.
[11] Department of Education, Senate Bill 486 *Legislative Bill Analysis* (Jan. 11, 2021) (on file with the Senate Appropriations Subcommittee on Education).
[12] Section 1003.51(2)(i), F.S.
[13] Section 1011.62(10), F.S.
[14] Section 1003.51(2)(i), F.S.
[15] Florida Department of Education, *Developing Effective Education in the Department of Juvenile Justice Annual Report 2019-2019 available at* http://www.fldoe.org/core/fileparse.php/7567/urlt/DevEffEduDJJ1819.pdf.
[16] Section 1003.52(3), F.S. and Rule 6A-6.05281(9), F.A.C.

- Payment structure and amounts;
- Access to district services;
- Contract management provisions;
- Data maintenance and reporting requirements;
- Administrative guidelines and oversight of federal programs; and
- Require that all educational services comply with this rule.[17]

III. Effect of Proposed Changes:

The bill modifies how juvenile justice education programs are operated and funded. These modifications include how instructional time is defined and how funds are allocated between school districts and educational providers.

The bill modifies the definition of "juvenile justice education programs or schools" by allowing for the number of instructional days, currently 250 days over 12 months, to be expressed in equivalent hours for nonresidential programs. These hours must be specified by the State Board of Education (SBE) and reviewed annually. Further, the bill specifies that current law authorizing a district school board to decrease the minimum number of days of instruction by up to 20 days for nonresidential programs may also be expressed in hours, subject to SBE rule. In any case, a DJJ nonresidential program will still be funded based on one FTE (900 hours) for the regular school year and up to 350 hours (.38 FTE) during the summer school period.

The bill adjusts the requirements for Florida Education Finance Program (FEFP) funds generated by students in Department of Juvenile Justice (DJJ) or juvenile delinquency education programs. The bill increases the funding amounts that must be spent on instructional cost for students from 90 percent to 95 percent of the funds generated. Increasing the percentage of FEFP dollars that must be provided to a DJJ educational program for instructional cost from 90 percent to 95 percent would have a 5 percent reduction for school districts in administrative dollars which are often used to provide accountability oversight.[18] Districts that have a high administrative overhead may have difficulty providing the same level of administrative support and oversight within the five percent of funds generated by the DJJ program FEFP. If that is the case, then the supplemental administrative funds will have to be provided from some other source.

The bill provides additional requirements for contracts between district school boards and juvenile justice education programs. Specifically, the bill requires:

- All contracts to be in writing between district school boards desiring to contract directly with juvenile justice education programs to provide academic instruction.
- New or renewal contracts to be executed and negotiated within 40 days after the district school board provides the proposal, unless both parties agree to an extension.
- District school boards to satisfy invoices issued by the juvenile justice education program within 15 working days after receipt.
    - If a district school board does not timely issue a warrant for payment, it must pay to the juvenile justice education program interest at a rate of one percent per month, calculated

[17] Rule 6A-6.05281(9), F.A.C.
[18] Department of Juvenile Justice, *Legislative Bill Analysis for SB 486* (Jan. 25, 2021).

on a daily basis, on the unpaid balance until such time as a warrant is issued for the invoice and accrued interest amount.

- District school boards may not delay payment to a juvenile justice education program of any portion of funds owed pending the district's receipt of local funds.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has no impact on state appropriations; however, it does affect school district expenditure of funds for DJJ programs.

The requirement for school districts to spend 95 percent of the funds generated by DJJ students on instructional costs for those students, an increase of 5 percent over the

percentage required under current law, may result in approximately an additional $2.1 million being spent on instructional costs by districts for DJJ students.[19]

This would be a 5% reduction in administrative dollars for the districts, which are often used to provide accountability oversight.[20] Districts that have high administrative overhead for the DJJ programs may be challenged to provide the same level of administrative and accountability support within the funds generated by the DJJ program FEFP. If that is the case, then supplemental administrative funds will have to be provided from some other source.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.01, 1003.51, and 1003.52.

IX. Additional Information:

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

CS by Education on March 2, 2021:
The committee substitute:
- Clarifies that the use of equivalent instructional days expressed in hours is only applicable to nonresidential programs.
- Removes redundant language regarding equivalent hours as specified in the State Board of Education rule.
- Modifies the length of time district school boards must satisfy invoices issued by juvenile justice programs from 10 working days to 15 working days.
- Removes the requirement that district school boards provide proposed contracts to juvenile justice education programs by April 1.

B. Amendments:

None.

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

[19] Department of Education, Senate Bill 486 *Legislative Bill Analysis* (Jan. 11, 2021) (on file with the Senate Appropriations Subcommittee on Education).
[20] Department of Juvenile Justice, Senate Bill 486 *Legislative Bill Analysis* (Jan. 25, 2021) (on file with the Senate Appropriations Subcommittee on Education).

By the Committee on Education; and Senator Bradley

581-02355-21 2021486c1

A bill to be entitled

An act relating to juvenile justice education programs; amending s. 1003.01, F.S.; redefining the term "juvenile justice education programs or schools"; amending s. 1003.51, F.S.; increasing the percentage of certain funds that must be spent on specified costs; clarifying that Department of Juvenile Justice education programs are entitled to certain funds; requiring such funds to be spent in a certain manner; amending 1003.52, F.S.; requiring that contracts between district school boards and juvenile justice education programs be in writing; providing a timeframe within which district school boards and juvenile justice education programs must negotiate and execute their contracts; authorizing an extension of time; requiring the Department of Education to provide mediation services for certain disputes; requiring district school boards satisfy certain invoices within a specified timeframe; requiring district school boards that fail to timely issue a warrant for payment to also pay interest at a specified rate to the juvenile justice education program; prohibiting school boards from delaying certain payments pending receipt of local funds; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (a) of subsection (11) of section

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

581-02355-21 2021486c1

1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(11)(a) "Juvenile justice education programs or schools" means programs or schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, for a school year composed ~~comprised~~ of 250 days of instruction, or the equivalent expressed in hours as specified in State Board of Education rule, distributed over 12 months. If the period of operation is expressed in hours, the State Board of Education must review the calculation annually. The use of the equivalent expressed in hours is only applicable to nonresidential programs. At the request of the provider, a district school board may decrease the minimum number of days of instruction by up to 10 days for teacher planning for residential programs and up to 20 days or equivalent hours as specified in the State Board of Education rule for teacher planning for nonresidential programs, subject to the approval of the Department of Juvenile Justice and the Department of Education.

Section 2. Paragraph (i) of subsection (2) of section 1003.51, Florida Statutes, is amended to read:

1003.51 Other public educational services.—

(2) The State Board of Education shall adopt rules articulating expectations for effective education programs for students in Department of Juvenile Justice programs, including, but not limited to, education programs in juvenile justice prevention, day treatment, residential, and detention programs. The rule shall establish policies and standards for education programs for students in Department of Juvenile Justice programs

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

and shall include the following:

(i) Funding requirements, which must provide ~~shall include the requirement~~ that at least 95 ~~90~~ percent of the FEFP funds generated by students in Department of Juvenile Justice programs or in an education program for juveniles under s. 985.19 must be spent on instructional costs for those students. Department of Juvenile Justice education programs are entitled to 100 ~~one hundred~~ percent of the formula-based categorical funds generated by students in Department of Juvenile Justice programs. Such funds must be spent on appropriate categoricals, such as instructional materials and public school technology for those students.

Section 3. Present paragraphs (a) and (b) of subsection (3) of section 1003.52, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and new paragraphs (a) and (b) are added to that subsection, and paragraph (a) of subsection (17) of that section is amended, to read:

1003.52 Educational services in Department of Juvenile Justice programs.—

(3) The district school board of the county in which the juvenile justice education prevention, day treatment, residential, or detention program is located shall provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.

(a) All contracts between a district school board desiring to contract directly with juvenile justice education programs to provide academic instruction for students in such programs must be in writing. Unless both parties agree to an extension of

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

time, the district school board and the juvenile justice education program shall negotiate and execute a new or renewal contract within 40 days after the district school board provides the proposal to the juvenile justice education program. The Department of Education shall provide mediation services for any disputes relating to this paragraph.

(b) District school boards shall satisfy invoices issued by juvenile justice education programs within 15 working days after receipt. If a district school board does not timely issue a warrant for payment, it must pay to the juvenile justice education program interest at a rate of 1 percent per month, calculated on a daily basis, on the unpaid balance until such time as a warrant is issued for the invoice and accrued interest amount. The district school board may not delay payment to a juvenile justice education program of any portion of funds owed pending the district's receipt of local funds.

(17) The department, in collaboration with the Department of Juvenile Justice, shall collect data and report on commitment, day treatment, prevention, and detention programs. The report shall be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by February 1 of each year. The report must include, at a minimum:

(a) The number and percentage of students who:

1. Return to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.

2. Receive a standard high school diploma or a high school equivalency diploma.

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

3. Receive industry certification.

4. Enroll in a postsecondary educational institution.

5. Complete a juvenile justice education program without reoffending.

6. Reoffend within 1 year after completion of a day treatment or residential commitment program.

7. Remain employed 1 year after completion of a day treatment or residential commitment program.

8. Demonstrate learning gains pursuant to paragraph (3)(d) ~~(3)(b)~~.

Section 4. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 25, 2021

Senator Kelli Stargel, Chairman
Senate Appropriations Committee
201 Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Stargel:

I respectfully request that CS/SB 486 be placed on the committee's agenda at your earliest convenience. The bill relates to juvenile justice educational programs in the state. Among other provisions, the bill increases from 90% to 95%, the FEFP percentage that must be spent on instructional costs. It also creates a timeline for the execution and payment of contracts with school districts.

Thank you for your consideration of this request.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Tim Sadberry, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
❒ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 566
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Perry
SUBJECT:	Motor Vehicle Rentals
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Proctor	Vickers	TR	**Favorable**
3.	Bruno	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 566 establishes insurance and operational requirements for peer-to-peer car-sharing programs (car-sharing programs). Under the bill, peer-to-peer car-sharing is the authorized use of a motor vehicle by an individual other than a shared vehicle's owner (vehicle owner) through a car-sharing program that connects motor vehicle owners with drivers for financial consideration.

The bill confirms that Florida's sales tax applies to car-sharing programs. The bill imposes a reduced surcharge of $1 per day on a motor vehicle rental or lease with a duration of less than 24 hours and on a car-sharing program agreement.

The bill requires that the car-sharing program ensure that during the car-sharing period, the vehicle owner and shared vehicle driver (driver) are insured to at least the minimum statutory requirements for property damage liability, bodily injury liability, personal injury protection, and uninsured motorist coverage. The car-sharing program must assume liability for damages that may occur during the car-sharing period in amounts that may not be less than the minimum statutory liability coverage requirements for bodily injury, property damage, personal injury protection, and uninsured motorist, with exceptions. The bill provides that car-sharing programs and vehicle owners are exempt from vicarious liability consistent with federal law.

The bill also requires a car-sharing program to:

- Keep and retain specified records;

- Provide notice to vehicle owners and drivers of the rates of the car-sharing program contract, the car-sharing programs' right to seek indemnification and make defenses, the fact that a vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle, conditions under which the driver must maintain insurance, and an emergency telephone number for roadside assistance and customer service inquiries;
- Require that drivers have a current, valid driver license or be otherwise authorized to drive;
- Have sole responsibility for equipment put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction; and
- Verify shared vehicles have been repaired pursuant to any safety recalls, provide notice the vehicle owner of recalls, and remove vehicles from the car-sharing program that have not been repaired.

The Revenue Estimating Conference determined that the provisions of the bill that clarify that peer-to-peer car-sharing programs must collect sales tax will increase General Revenue Fund receipts, Trust Fund receipts, and local government receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter.

The bill takes effect January 1, 2022.

II. Present Situation:

Motor Vehicle Rentals

Section 322.38, F.S., provides driver license-related requirements for renting a motor vehicle to another person. A person may not rent a motor vehicle to any other person unless the other person is duly licensed in Florida or, if a nonresident, is licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed. Prior to the rental, the rentee must inspect the driver license of the person to whom the vehicle is to be rented and verify that the driver license is unexpired.

Every person renting a motor vehicle to another is required to keep a record of the registration number of the motor vehicle, the name and address of the person to whom the vehicle is rented, the number of the license of the renter, and the place where the license was issued. The record must be open to inspection by any police officer, or officer or employee of the Department Highway Safety and Motor Vehicles.

If a rental car company rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the above obligations when the rental car company, at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services, or any time thereafter, requires the renter to verify that he or she is duly licensed and that the license is unexpired.

Peer-to-Peer Car-sharing

Car owners interested in sharing their vehicles can register as a vehicle owner on a car-sharing program's website.[1] Car-sharing programs require photos of the car and help the vehicle owner determine a rental fee based on the location and type of car. The vehicle owner then specifies the car's availability. The vehicle owner may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Vehicle owners typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.[2]

Drivers also register with the car-sharing program. The car-sharing program will conduct a background check and review the drivers' driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card information if it is not already on file. At the end of the sharing period, the driver replaces any consumed fuel before returning the car to its pickup location.[3]

One car-sharing website reports that its car-sharing program has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to $1 million in liability insurance.[4]

Car-Sharing Service

"Car-sharing service" is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955[5] provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.[6] In combination with the Florida Motor Vehicle No-Fault Law,[7] operators of motor vehicles with four or more wheels are required

[1] Turo, Getaround, and Avail are examples of peer-to-peer car-sharing programs.
[2] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car-sharing*, Autotrader, (February 9, 2015), available at https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited April 14, 2021).
[3] *Id.*
[4] Turo, *About Turo*, available at https://turo.com/us/en/about(last visited April 14, 2021).
[5] Chapter 324, F.S.
[6] Section 324.011, F.S.
[7] Sections 627.730 – 627.7405, F.S.

to purchase minimum insurance coverages for property damage liability[8] and personal injury protection.[9]

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of $10,000, or $30,000 for a combined PD and bodily injury liability policy.[10]

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of $10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,[11] which is reduced to a $2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.[12] PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a $5,000 death benefit.[13]

Liability for Motor Vehicle Lessors

Florida's Financial Responsibility Law of 1955 also provides liability limits applicable to rented and leased vehicles. Under a motor vehicle rental or lease agreement with a term of less than one year, the lessor is deemed the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith up to $100,000 per person and $300,000 per incident for bodily injury.[14] The lessor is liable for property damage up to $50,000.[15]

However, if the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined PD and BI, the lessor is liable up to an additional $500,000 in economic damages arising from the operation of the motor vehicle.[16] This additional specified liability of the lessor for economic damages is reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.[17]

[8] Section 324.022, F.S.
[9] Section 627.733, F.S.
[10] Section 324.022(1), F.S.
[11] Section 627.736(1), F.S.
[12] Section 627.736(1)(a)(4), F.S.
[13] Section 627.736(1)(c), F.S.
[14] Section 324.021(9)(b)1, F.S.
[15] *Id*.
[16] *Id*.
[17] *Id*.

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of $10,000 because of bodily injury to, or death of, one person in any one crash, and $20,000 for bodily injury to, or death of, two or more persons in any one crash.[18] Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage.[19]

Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.[20]

Florida Sales and Use Tax and Motor Vehicle Rental Surcharges

The lease or rental of tangible personal property, including vehicles, is taxable.[21] When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of six percent[22] of the gross proceeds derived from the lease or rental.[23] A "lease or rental" is defined as the leasing or renting or tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of title.[24] The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.[25]

Rule 12A-16.002(7), F.A.C., provides in pertinent part that "any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement…and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction." The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

Florida law imposes a surcharge[26] of $2.00 per day, or any part of a day, upon the lease or rental of a "motor vehicle licensed for hire"[27] and designed to carry less than nine passengers,

[18] Section 324.022, F.S.
[19] Section 627.727(1), F.S.
[20] Section 627.727(2), F.S.
[21] Section 212.05(1), F.S.
[22] Discretionary county sales surtax, if any, is also owed if the six percent Florida state sales tax applies. *See* s. 212.054, F.S.
[23] Section 212.05(1)(c), F.S.
[24] Section 212.02(10)(g), F.S.
[25] Rule 12A-1.007(13)(a)1, F.A.C.
[26] The rental car surcharge is subject to sales and use tax. *See* s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.
[27] The term "for hire passenger motor vehicle" means any automobile designed to carry fewer than nine (9) passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term "for hire passenger motor vehicle" does not include any motorcycle,

regardless of whether such motor vehicle is licensed in Florida.[28] The surcharge applies to the first 30 days of the term of any lease or rental.[29] Pursuant to Rule 12A-16.002(1)(b), F.A.C., "[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement." The term "person" includes "any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit…."[30] The term "business" is defined to mean "any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect."[31]

The $2.00 surcharge does not apply to rentals by a member of a car-sharing service when the motor vehicle is used for less than 24 hours.[32] Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a $1.00 surcharge, per usage.[33] The term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, 7 days per week;
- Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;
- On an hourly basis or for a shorter increment of time;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.[34]

80 percent of the proceeds of this surcharge are deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge are deposited in the Tourism Promotional Trust Fund, and 4.25 percent of the proceeds of this surcharge are deposited in the Florida International Trade and Promotion Trust Fund.

The surcharge deposited in the State Transportation Trust Fund is allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district must be based on the amount of surcharge attributed to the counties within each respective district.[35]

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moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. See Rule 12A-16.002(2)(c), F.A.C.

[28] Section 212.0606(1), F.S.

[29] *Id*.

[30] Section 212.02(12), F.S.

[31] Section 212.02(2), F.S.

[32] Rule 12A-16.002(3), F.A.C.

[33] Section 212.0606(2), F.S.

[34] *Id*.

[35] *Id*.

The surcharge deposited in the Tourism Promotional Trust Fund must be used to support the authorized activities and operations and the tourism promotion and marketing activities, services, functions, and programs administered by Enterprise Florida, Inc.,[36] and the surcharge deposited into the Florida International Trade and Promotion Trust Fund must be used for the operation of Enterprise Florida, Inc.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 212.05, F.S., to subject the lease or rental of a motor vehicle by a peer-to-peer car-sharing program to the six percent sales tax on of the gross proceeds derived from the lease or rental of a motor vehicle.

Section 2 amends s. 212.0606, F.S., to reduce the surcharge for a peer-to-peer car-sharing program agreement from the existing rental car surcharge of $2 per day to $1 per day.

The bill moves the existing definition for "car-sharing service" to the definitions subsection and provides the following definitions.

- "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.
- "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1), F.S.

These entities or business platforms are required to collect the reduced rental car surcharge.

Section 3 creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car-sharing programs.

Definitions

The bill provides the following definitions:

- "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.
- "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.
- "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.
- "Car-sharing termination time" means the earliest of the following:
    - The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

[36] Section 288.122, F.S.
[37] Section 288.826, F.S.

  - The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program, which alternatively agreed-upon location must incorporated into the peer-to-peer car-sharing program agreement; or
  - The time the shared vehicle owner takes possession and control of the shared vehicle.
- "Peer-to-peer car-sharing" or "car-sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include the use of a for-hire vehicle as defined in s. 320.01(15), F.S., ridesharing as defined in s. 341.031(9), F.S., a carpool as defined in s. 450.28(3), F.S., or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1), F.S.
- "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), F.S., a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), F.S., or a service provider that is solely providing hardware or software as a service to a person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.
- "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15), F.S., or for a car-sharing service as defined in s. 212.0606(1), F.S.
- "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), F.S., or a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., for carpool as defined in s. 450.28(3), F.S., or for car-sharing service as defined in s. 212.0606(1), F.S. "Shared vehicle driver" means an individual who is authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15), F.S.

Insurance Requirements, Liability

Insurance Coverage Requirements

A peer-to-peer car-sharing program must ensure that the shared vehicle owner and shared vehicle driver have a motor vehicle insurance policy that provides all of the following during the car-sharing period:

- Property damage liability coverage in the amount of at least $10,000 as required under s. 324.022, F.S.;

- Bodily injury liability coverage in the amount of at least $10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least $20,000 for bodily injury to, or death of, two or more persons in any one crash as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits in the amount of at least $10,000[38] for medical and disability benefits and in the amount of at least $5,000 for death benefits required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits as required under s. 627.727, F.S.

The peer-to-peer car-sharing program must also ensure that the motor vehicle insurance policy:
- Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; and
- Does not exclude the use of a shared vehicle by a shared vehicle driver.

These insurance requirements may be satisfied by a motor vehicle insurance policy maintained by:
- A shared vehicle owner;
- A shared vehicle driver;
- A peer-to-peer car-sharing program; or
- A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

A motor vehicle insurance policy maintained by a shared vehicle owner, shared vehicle driver, peer-to-peer car-sharing program, or a combination of a shared vehicle owner, shared vehicle driver, and peer-to-peer car-sharing program, is primary during each peer-to-peer car-sharing period.

If a claim occurs during the car-sharing period in another state with higher minimum financial responsibility limits requiring under ch. 324, F.S., the minimum insurance requirements under the peer-to-peer car-sharing program satisfy the difference in minimum coverage amounts up to the applicable policy limits.

If insurance maintained by a shared vehicle owner or shared vehicle driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car-sharing program must provide the required coverage beginning with the first dollar of a claim and must defend such claim, with the exceptions discussed below. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program may not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the peer-to-peer car-sharing period. This interest does not create liability for a network for maintaining the required coverage.

[38] Personal injury protection reimbursement medical benefits are limited to $2,500 if specified medical providers determine the injured person did not have an emergency medical condition.

A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;
- Liability of the shared vehicle owner;
- Liability of the shared vehicle driver;
- Damage or loss to the shared motor vehicle; or
- Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

When the required insurance is maintained by a peer-to-peer car-sharing program, the motor vehicle insurance policy may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. A peer-to-peer car-sharing program is not transacting in insurance when it maintains this insurance.

Liability

A peer-to-peer car-sharing program assumes liability, with stated exclusions, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer car-sharing period in amounts stated in the peer-to-peer car-sharing program agreement. Such amounts may not be less than those set forth in:

- Section 324.021(7)(a) and (b), F.S.: Bodily injury liability coverage in the amount of at least $10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least $20,000 for bodily injury to, or death of, two or more persons in any one crash;
- Section 324.022, F.S.: Property damage liability coverage in the amount of at least $10,000;
- Section 627.727, F.S.: Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits; and
- Section 627.736, F.S.: Personal injury protection benefits in the amount of at least $10,000 for medical and disability benefits and in the amount of at least $5,000 for death benefits.

This assumption of liability does not apply if a shared vehicle owner:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the peer-to-peer car-sharing period in which the loss occurs; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer to-peer car-sharing program agreement.

The insurer, insurers, or peer-to-peer car-sharing program assumes primary liability for a claim when it is providing, in whole or in part, the minimal insurance discussed above and:

- A dispute exists as to who was in control of the shared motor vehicle at the time of the loss and the peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the required rental information; or

- A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required in the peer-to-peer car-sharing program agreement.

The shared vehicle owner's insurer must indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

Vicarious Liability

A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

Exclusions

An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

This provision does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use, which excludes coverage for motor vehicles made available for rent, sharing, hire, or for any business use. This provision also does not invalidate, limit, or restrict an insurer from underwriting, canceling, or nonrenewing an insurance policy as available under existing law.

Contribution Against Indemnification

A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program, if the claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the peer to-peer car-sharing period and excluded under the terms of its policy.

Notification of Implications of a Lien

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car-sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Recordkeeping

A peer-to-peer car-sharing program must:

- Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.
- Retain these records for a period of not less than the applicable personal injury statute of limitations.
- Provide the information contained in the records upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

Consumer Protections

Disclosures

Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement;
- That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;
- That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;
- The daily rate and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;
- That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

Driver License Verification and Retention

A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver holds a valid driver license or is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

A peer-to-peer car-sharing program must keep a record of:

- The name and address of the shared vehicle driver;

- The driver license number of the shared vehicle driver and of any other person who will operate the shared vehicle; and
- The place of issuance of the driver license.

Responsibility for Equipment

The bill provides that a peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program must indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs outside of the peer-to-peer car-sharing period.

Motor Vehicle Safety Recalls

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car-sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

- Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and
- Notify the shared vehicle owner that:
  - A shared vehicle may not be made available on the peer-to-peer car-sharing program if the vehicle is subject to a safety recall and the required repairs have not been made.
  - If the shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, the owner must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible so that the owner may address the safety recall repair.

Construction

The bill does not limit:

- The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car-sharing; or
- The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4 provides an effective date of January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution, as leases or rented motor vehicles licensed for hire are currently subject to sales tax under s. 212.05, F.S., and a rental car surcharge under s. 212.0606, F.S.

The bill's inclusion of motor vehicle rental companies and peer-to-peer car-sharing programs as subcategories of motor vehicle lease or rental arrangements currently subject to state sales tax and rental car surcharges neither imposes a fee on an industry not currently subject to state sales tax or rental car surcharges under the section nor raises a fee on an industry currently subject to state sales tax or rental car surcharges under the section. Accordingly, the bill does not appear to trigger the requirement for a separate bill for the consideration of the rental surcharge provision subject to a 2/3 vote by each chamber of the Legislature.[39]

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the provisions of the bill that clarify that peer programs must collect sales tax will increase General Revenue Fund receipts, Trust Fund receipts, and local government receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter.

B. Private Sector Impact:

Peer-to-peer car-sharing programs will be responsible for collecting and remitting the six percent sales tax on motor vehicle rentals under s. 212.05, F.S., and collecting the $1 per day rental car surcharge under s. 212.0606, F.S.

C. Government Sector Impact:

None.

[39] See Fla. Const. art. VII, s. 19(a),(b) (2019).

VI. Technical Deficiencies:

The bill indicates that the primary insurance policy is a shared vehicle owner, a shared vehicle driver, a peer-to-peer car-sharing program, and any combination of those. A plain language reading suggests that this language is contradictory indicating all of the above are primary without establishing a preferential order.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.05 and 212.0606.

This bill creates section 627.7483 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute makes the following changes to the underlying bill:

- Exempts all peer-to-per car-sharing programs from the existing $2 per day surcharge;
- Imposes a reduced $1 per day surcharge on all peer-to-per car-sharing programs;
- Affirmatively places the responsibility for collecting sales tax with the peer-to-peer car-sharing program;
- Removes the reduction of the surcharge for rentals of less than 24 hours from $2 to $1 for motor vehicle rental companies;
- Removes the explicit instruction for peer-to-peer car-sharing programs to report surcharge collections to the Department of Revenue by county for attribution on a timely filed return for each required reporting period, while maintaining the instruction for dealers generally.

CS by Banking and Insurance on March 24, 2021:
The committee substitute makes the following changes to the underlying bill:

- Exempts all peer-to-per car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours from the existing $2 per day surcharge;
- Imposes a reduced $1 per day surcharge on all peer-to-per car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours;
- Requires that the peer-to-peer car-sharing program report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time;
- Requires the alternatively agreed-upon location for returning the vehicle to be incorporated into the peer-to-peer car-sharing agreement;

- Provides that Florida's minimum insurance requirements for peer-to-peer car-sharing programs satisfy the difference in coverage requirements in another state with higher minimum insurance requirements;
- Requires the insurer, insurers, or peer-to-peer car-sharing program that satisfies the minimum insurance requirements to assuming primary liability for the claim under certain conditions;
- Preserves an insurer's authority to underwrite, cancel, or nonrenew an insurance policy under current law;
- Removes applicable fees as a requirements disclosure items in a peer-to-peer car-sharing program agreement; and
- Additional technical and conforming changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 80 - 223
and insert:
c. If the motor vehicle is rented through a peer-to-peer car-sharing program, the peer-to-peer car-sharing program shall collect and remit the applicable tax due in connection with the rental.
2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12

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months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with ~~the provisions of~~ s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsections (3) and (4) ~~subsection (2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) A surcharge of $1 per day or any part of a day is imposed upon each peer-to-peer car-sharing program agreement involving a shared vehicle that is registered in this state and

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designed to carry fewer than nine passengers for financial consideration and without transfer of the title of the shared vehicle. If the duration of the car-sharing period for a peer-to-peer car-sharing program agreement subject to the surcharge established pursuant to this section is less than 24 hours, the applicable surcharge will be $1 per usage. The surcharge applies to the first 30 days only of a car-sharing period for any peer-to-peer car-sharing program agreement to which the surcharge applies and must be collected by the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(4) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership~~

~~cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates~~. The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(5)(a)~~(3)(a)~~ Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each

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district shall be based on the amount of proceeds attributed to the counties within each respective district.

(6)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharges ~~surcharge~~ as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county in which ~~where~~ the rental agreement was entered into, except that, for peer-to-peer car-sharing, the surcharge shall be attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time.

(c) ~~(b)~~ A dealer that

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

And the title is amended as follows:

Delete lines 6 - 12

and insert:

programs; requiring peer-to-peer car-sharing programs to collect and remit the applicable sales tax; amending s. 212.0606, F.S.; defining terms; specifying the applicable surcharge on motor vehicle leases and rentals by motor vehicle rental companies; specifying applicability of the surcharge; requiring motor vehicle rental companies to collect specified surcharges; specifying the applicable rental car surcharge on peer-to-peer car-sharing program agreements involving shared vehicles; specifying

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applicability of the surcharge; requiring peer-to-peer car-sharing programs to collect specified surcharges; requiring car-sharing services to collect specified surcharges; defining the term "proceeds of this surcharge", rather than "proceeds of the surcharge"; providing that the surcharge for peer-to-peer car-sharing is attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time; requiring a dealer to report collected surcharge revenue accordingly; providing an exception; providing for application of a surcharge to a shared vehicle; creating s.

By the Committee on Banking and Insurance; and Senator Perry

597-03307-21 2021566c1

A bill to be entitled

An act relating to motor vehicle rentals; amending s. 212.05, F.S.; specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; amending s. 212.0606, F.S.; defining terms; specifying the applicable surcharge on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying applicability of the surcharge; requiring motor vehicle rental companies and peer-to-peer car-sharing programs to collect specified surcharges; creating s. 627.7483, F.S.; defining terms; specifying motor vehicle insurance requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have an insurable interest in shared vehicles during specified periods; providing construction; authorizing peer-to-peer car-sharing programs to own and maintain certain motor vehicle insurance policies; requiring peer-to-peer car-sharing programs to assume certain liability; providing exceptions; providing for the assumption of primary liability for claims when certain disputes exist; requiring shared vehicle owners' insurers to indemnify peer-to-peer car-sharing programs under certain circumstances; providing exemptions from vicarious liabilities for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude specified coverages under certain

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circumstances; providing construction related to exclusions; authorizing specified insurers to seek recovery against motor vehicle insurers of peer-to-peer car-sharing programs under certain circumstances; requiring peer-to-peer car-sharing programs to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping, record retention, and record-sharing requirements for peer-to-peer car-sharing programs; specifying disclosure requirements for peer-to-peer car-sharing program agreements; specifying driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification regarding such equipment; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes

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any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles and to peer-to-peer car-sharing programs:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or through a peer-to-peer car-sharing program as those terms are defined in s. 212.0606(1) for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the

lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsections (3), (4), and (5) ~~subsection (2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) A surcharge of $1 per day or any part of a day is imposed upon each peer-to-peer car-sharing program agreement involving a shared vehicle that is registered in this state and designed to carry fewer than nine passengers for financial consideration and without transfer of the title of the shared vehicle. If the duration of the car-sharing period for a peer-to-peer car-sharing program agreement subject to the surcharge established pursuant to this section is less than 24 hours, the applicable surcharge will be $1 per usage. The surcharge applies

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to the first 30 days only of a car-sharing period for any peer-to-peer car-sharing program agreement to which the surcharge applies and must be collected by the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(4) A surcharge of $1 per usage is imposed upon the lease or rental for less than 24 hours by a motor vehicle rental company of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge is subject to all applicable taxes imposed by this chapter.

(5) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting~~

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~~with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates~~.

The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(6)(a) ~~(3)(a)~~ Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year

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by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(7)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharges ~~surcharge~~ as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer or peer-to-peer car-sharing program ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county in which ~~where~~ the rental agreement was entered into, except that, for peer-to-peer car-sharing, the surcharge shall be attributable to the county corresponding to the location of the motor vehicle at the car-sharing start time.

(c) ~~(b)~~ A dealer or peer-to-peer car-sharing program that collects a ~~Dealers who collect the rental car~~ surcharge pursuant to this section shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period; except that, in the case of peer-to-peer car-sharing, the peer-to-peer car-sharing program shall report the applicable surcharge revenue attributed to the county corresponding to the location of the motor vehicle at the car sharing start time. The provisions of this chapter which apply

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to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(8)~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle or a shared vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time

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established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program, which alternatively agreed-upon location must be incorporated into the peer-to-peer car-sharing program agreement; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), a carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), or a service provider that is solely providing hardware or software as a service to a

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person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for a carpool as defined in s. 450.28(3), or for a car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that,

during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period. If a claim occurs during the car-sharing period in another state with minimum financial

responsibility limits higher than those limits required under chapter 324, the coverage maintained under paragraph (a) satisfies the difference in minimum coverage amounts up to the applicable policy limits.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a peer-to-peer car-sharing program for maintaining the coverage required under paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) *Liability.*—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material

misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. The insurer, insurers, or peer-to-peer car-sharing program providing coverage under paragraph (2)(a) shall assume primary liability for a claim when:

a. A dispute exists over who was in control of the shared motor vehicle at the time of the loss, and the peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5); or

b. A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required under subparagraph (1)(d)2.

(b) *Vicarious liability.*—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) *Exclusions in motor vehicle insurance policies.*—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

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2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use. This paragraph does not invalidate, limit, or restrict an insurer's ability under existing law to underwrite, cancel, or nonrenew any insurance policy.

(d) *Contribution against indemnification.*—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek recovery against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing

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program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, car-sharing period pick up and drop off locations, and revenues received by the shared vehicle owner;

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations; and

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.

(6) CONSUMER PROTECTIONS.—

(a) *Disclosures.*—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the

shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) *Driver license verification and data retention.*—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The driver license number of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) *Responsibility for equipment.*—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) *Motor vehicle safety recalls.*—At the time a motor

vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program

which results in the bodily injury of a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect January 1, 2022.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill #566**, relating to Motor Vehicle Rentals, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

566
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Peer to Peer Car Sharing

Name Leslie Dughi

Job Title

Address 101 E College Avenue
Street

Phone

City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Enterprise Holdings

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

5660
Bill Number (if applicable)

732632
Amendment Barcode (if applicable)

Topic Peer to Peer Car Sharing

Name Leslie Dughi

Job Title

Address 121E College Ave
Street

Tal FL
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Enterprise Holdings

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

566
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name Eric Prutsman

Job Title

Address 537 East Park Ave.
Street

Phone 8502102525

Tallahassee FL 32301
City *State* *Zip*

Email eric@teamjb.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Airports Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

566
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name Lisa Waters

Job Title President/CEO

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Orlando FL 32822
City *State* *Zip*

Phone (407) 745-4161

Email lisa@ floridaairports.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Airports Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

566
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

SB 566
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Motor Vehicle Rentals

Name George Feijoo

Job Title

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-0024

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Avail

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021 10AM
Meeting Date

0566
Bill Number (if applicable)

Topic SB 0566 - Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name Alli Liby-Schoonover

Job Title Senior Policy Advisor

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Street

Phone 8502059000

TLH FL 32301
City *State* *Zip*

Email ALS@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Turo

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

566
Bill Number (if applicable)

Topic Motor Vehicle Rentals

Amendment Barcode (if applicable)

Name Bill Cotterall

Job Title General Counsel

Address 218 S Monroe Street
Street

Phone 850-224-9403

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 590
INTRODUCER:	Appropriations Committee and Senator Harrell
SUBJECT:	Involuntary Examinations of Minors
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Favorable**
2.	Jahnke	Bouck	ED	**Favorable**
3.	Sneed	Sadberry	AP	**Fav/CS**

I. Summary:

CS/SB 590 requires public and charter schools to make a reasonable attempt to notify the parents of a minor student before the student is removed from school, school transportation, or a school-sponsored activity for an involuntary mental health examination. The bill provides that a school principal or designee may delay notification if they believe it is necessary to avoid jeopardizing the health and safety of the student.

The bill requires all school safety officers to undergo crisis intervention training. The bill also requires schools to contact a health care practitioner capable of initiating a Baker Act in person or via telehealth prior to a Baker Act being initiated. The bill mandates the collection of data by school districts and the Department of Children and Families (DCF) relating to the number and frequency of involuntary examinations of minors initiated by schools.

The bill specifies that parents of public school students have the right to timely notification of threats, unlawful acts, and significant emergencies, as well as access to school safety and discipline incidents as reported in the school environmental safety incident report.

The bill adds requirements to the student code of conduct to include:

- Criteria for recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest; and
- Criteria for assigning a student who commits a petty act of misconduct, to a school-based intervention program. If a student's assignment is based on a noncriminal offense, the student's participation in a school-based intervention program may not be entered into the Department of Juvenile Justice Information System Prevention Web.

The bill allows district school board policies to provide accommodations for drills conducted by exceptional education centers, and requires district school boards to establish certain emergency

response and emergency preparedness policies and procedures. The bill also requires timely notice to parents of specified unlawful acts and significant emergency situations on school grounds, school transportation, or school-sponsored activities.

The bill will have an indeterminate, but likely insignificant, negative fiscal impact on public and charter schools and the DCF.

The bill is effective July 1, 2021.

II. Present Situation:

Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[1] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[2]

Involuntary Examination and Receiving Facilities

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[3] An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:[4]

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

An involuntary examination may be initiated by any of the following means:

- A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based;[5]
- A law enforcement officer may take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an

[1] Sections 394.451-394.47891, F.S.
[2] Section 394.459, F.S.
[3] *See* Sections 394.4625 and 394.463, F.S.
[4] Section 394.463(1), F.S.
[5] Section 394.463(2)(a)1., F.S.

appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462, F.S., for examination;[6] or

- Any of the following healthcare professionals may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination:
  - Physicians;
  - Clinical psychologists;
  - Psychiatric nurses;
  - Advanced practice registered nurse registered under s. 464.0123, F.S.;
  - Mental Health Counselors;
  - Marriage and family therapists; or
  - Clinical social workers.[7]

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of a receiving facility is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation of the patient to the appropriate service provider.[8] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[9] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and who are the least able to pay.[10]

A Crisis Stabilization Unit (CSU) is a specialized public receiving facility that receives state funding to provide services to individuals showing acute mental health disorders.[11] The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.[12] CSUs screen, assess, and admit for stabilization individuals who voluntarily present themselves to the unit, as well as individuals who are brought to the unit on an involuntary basis.[13] CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.[14] Individuals often enter the public mental health system through CSUs.[15] For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by the Legislature in the 1970s to ensure continuity of care for individuals.[16]

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[6] Section 394.463(2)(a)2., F.S.
[7] Section 394.463(2)(a)3., F.S.
[8] Section 394.455(40), F.S.
[9] Section 394.455(38), F.S
[10] Rule 65E-5.400(2), F.A.C.
[11] Section 394.875, F.S.
[12] Section 394.875(1)(b) and (c)
[13] Section 394.875(1)(a), F.S.
[14] *Id*.
[15] Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109), p. 2 (Sept. 2011), *available at* https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf (last visited April 19, 2021).
[16] Sections 394.451-394.47891, F.S.

Currently, there are 122 Baker Act receiving facilities in the state, including 54 public receiving facilities and 68 private receiving facilities.[17] Of the 54 public receiving facilities, 40 are designated as CSUs.[18]

Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.[19] During those 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.[20] If the patient is a minor, the examination must be initiated within 12 hours.[21]

Within that 72-hour examination period, or if the 72 hours ends on a weekend or holiday, no later than the next business day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary patient and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.[22]

Mental Health Services for Students

The Florida Department of Education (DOE), through the Bureau of Exceptional Education and Student Services and the Office of Safe Schools, promotes a system of support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety. Florida law requires instructional personnel to teach comprehensive health education that addresses concepts of mental and emotional health, as well as substance use and abuse.[23] Student Services personnel, which includes school psychologists, school social workers, and school counselors, are classified as instructional personnel responsible for advising students regarding personal and social adjustments, and provide direct and indirect services at the district and school level.[24]

State funding for school districts' mental health services is provided primarily by legislative appropriations, the majority of which is distributed through an allocation through the Florida Education Finance Program (FEFP) to each district. In addition to the basic amount for current operations for the FEFP, the Legislature may appropriate categorical funding for specified

[17] The Department of Children and Families, *Designated Baker Act Receiving Facilities*, (April 19, 2021), *available at* https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/baker/Baker%20Act%20Receiving%20Faciliites.pdf (last visited April 19, 2021). Hospitals can also be designated as public receiving facilities.
[18] *Id*.
[19] Section 394.463(2)(g), F.S.
[20] Section 394.463(2)(f), F.S.
[21] Section 394.463(2)(g), F.S.
[22] *Id*.
[23] Section 1003.42(2)(n), F.S.
[24] Section 1012.01(2)(b), F.S.

programs, activities, or purposes.[25] Each district school board must include the amount of categorical funds as a part of the district annual financial report to the DOE and the DOE must submit a report to the Legislature that identifies by district and by categorical fund the amount transferred and the specific academic classroom activity for which the funds were spent.[26]

The law allows district school boards and state agencies administering children's mental health funds to form a multiagency network to provide support for students with severe emotional disturbance.[27] The program goals for each component of the multiagency network are to:

- Enable students with severe emotional disturbance to learn appropriate behaviors, reduce dependency, and fully participate in all aspects of school and community living;
- Develop individual programs for students with severe emotional disturbance, including necessary educational, residential, and mental health treatment services;
- Provide programs and services as close as possible to the student's home in the least restrictive manner consistent with the student's needs; and
- Integrate a wide range of services necessary to support students with severe emotional disturbances and their families.[28]

The DOE awards grants to district school boards for statewide planning and development of the multiagency Network for Students with Emotional or Behavioral Disabilities (SEDNET).[29] SEDNET is a network of 19 regional projects that are composed of major child-serving agencies, community-based service providers, and students and their families. Local school districts serve as fiscal agents for each local regional project.[30] SEDNET focuses on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with and at risk of emotional and behavioral disabilities.[31]

Mental Health Allocation

The mental health assistance allocation was established in 2018[32] to provide funding to assist school districts in establishing or expanding school-based mental health care. These funds must be allocated annually in the General Appropriations Act or other law to each eligible school district. Each school district must receive a minimum of $100,000 with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment. Eligible charter schools are entitled to a proportionate share of district funding. At least 90 percent of a district's allocation must be expended on the elements

[25] Section 1011.62(6), F.S.
[26] *Id*.
[27] *See* s. 1006.04(1)(a), F.S.
[28] Section 1006.04(1)(b), F.S.
[29] Section 1006.04(2), F.S.
[30] Fiscal agencies include the Brevard, Broward, Clay, Columbia, Miami-Dade, Escambia, Hendry, Hernando, Hillsborough, Levy, Liberty, Orange, Palm Beach, Pinellas, Polk, St. Lucie, Volusia, and Washington school districts. Florida Department of Education, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects*, January 2017, at p. 11, *available at* http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf (last visited April 19, 2021).
[31] The Florida Department of Education, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects*, January 2017, p. 11, *available at* http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf (last visited April 19, 2021).
[32] Section 29, ch. 2018-4, L.O.F.

specified in law. The allocated funds may not replace funds that are provided for this purpose from other operating funds or be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.[33]

Before the distribution of the allocation:

- The school district must develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval.
- A charter school must develop and submit a detailed plan outlining the local program and planned expenditures to its governing body for approval and it must be provided to the charter school's sponsor after the plan is approved by the governing body.
- The required plans must be focused on delivering evidence-based mental health care treatment to children and include all of the following elements:
  - Provision of mental health assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and students at high risk of such diagnoses.
  - Coordination of such services with a student's primary care provider and with other mental health providers involved in the student's care.
  - Direct employment of such service providers, or a contract-based collaborative effort or partnership with one or more local community mental health programs, agencies, or providers.[34]

School districts must submit approved plans, including approved plans of each charter school in the district, to the commissioner by August 1 of each fiscal year.[35]

Beginning September 30, 2019, and annually by September 30, each school district must submit to the DOE a report on its program outcomes and expenditures for the previous fiscal year which, at a minimum, must include the number of each of the following:

- Students who receive screenings or assessments.
- Students who are referred for services or assistance.
- Students who receive services or assistance.
- Direct employment service providers employed by each school district.
- Contract-based collaborative efforts or partnerships with community mental health programs, agencies, or providers.[36]

Office of Safe Schools

The Office of Safe Schools (OSS) in the DOE serves as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning.[37] The OSS requirements include:

[33] Section 1011.62(16), F.S.
[34] Section 1011.62(16)(b), F.S.
[35] Section 1011.62(16)(c), F.S.
[36] Section 1011.62(16)(d), F.S.
[37] Section 1001.212, F.S. *See also* The Florida Department of Education, *Office of Safe Schools*, *available at* http://www.fldoe.org/safe-schools/ (last visited April 19, 2021).

- Establishing and updating as necessary a school security risk assessment tool[38] for use by school districts and charter schools.
- Providing ongoing professional development opportunities to school district personnel.
- Providing a coordinated and interdisciplinary approach to providing technical assistance and guidance to school districts on safety and security and recommendations to address findings identified in the school security risk assessment.[39]
- Developing and implementing a School Safety Specialist Training Program for school safety specialists. The office must develop the training program based on national and state best practices on school safety and security and must include active shooter training.[40]
- Reviewing and providing recommendations on the security risk assessments.

Safe-School Officers

Florida law requires each district school board and school district superintendent to partner with law enforcement agencies, to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options that best meet the needs of the school district.[41] These options include:

- Establishing a school resource officer program, through a cooperative agreement with law enforcement agencies.[42]
- Commissioning one or more school safety officers. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.[43]
- Participating in the Coach Aaron Feis Guardian Program if such program is established by the sheriff.[44]

Coach Aaron Feis Guardian Program

The Coach Aaron Feis Guardian Program (guardian program) was established in 2018[45] as an option for school districts to meet the safe-school officer requirements in law.[46] Each sheriff has the discretion to establish a guardian program to aid in the prevention or abatement of active assailant incidents on school premises. School employees, except individuals who exclusively perform classroom duties as classroom teachers as defined in law,[47] may participate in the guardian program. The sheriff who chooses to establish a guardian program shall appoint as school guardians, without the power of arrest, school employees who volunteer and who comply with all of the following:

- Hold a valid license issued under s. 790.06, F.S. (license to carry a concealed firearm).

[38] Section 1006.1493, F.S., provides for the Florida Safe Schools Assessment Tool (FSSAT).
[39] Section 1006.07(6)(a)4., F.S., requires a school security risk assessment at each public school using the school security risk assessment tool (FSSAT) developed by the OSS.
[40] Section 1006.07(6)(a), F.S., requires each district school superintendent to designate a school administrator as a school safety specialist for the district.
[41] Section 1006.12, F.S.
[42] Section 1006.12(1), F.S.
[43] Section 1006.12(2), F.S
[44] Section 1006.12(3), F.S
[45] Section 26, ch. 2018-3, L.O.F.
[46] Section 1006.12, F.S.
[47] Section 1012.01(2)(a), F.S.

- Complete 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:
  - Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
  - Sixteen hours of instruction in precision pistol.
  - Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.
  - Eight hours of instruction in active shooter or assailant scenarios.
  - Eight hours of instruction in defensive tactics.
  - Twelve hours of instruction in legal issues.
- Pass a psychological evaluation administered by a psychologist licensed under ch. 490, F.S., and designated by the Florida Department of Law Enforcement (FDLE) and submit the results of the evaluation to the sheriff's office. The FDLE may provide the sheriff's office with mental health and substance abuse data for compliance with this requirement.
- Submit to and pass an initial drug test and subsequent random drug tests in accordance with the requirements of s. 112.0455, F.S.,[48] and the sheriff's office.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.
- Successfully complete at least 12 hours of a certified nationally recognized diversity training program.[49]

A sheriff must issue a school guardian certificate to individuals who meet the requirements specified in law.[50] The sheriff must maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian appointed by the sheriff.[51]

School Safety Drills

District school boards must formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active shooter and hostage situations, and bomb threats, for all students and faculty at all district K-12 public schools.[52]

Drills for active shooter and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies must establish model emergency management and emergency preparedness procedures, including emergency notification procedures.[53]

[48] Section 112.0455, F.S., relates to the Drug-Free Workplace Act.
[49] Section 30.15(1)(k), F.S.
[50] Section 30.15(1)(k)2., F.S.
[51] *Id*.
[52] Section 1006.07(4), F.S.
[53] *Id*.

Parent and Student Rights

A parent of a K-12 public school student is afforded many statutory rights.[54] Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.[55]
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.[56]
- Establish a policy enabling a parent to object to and contest specific instructional materials.[57]
- Notify a parent and obtain his or her consent before a public school student may be referred to or offered contraceptive services at school facilities or travel in a privately owned motor vehicle to a school function.[58]

Juvenile Diversion Programs

Juvenile diversion programs (diversion programs) are alternatives to juvenile arrest. A juvenile arrest may be diverted based on comprehensive knowledge of the juvenile's criminal history, prior contacts with law enforcement, and prior program enrollment.[59]

A civil citation or similar prearrest diversion program for misdemeanor offenses must be established in each judicial circuit in the state and operated by the state attorney of each circuit.[60] A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may continue to operate an independent civil citation or similar prearrest diversion program as long as the program was in operation as of October 1, 2018, reviewed by the state attorney in the circuit, and determined to be substantially similar to the civil citation or similar prearrest diversion program developed by the circuit.[61] Each civil citation or similar prearrest diversion program must enter the appropriate youth data into the Juvenile Justice Information System Prevention Web within 7 days after the admission of the youth into the program.[62]

Compliance with community-based diversion programs includes all reporting requirements, specifically that criminal diversions be entered into Juvenile Justice Information System (JJIS)

[54] Section 1002.20, F.S.
[55] Section 1002.23, F.S.
[56] Section 1003.57, F.S.
[57] Section 1006.28(2)(a)2.-3., F.S.
[58] Sections 1002.20(3)(e) and (22)(c), F.S.
[59] Marjory Stoneman Douglas High School Public Safety Commission (Commission), *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President* (Nov. 1, 2019), *available at* http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf. at 131 (last visited April 19, 2021) (hereinafter cited as "The Commission Report").
[60] Section 985.12(2)(a) and (c), F.S.
[61] Section 985.12(2)(c), F.S.
[62] Section 985.12(2)(f), F.S.

Prevention Web.[63] School districts may still operate their own "diversion programs" that address non-criminal conduct, such as Student Code of Conduct violations and other misbehavior.[64]

In 2019, the Governor issued Executive Order 19-45, providing for an immediate statewide audit of all 67 county school districts to determine any and all types of school-based discipline diversion programs in place.[65] The DOE and Department of Juvenile Justice worked together to complete the audit and review of diversion programs.[66] The audit focused on identification of programs serving youth with offenses that could be deemed delinquent.[67] The audit found that as of July 1, 2019, 58 of the 67 school districts in Florida do not operate school-based diversion programs for potentially delinquent offenses,[68] six school districts operate programs that supplement traditional handling through school-based discipline and/or referral to law enforcement,[69] and three school districts operate school-based diversion programs.[70]

Safety Incident Reporting

Each district school board is required to adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline.[71] The School Environmental Safety Incident Reporting (SESIR) system collects data on incidents related to school safety and discipline that occur on school grounds, school transportation, and off-campus, school-sponsored events.[72]

The law requires each school principal to ensure that standardized forms prescribed by SBE rule are used to report data concerning school safety and discipline to the Department of Education (DOE).[73]

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[63] *Id*.
[64] The Commission Report at p. 133.
[65] Fla. Exec. Order 19-45 (Feb. 13, 2019), *available at* https://www.flgov.com/wp-content/uploads/2019/02/EO-19-45.pdf (last visited April 20, 2021).
[66] *Id*.
[67] Florida Department of Juvenile Justice, *Statewide Audit of School-Based Diversion Programs* (July 1, 2019), at 6, *available at* http://www.fdle.state.fl.us/MSDHS/Meetings/2019/August/August-14-1015am-Report-on-Statewide-Assessment-DJ.aspx.
[68] *Id.* at 20 The 58 districts indicated that non-criminal infractions are handled through school-based consequences such as in-school suspension or out-of-school suspension, and youth who have committed misdemeanors or felonies are referred to law enforcement, typically the school resource officer.
[69] *Id.* at 6 The districts indicated that delinquent offenses are referred to law enforcement for handling, and youth may also participate in the overlay program.; *Id.* at 21 The six districts include Duval, Hendry, Hillsborough, Levy, Marion and Martin Counties.
[70] *Id.* at 22-23. The three counties include Franklin, Broward, and Sarasota. The audit found that Sarasota operates a program that could be described as an "overlay" program but the program does not enter data into the Juvenile Justice Information System Prevention Web.
[71] Section 1006.07(9), F.S.
[72] FSU Center of Criminology and Florida Department of Education *The Florida School Environmental Safety and Incident Reporting (SESIR) system* (2006), *available at* http://criminology.fsu.edu/wp-content/uploads/The-Florida-School-Environmental-Safety-Incident-Reporting-SESIR-System.pdf, at p. 1 (last visited April 19, 2021).
[73] Section 1006.09(6), F.S.

Children and the Baker Act

Over a 15-year period, the number of children subject to involuntary commitments under the Baker Act have increased at a faster pace than any other age group.[74] Children are incapable of legally consenting to medical intervention needed to gauge whether an involuntary examination under the Baker Act is necessary.[75] School officials and mental health professionals have stressed the need for additional mobile response teams, greater access to telehealth technology in accessing the teams, and more school psychologists as methods of addressing the growing number of children subjected to the Baker Act.[76] Over 130 law enforcement agencies across the state have policies in place requiring a parent or family member of a minor to be contacted prior to initiating a Baker Act; however there is no currently no statewide statutory requirement for parental or family notification.[77]

Report on Involuntary Examinations of Minors

In 2017, the Legislature created a task force within the DCF[78] to address the issue of involuntary examination of minors age 17 years or younger, specifically by:[79]

- Analyzing data on the initiation of involuntary examinations of minors;
- Researching the root causes of and trends in such involuntary examinations;
- Identifying and evaluating options for expediting the examination process; and
- Identifying recommendations for encouraging alternatives to or eliminating inappropriate initiations of such examinations.

The task force found that specific causes of increases in involuntary examinations of children are unknown. Possible factors cited in the task force report include:

- Increase in mental health concerns:
  - In 2017, 31.5 percent of high school students experienced periods of persistent feelings of sadness or hopelessness within the past year, an increase from 28.5 percent in 2007.
  - In 2017, 17.2 percent of high school students seriously considered attempting suicide in the past year, an increase from 14.5 percent in 2007.[80]
- Social stressors such as parental substance use, poverty and economic insecurity, mass shootings, and social media and cyber bullying.[81]

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[74] Lynn Hatter, WFSU Public Media, *Committed: Improving Florida's Baker Act for Children a Challenge*, December 17, 2020, *available at* https://news.wfsu.org/2020-12-17/committed-improving-floridas-baker-act-for-children-a-challenge (last visited April 19,, 2021).
[75] *Id*.
[76] *Id*.
[77] *Id*.
[78] Ch. 2017-151, LO.F.
[79] The Florida Department of Children and Families, *Task Force Report on Involuntary Examination of Minors,* (Nov. 2017), p. 1, *available at* https://www.myflfamilies.com/service-programs/samh/publications/docs/S17-005766-TASK%20FORCE%20ON%20INVOLUNTARY%20EXAMINATION%20OF%20MINORS.pdf (last visited April 19,, 2021) (hereinafter cited as "The 2017 Task Force Report").
[80] The DCF *Task Force Report on Involuntary Examination of Minors,* (Nov. 2017), p. 6, *available at* https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors.pdf (last visited April 19,, 2021) (hereinafter cited as "The 2017 Task Force Report").
[81] The DCF, *Task Force Report on Involuntary Examination of Minors,* (Nov. 2019), *available a*t https://www.myflfamilies.com/service-

- Lack of availability of mental health services, due to wait lists for services, limitations on coverage or approval, lack of funding for prevention and diversion, and shortage of psychiatrists and other mental health professionals.
    - Among children ages 12 to 17 in Florida, approximately 13 percent experienced a major depressive episode in the past year, but only about 33 percent of children experiencing a major depressive episode in the past year receive treatment.[82]

As a follow up to the 2017 task force report, in 2019, the Legislature instructed the DCF to prepare a report on the initiation of involuntary examinations of minors age 17 and younger and submit it by November 1 of each odd numbered year.[83] As part of the 2019 report, the DCF was required to:

- Analyze data on the initiation of involuntary examinations of minors;
- Identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child;
- Study root causes for such patterns, trends, or repeated involuntary examinations; and
- Make recommendations for encouraging alternatives to and eliminating inappropriate initiations of such examinations.[84]

Task Force Recommendations

Among the 2017 task force report recommendations were to:

- Amend the statute to increase the number of days that the receiving facility has to submit required forms to the DCF to capture additional data;
- Expedite involuntary exams by expanding the list of mental health professionals who can conduct the clinical exam to include physician assistants, psychiatric advanced registered nurse practitioners, licensed clinical social workers, licensed mental health counselors, and licensed marriage and family therapist;
- Increase funding for mobile crisis teams;
- Fund an adequate network of prevention and early intervention services so that mental health challenges are addressed prior to becoming a crisis;
- Expand access to outpatient crisis intervention services and treatment especially for children under 13;
- Create the "Invest in the Mental Health of our Children" grant program to provide matching funds to counties to enhance their systems of care serving these children;
- Encourage school districts to adopt a standardized suicide risk assessment tool that school-based mental health professionals would implement prior to initiation of a Baker Act examination;
- Revise statutes to include school psychologists licensed under ch. 490, F.S., to the list of mental health professionals who are qualified to initiate a Baker Act;

programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors.pdf (last visited April 19, 2021) (hereinafter cited as "The 2019 Task Force Report"), at p. 3.

[82] The 2019 Task Force Report, at p. 5.

[83] Chapter 2019-134, LO.F.

[84] *Id*.

- Require Youth Mental Health First Aid and/or Crisis Intervention Team (CIT) training for school resource officers and other law enforcement officers who initiate Baker Act examinations from schools;
- Require the Agency for Health Care Administration (AHCA) to post quarterly Medicaid health plans' Early and Periodic Screening, Diagnostic and Treatment (EPSDT) compliance reports on its website; and
- Supporting Baker Act training and technical assistance by funding a position in the DCF to train and provide technical assistance to providers, clinicians, and other professionals who are responsible for implementing the Baker Act.[85]

Several of these recommendations have been implemented through statutory change or legislative appropriations.

The 2019 report recommended:
- Increasing care coordination for minors with multiple involuntary examinations;
- Utilizing the wraparound care coordination approach for children with complex behavioral health needs and multi-system involvement to ensure one point of accountability and individualized care planning;
- Utilizing existing local review teams;
- Revising administrative rules to gather more information about actions taken after the initiation of exams, require electronic submission of forms, and improve care coordination and discharge planning;
- Funding an additional FTE position at the DCF to provide technical assistance; and
- Ensuring that parents receive information about mobile crisis response teams and other community resources and supports upon child's discharge.[86]

Mobile Response Teams (MRTs)

A mental health crisis can be can be caused by a variety of factors at any hour of the day.[87] Family members and caregivers of an individual experiencing a mental health crisis are often ill-equipped to handle these situations and need the advice and support of professionals.[88] All too frequently, law enforcement or emergency medical technicians (EMTs) are called to respond to mental health crises and they often lack the training and experience to effectively handle the situation.[89] Mobile crisis response teams (MRTs) can be beneficial in such instances.

MRTs provide readily available crisis care in a community-based setting and increase opportunities to stabilize individuals in the least restrictive setting to avoid the need for jail or hospital/emergency department utilization.[90] Early intervention services are critical to reducing involuntary examinations in minors and there are areas across the state where options short of

[85] The 2017 Task Force Report, p. 1.
[86] The 2019 Task Force Report, p. 17-18.
[87] The DCF, *Mobile Response Teams Framework*, (August 29, 2018), p. 4, *available at* https://www.myflfamilies.com/service-programs/samh/publications/docs/Mobile%20Response%20Framework.pdf (last visited April 19,, 2021)(hereinafter cited as "MRT Framework").
[88] *Id*.
[89] *Id*.
[90] *Id*. at 2

involuntary examination via the Baker Act are limited or nonexistent.[91] MRTs are available to individuals age 25 and under, regardless of their ability to pay, and must be ready to respond to any mental health emergency.[92] Telehealth can be used to provide direct services to individuals via video-conferencing systems, mobile phones, and remote monitoring.[93] It can also be used to provide assessments and follow-up consultation as well as initial triage to determine if an in-person visit is needed to respond to the crisis.[94]

In ch. 2018-3, L.O.F., the legislature appropriated $18.3 million in recurring funds to the DCF to establish 40 additional MRTs in an effort to provide services to all 67 counties.[95] Recent MRT monthly reports showed an 80 percent statewide average of diverting individuals from involuntary examination.[96]

The DCF established a framework to guide procurement of MRTs. This framework suggests that the procurement:

- Be conducted with the collaboration of local Sherriff's Offices and public schools in the procurement planning, development, evaluation, and selection process;
- Be designed to ensure reasonable access to services among all counties in the Managing Entity's service region, taking into consideration the geographic location of existing mobile crisis teams;
- Require services be available 24 hours per day, seven days per week with on-site response time to the location of referred crises within 60 minutes of the request for services;
- Require the Network Service Provider to establish formalized written agreements to establish response protocols with local law enforcement agencies and local school districts or superintendents;
- Require access to a board-certified or board-eligible Psychiatrist or Psychiatric Nurse Practitioner; and
- Provide for an array of crisis response services that are responsive to the individual and the family needs, including screening, standardized assessments, early identification, or linkage to community services as necessary to address the immediate crisis event.[97]

III. Effect of Proposed Changes:

Notification Requirements to Parents

This bill amends s. 381.0056, F.S., related to the school health services program, requiring school health services plans to mandate that a reasonable attempt be made to notify a parent or guardian before a student is removed from school or a school-sponsored activity for an involuntary examination, except when the principal or their designee believes that a delay in removal is necessary to avoid jeopardizing the health and safety of the student.

[91] MRT Framework, p. 4.
[92] *Id*.
[93] MRT Framework, p. 7.
[94] *Id*.
[95] The 2019 Task Force Report, p. 4
[96] *Id*.
[97] MDT Framework, p. 2-3.

The bill amends ss. 1002.20 and 1002.33, F.S., related to K-12 student and parental rights and charter schools, respectively, requiring the public school or charter school principal or principal's designee to make a reasonable attempt to notify the parent before a student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination. The bill provides an exception for delaying notification up to 24 hours should the principal or designee believe that a delay is necessary to avoid jeopardizing the health and safety of the student.

For parents of public school students, the bill adds to ss. 1002.20 and 1002.33, F.S., the right to timely notification of school safety and emergency incidents, including certain threats, unlawful acts, and significant emergencies, and the right to access SESIR data as reported by school districts to the DOE.

The bill modifies parental threat notification requirements by eliminating the requirement that school districts establish model emergency management and preparedness procedures. Under the bill, school districts must instead provide timely notice to parents of the following unlawful acts and significant emergency situations on school grounds, school transportation, or school-sponsored activities:

- Weapons possession or use, hostage and active assailant situations.
- Murder, homicide, or manslaughter.
- Sex offenses, including rape, sexual assault, or sexual misconduct with a student by school personnel.
- Natural emergencies, including hurricanes, tornadoes, and severe weather.
- Exposure as a result of a manmade emergency.

The bill also removes the requirement that schools establish model emergency notification policies for reporting hazardous materials or toxic chemical spills.

Civil Citation or Similar Prearrest Diversion Programs

The bill provides that the code of student conduct adopted by a district school board include criteria for recommending to law enforcement a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to arrest or expulsion. The bill requires all civil citation or similar prearrest diversion programs used by a school district to comply with the civil citation or similar prearrest diversion programs established in each judicial circuit in the state as provided in s. 985.12, F.S. The bill also requires the student code of conduct to include criteria for assigning a student who commits a petty act of misconduct to a school-based intervention program. The bill prohibits a school-based intervention program from entering a participating student's information into the Juvenile Justice Information System Prevention Web, when the assignment is based on a non-criminal offense.

Reporting Requirements

The bill amends s. 394.463, F.S., related to involuntary examinations, adding the initiation of involuntary examinations of students who are removed from school, school transportation, or a school-sponsored activity to the elements that must be included in data collected by the

Department of Children and Families (DCF), and requiring the DCF to submit a report on findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House by November 1 of each odd-numbered year.

The bill amends s. 1001.212, F.S., related to the Office of Safe Schools (OSS) in the Department of Education (DOE), requiring that both the number of involuntary examinations initiated at each school or school-sponsored activity and the number of students for whom an involuntary examination was initiated be included in the data provided by the OSS to support the evaluation of mental health services.

The bill amends s. 1006.07, F.S., related to district school board duties pertaining to student discipline and school safety, requiring each district school board to adopt a policy requiring that the superintendent report annually to the DOE the number of involuntary examinations initiated at a school, on school transportation, or at a school-sponsored activity.

Safety Incident Notification

The bill also requires school districts to adopt policies, consistent with the OSS's model policies and best practices, for parental notification for certain threats as identified by a school's threat assessment team. When permitted by law to disseminate such information, the notification must include resolution and actions taken.

The bill requires the DOE to annually publish the most recently available SESIR data, along with other school accountability and performance data, in a uniform, statewide format that is easy to read and understand.

Emergency Drills

The bill authorizes school board policies to provide accommodations for drills conducted by Exceptional Student Education centers.

The bill replaces the term "active shooter" with "active assailant" to expand emergency notification and staff and student training for situations in which the perpetrator may use a weapon other than a firearm.

Training Requirements

The bill amends s. 1006.12, F.S., related to safe school officers at each public school, requiring that school safety officers complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention to improve skills in responding to students with emotional behavioral disability or mental illness, including de-escalation techniques.

Mental Health Professional Notification

The bill requires school or law enforcement personnel to make a reasonable attempt to contact a mental health professional statutorily authorized to initiate an involuntary examination, unless

the child poses an imminent danger to themselves or others, before initiating an involuntary examinations

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be an indeterminate impact to providers of crisis intervention training for school safety officers and school resource officers.

C. Government Sector Impact:

The DCF anticipates an indeterminate, negative fiscal impact generated by additional calls from schools to mobile response teams (MRTs) or mental health professionals in instances where schools do not already contact a MRT or mental health professional prior to initiating a Baker Act.[98]

[98] The Florida Department of Children and Families, *Agency Analysis for SB 590*), p. 6, January 19, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee).

In the agency's bill analysis for legislation filed in the 2020 session (CS/SB 1062)[99], the DOE estimated that the agency may incur costs relating to data collection and analysis of involuntary examinations, including costs related to training school and district staff on data collection required by the bill. The DOE determined that the impact of these requirements is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0056, 394.463, 1001.212, 1002.20, 1002.33, 1006.07, 1006.12, and 1011.62.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute:

- Removes the required memorandum of understanding with a local mobile response team and all provisions related to the memorandum.
- Clarifies that the school or law enforcement personnel must make a reasonable attempt to contact a mental health professional, who may initiate an involuntary examination, unless the child poses an imminent danger to themselves or others before initiating an involuntary examination.
- Provides that the school or law enforcement personnel's contact with a mental health professional may be in person or using telehealth.
- Specifies the mental health professional may be available to the school district either by contract or by interagency agreement with one or more local community behavioral health providers, MRT, or be a direct or contract school district employee.
- Replaces the term "immediate notification" with "reasonable attempt of notification".
- Modifies ss. 1002.20 and 1002.33, F.S., to specify that parents of public school or charter school students have the right to:
  - Timely notification of threats, unlawful acts, and significant emergencies; and
  - Access school safety and discipline incidents as reported in the school environmental safety incident report.

[99] The Florida Department of Education, *Agency Analysis of CS/SB 1062 (2020)*, p. 8, July 1, 2020 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Modifies s. 1006.07, F.S., by adding requirements to student codes of conduct to include:
  - Criteria for recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest.
  - Criteria for assigning a student who commits a petty act of misconduct, to a school-based intervention program. If a student's assignment is based on a noncriminal offense, the student's participation in a school-based intervention program may not be entered into the Department of Juvenile Justice Information System Prevention Web.
- Replaces the term "active shooter" with "active assailant".
- Allows district school board policies to provide accommodations for drills conducted by exceptional education centers.
- Requires district school boards to establish emergency response and emergency preparedness policies and procedures that include, but are not limited to, identifying the individuals responsible for contacting the primary emergency response agency and the emergency response agency that is responsible for notifying the school district for each type of emergency.
- Requires timely notice to parents of the following unlawful acts and significant emergency situations on school grounds, school transportation, or school-sponsored activities:
  - Weapons possession or use, hostage and active assailant situations.
  - Murder, homicide, or manslaughter.
  - Sex offenses, including rape, sexual assault, or sexual misconduct with a student by school personnel.
  - Natural emergencies, including hurricanes, tornadoes, and severe weather.
  - Exposure as a result of a manmade emergency.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 333 - 343

and insert:

7. Policies of the school district must require that in a student crisis situation, school or law enforcement personnel must contact a mental health professional who may initiate an involuntary examination pursuant to s.394.463, before initiating an involuntary examination pursuant to s. 394.463. Such contact may be in person, or using telehealth as defined in s. 456.47.

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The mental health professional may be available to the school district either by contracts or interagency agreements with one or more local community behavioral health providers or the local mobile response team or be a direct or contracted school district employee.

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

And the title is amended as follows:

Delete lines 30 - 32

and insert:

include certain strategies; requiring that certain plans include policies for student crisis situations; specifying the requirements for such policies; providing an

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Harrell) recommended the following:

Senate Substitute for Amendment (359110)

Delete lines 333 - 343

and insert:

7. Policies of the school district must require that in a student crisis situation, school or law enforcement personnel must make a reasonable attempt to contact a mental health professional who may initiate an involuntary examination pursuant to s. 394.463, unless the child poses an imminent danger to themselves or others before initiating an involuntary

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examination pursuant to s. 394.463. Such contact may be in person or using telehealth as defined in s. 456.47. The mental health professional may be available to the school district either by contracts or interagency agreements with one or more local community behavioral health providers or the local mobile response team or be a direct or contracted school district employee.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment

Delete lines 79 - 163
and insert:
19. A reasonable attempt to notify ~~Immediate notification to~~ a student's parent, guardian, or caregiver before ~~if~~ the student is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463, including and subject to the requirements and exceptions

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established under ss. 1002.20(3) and 1002.33(9), as applicable.

Section 2. Subsection (4) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(4) DATA ANALYSIS.—Using data collected under paragraph (2)(a), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school, identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student, study root causes for such patterns, trends, or repeated involuntary examinations, and make recommendations to encourage the use of ~~for encouraging~~ alternatives to eliminate ~~and eliminating~~ inappropriate initiations of such examinations. The department shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered ~~odd-numbered~~ year.

Section 3. Subsection (7) of section 1001.212, Florida Statutes, is amended to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

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(7) Provide data to support the evaluation of mental health services pursuant to s. 1004.44. Such data must include, for each school, the number of involuntary examinations as defined in s. 394.455 which are initiated at the school, on school transportation, or at a school-sponsored activity and the number of children for whom an examination is initiated.

Section 4. Paragraph (l) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(l) *Notification of involuntary examinations.*—

1. Except as provided in subparagraph 2., the public school principal or the principal's designee shall make a reasonable attempt to ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay the required notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment,

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or neglect; or

b. The principal or principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each district school board shall develop a policy and procedures for notification under this paragraph.

Section 5. Paragraph (q) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(q)1. The charter school principal or the principal's designee shall make a reasonable attempt to ~~immediately~~ notify the parent of a student before

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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	.	

The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 121 - 196

and insert:

1002.20, Florida Statutes, is amended, and a new subsection (25) is added to that section, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12

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students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(l) *Notification of involuntary examinations.*—

1. Except as provided in subparagraph 2., the public school principal or the principal's designee shall ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay the required notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

b. The principal or the principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

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Each district school board shall develop a policy and procedures for notification under this paragraph.

(25) SAFE SCHOOLS.—

(a) *School safety and emergency incidents*.—Parents of public school students have a right to timely notification of threats, unlawful acts, and significant emergencies pursuant to s. 1006.07(4) and (7).

(b) *School environmental safety incident reporting*.—Parents of public school students have a right to access school safety and discipline incidents as reported pursuant to s. 1006.07(9).

Section 5. Paragraph (q) of subsection (9) of section 1002.33, Florida Statutes, is amended, and paragraph (r) is added to that subsection, to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(q)1. The charter school principal or the principal's designee shall ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

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b. The principal or the principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each charter school governing board shall develop a policy and procedures for notification under this paragraph.

(r)1. Parents of charter school students have a right to timely notification of threats, unlawful acts, and significant emergencies pursuant to s. 1006.07(4) and (7).

2. Parents of charter school students have a right to access school safety and discipline incidents as reported pursuant to s. 1006.07(9).

Section 6. Paragraphs (a) and (b) of subsection (4) of section 1006.07, Florida Statutes, are amended, and paragraphs (n) and (o) of subsection (2) and subsection (10) are added to that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the

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welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(n) Criteria for recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest. All civil citation or similar prearrest diversion programs must comply with s. 985.12.

(o) Criteria for assigning a student who commits a petty act of misconduct, as defined by the district school board pursuant to s. 1006.13(2)(c), to a school-based intervention program. If a student’s assignment is based on a noncriminal offense, the student’s participation in a school-based intervention program may not be entered into the Juvenile Justice Information System Prevention Web.

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for

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emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant ~~shooter~~ and hostage situations, and bomb threats, for all students and faculty at all public schools of the district comprised of grades K-12. Drills for active assailant ~~shooter~~ and hostage situations shall be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies shall include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes and may provide accommodations for drills conducted by exceptional student education centers. District school boards shall establish ~~The~~ emergency response and emergency preparedness policies and procedures that include, but are not limited to, identifying ~~policy shall identify~~ the individuals responsible for contacting the primary emergency response agency and the emergency response agency that is responsible for notifying the school district for each type of emergency.

(b) Provide timely ~~Establish model emergency management and emergency preparedness procedures, including emergency~~ notification to parents of threats pursuant to policies adopted under subsection (7) and ~~procedures pursuant to paragraph (a), for~~ the following unlawful acts or significant emergencies that occur on school grounds, during school transportation, or during school-sponsored activities ~~life-threatening emergencies~~:

1. Weapons possession or use when there is intended harm toward another person ~~Weapon-use~~, hostage, and active assailant ~~shooter~~ situations. The active assailant ~~shooter~~ situation

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training for each school must engage the participation of the district school safety specialist, threat assessment team members, faculty, staff, and students and must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

2. Murder, homicide, or manslaughter.

3. Sex offenses, including rape, sexual assault, or sexual misconduct with a student by school personnel.

~~2. Hazardous materials or toxic chemical spills.~~

4.~~3.~~ Natural ~~Weather~~ emergencies, including hurricanes, tornadoes, and severe storms.

5.~~4.~~ Exposure as a result of a manmade emergency.

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

And the title is amended as follows:

Delete lines 11 - 21

and insert:

guardian notification requirements; providing an exception; providing that parents of public school students have a right to access school safety and discipline incidents as reported; amending s. 1002.33, F.S.; revising parent and guardian notification requirements; providing an exception; providing that parents of charter school students have a right to access school safety and discipline incidents as reported; amending s. 1006.07, F.S.; requiring codes of student conduct to include provisions relating to civil citation or similar prearrest diversion programs for specified purposes; requiring codes of student

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conduct to include provisions relating to the assignment of students to school-based intervention programs; prohibiting participation in such programs from being entered into a specified system under certain circumstances; authorizing certain procedures to include accommodations for specified drills; requiring district school boards to establish certain emergency response and emergency preparedness policies and procedures and provide timely notification to parents following certain unlawful acts or significant emergencies; creating reporting requirements for schools

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 79 - 196

and insert:

19. A reasonable attempt to notify ~~Immediate notification~~ ~~to~~ a student's parent, guardian, or caregiver before ~~if~~ the student is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463, including and subject to the requirements and exceptions

established under ss. 1002.20(3) and 1002.33(9), as applicable.

Section 2. Subsection (4) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(4) DATA ANALYSIS.—Using data collected under paragraph (2)(a), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school, identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student, study root causes for such patterns, trends, or repeated involuntary examinations, and make recommendations to encourage the use of ~~for encouraging~~ alternatives to eliminate ~~and eliminating~~ inappropriate initiations of such examinations. The department shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered ~~odd-numbered~~ year.

Section 3. Subsection (7) of section 1001.212, Florida Statutes, is amended to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

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(7) Provide data to support the evaluation of mental health services pursuant to s. 1004.44. Such data must include, for each school, the number of involuntary examinations as defined in s. 394.455 which are initiated at the school, on school transportation, or at a school-sponsored activity and the number of children for whom an examination is initiated.

Section 4. Paragraph (l) of subsection (3) of section 1002.20, Florida Statutes, is amended, and a new subsection (25) is added to that section, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(l) *Notification of involuntary examinations.*—

1. Except as provided in subparagraph 2., the public school principal or the principal's designee shall make a reasonable attempt to ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay the required notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s.

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39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

b. The principal or principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each district school board shall develop a policy and procedures for notification under this paragraph.

(25) SAFE SCHOOLS.—

(a) School safety and emergency incidents.—Parents of public school students have a right to timely notification of threats, unlawful acts, and significant emergencies pursuant to s. 1006.07(4) and (7).

(b) School environmental safety incident reporting.—Parents of public school students have a right to access school safety and discipline incidents as reported pursuant to s. 1006.07(9).

Section 5. Paragraph (q) of subsection (9) of section 1002.33, Florida Statutes, is amended, and paragraph (r) is added to that subsection, to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(q)1. The charter school principal or the principal's designee shall make a reasonable attempt to ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

b. The principal or the principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each charter school governing board shall develop a policy and procedures for notification under this paragraph.

(r)1. Parents of charter school students have a right to

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timely notification of threats, unlawful acts, and significant emergencies pursuant to s. 1006.07(4) and (7).

2. Parents of charter school students have a right to access school safety and discipline incidents as reported pursuant to s. 1006.07(9).

Section 6. Paragraphs (a) and (b) of subsection (4) of section 1006.07, Florida Statutes, are amended, and paragraphs (n) and (o) of subsection (2) and subsection (10) are added to that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(n) Criteria for recommending to law enforcement that a

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student who commits a criminal offense be allowed to participate in a civil citation or similar prearrest diversion program as an alternative to expulsion or arrest. All civil citation or similar prearrest diversion programs must comply with s. 985.12.

(o) Criteria for assigning a student who commits a petty act of misconduct, as defined by the district school board pursuant to s. 1006.13(2)(c), to a school-based intervention program. If a student's assignment is based on a noncriminal offense, the student's participation in a school-based intervention program may not be entered into the Juvenile Justice Information System Prevention Web.

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures, in consultation with the appropriate public safety agencies, for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, active assailant ~~shooter~~ and hostage situations, and bomb threats, for all students and faculty at all public schools of the district comprised of grades K-12. Drills for active assailant ~~shooter~~ and hostage situations shall be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills. District school board policies shall include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes and may provide accommodations for drills conducted by exceptional student education centers. District school boards shall establish ~~The~~ emergency response and emergency preparedness policies and procedures that include, but are not limited to,

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identifying ~~policy shall identify~~ the individuals responsible for contacting the primary emergency response agency and the emergency response agency that is responsible for notifying the school district for each type of emergency.

(b) Provide timely ~~Establish model emergency management and emergency preparedness procedures, including emergency~~ notification to parents of threats pursuant to policies adopted under subsection (7) and ~~procedures pursuant to paragraph (a), for~~ the following unlawful acts or significant emergencies that occur on school grounds, during school transportation, or during school-sponsored activities ~~life-threatening emergencies~~:

1. Weapons possession or use when there is intended harm toward another person ~~Weapon-use~~, hostage, and active assailant ~~shooter~~ situations. The active assailant ~~shooter~~ situation training for each school must engage the participation of the district school safety specialist, threat assessment team members, faculty, staff, and students and must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

2. Murder, homicide, or manslaughter.

3. Sex offenses, including rape, sexual assault, or sexual misconduct with a student by school personnel.

~~2. Hazardous materials or toxic chemical spills.~~

4.~~3.~~ Natural ~~Weather~~ emergencies, including hurricanes, tornadoes, and severe storms.

5.~~4.~~ Exposure as a result of a manmade emergency.

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

And the title is amended as follows:

Delete lines 2 - 21

and insert:

An act relating to school safety; amending s. 381.0056, F.S.; revising parent, guardian, or caregiver notification requirements that must be met before an involuntary examination of a minor; amending s. 394.463, F.S.; revising data reporting requirements for the Department of Children and Families; amending s. 1001.212, F.S.; revising data reporting requirements for the Office of Safe Schools; amending s. 1002.20, F.S.; revising parent and guardian notification requirements; providing an exception; providing that parents of public school students have a right to access school safety and discipline incidents as reported; amending s. 1002.33, F.S.; revising parent and guardian notification requirements; providing an exception; providing that parents of charter school students have a right to access school safety and discipline incidents as reported; amending s. 1006.07, F.S.; requiring codes of student conduct to include provisions relating to civil citation or similar prearrest diversion programs for specified purposes; requiring codes of student conduct to include provisions relating to the assignment of students to school-based intervention programs; prohibiting participation in such programs from being entered into a specified system under certain circumstances; authorizing certain procedures to include accommodations for specified drills;

requiring district school boards to establish certain emergency response and emergency preparedness policies and procedures and provide timely notification to parents following certain unlawful acts or significant emergencies; creating reporting requirements for schools

By Senator Harrell

25-00632-21 2021590__

A bill to be entitled

An act relating to involuntary examinations of minors; amending s. 381.0056, F.S.; revising parent, guardian, or caregiver notification requirements that must be met before an involuntary examination of a minor; amending s. 394.463, F.S.; revising data reporting requirements for the Department of Children and Families; amending s. 1001.212, F.S.; revising data reporting requirements for the Office of Safe Schools; amending s. 1002.20, F.S.; revising parent and guardian notification requirements that must be met before conducting an involuntary examination of a minor who is removed from school, school transportation, or a school-sponsored activity; providing an exception; amending s. 1002.33, F.S.; revising parent and guardian notification requirements that must be met before an involuntary examination of a minor who is removed from a charter school, charter school transportation, or a charter school-sponsored activity; providing an exception; amending s. 1006.07, F.S.; creating reporting requirements for schools relating to involuntary examinations of minors; amending s. 1006.12, F.S.; revising training requirements for school safety officers; amending s. 1011.62, F.S.; requiring that certain plans include procedures to assist certain mental and behavioral health providers in attempts to verbally deescalate certain crisis situations before initiating an involuntary examination; requiring the procedures to

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

25-00632-21 2021590__

include certain strategies; creating requirements for memoranda of understanding between schools and local mobile crisis response services; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 381.0056, Florida Statutes, is amended to read:

381.0056 School health services program.—

(4)(a) Each county health department shall develop, jointly with the district school board and the local school health advisory committee, a school health services plan. The plan must include, at a minimum, provisions for all of the following:

1. Health appraisal;
2. Records review;
3. Nurse assessment;
4. Nutrition assessment;
5. A preventive dental program;
6. Vision screening;
7. Hearing screening;
8. Scoliosis screening;
9. Growth and development screening;
10. Health counseling;
11. Referral and followup of suspected or confirmed health problems by the local county health department;
12. Meeting emergency health needs in each school;
13. County health department personnel to assist school personnel in health education curriculum development;

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

14. Referral of students to appropriate health treatment, in cooperation with the private health community whenever possible;

15. Consultation with a student's parent or guardian regarding the need for health attention by the family physician, dentist, or other specialist when definitive diagnosis or treatment is indicated;

16. Maintenance of records on incidents of health problems, corrective measures taken, and such other information as may be needed to plan and evaluate health programs; except, however, that provisions in the plan for maintenance of health records of individual students must be in accordance with s. 1002.22;

17. Health information which will be provided by the school health nurses, when necessary, regarding the placement of students in exceptional student programs and the reevaluation at periodic intervals of students placed in such programs;

18. Notification to the local nonpublic schools of the school health services program and the opportunity for representatives of the local nonpublic schools to participate in the development of the cooperative health services plan; and

19. ~~Immediate~~ Notification to a student's parent, guardian, or caregiver before ~~if~~ the student is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463, including and subject to the requirements and exceptions established under ss. 1002.20(3) and 1002.33(9), as applicable.

Section 2. Subsection (4) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(4) DATA ANALYSIS.—Using data collected under paragraph (2)(a), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school, identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student, study root causes for such patterns, trends, or repeated involuntary examinations, and make recommendations to encourage the use of ~~for encouraging~~ alternatives to eliminate ~~and eliminating~~ inappropriate initiations of such examinations. The department shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered ~~odd-numbered~~ year.

Section 3. Subsection (7) of section 1001.212, Florida Statutes, is amended to read:

1001.212 Office of Safe Schools.—There is created in the Department of Education the Office of Safe Schools. The office is fully accountable to the Commissioner of Education. The office shall serve as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning. The office shall:

(7) Provide data to support the evaluation of mental health services pursuant to s. 1004.44. Such data must include, for each school, the number of involuntary examinations as defined

in s. 394.455 which are initiated at the school, on school transportation, or at a school-sponsored activity and the number of children for whom an examination is initiated.

Section 4. Paragraph (l) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(l) *Notification of involuntary examinations.*—

1. Except as provided in subparagraph 2., the public school principal or the principal's designee shall ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay the required notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

b. The principal or principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the

health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each district school board shall develop a policy and procedures for notification under this paragraph.

Section 5. Paragraph (q) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(q)1. The charter school principal or the principal's designee shall ~~immediately~~ notify the parent of a student before the student ~~who~~ is removed from school, school transportation, or a school-sponsored activity to be ~~and~~ taken to a receiving facility for an involuntary examination pursuant to s. 394.463.

2. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if:

a. The principal or the principal's designee deems the delay to be in the student's best interest and ~~if~~ a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect; or

b. The principal or principal's designee reasonably believes that such delay is necessary to avoid jeopardizing the health and safety of the student.

3. Before a principal or his or her designee contacts a law enforcement officer, he or she must verify that deescalation ~~de-escalation~~ strategies have been utilized and outreach to a mobile response team has been initiated unless the principal or the principal's designee reasonably believes that any delay in removing the student will increase the likelihood of harm to the student or others. This requirement does not supersede the authority of a law enforcement officer to act under s. 394.463.

Each charter school governing board shall develop a policy and procedures for notification under this paragraph.

Section 6. Subsection (10) is added to section 1006.07, Florida Statutes, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(10) REPORTING OF INVOLUNTARY EXAMINATIONS.—Each district school board shall adopt a policy to require the district superintendent to annually report to the department the number of involuntary examinations, as defined in s. 394.455, which are initiated at a school, on school transportation, or at a school-sponsored activity.

Section 7. Present paragraph (c) of subsection (2) of

section 1006.12, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.

(2) SCHOOL SAFETY OFFICER.—A school district may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

(c) School safety officers must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve officers' knowledge and skills as first responders to incidents involving students with emotional disturbance or mental illness, including deescalation skills to ensure student and officer safety.

If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource officer or school safety officer may not exceed the safe school allocation funds provided to the charter school pursuant to s. 1011.62(15) and shall be retained by the school district.

Section 8. Paragraph (b) of subsection (16) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(16) MENTAL HEALTH ASSISTANCE ALLOCATION.—The mental health assistance allocation is created to provide funding to assist school districts in establishing or expanding school-based mental health care; train educators and other school staff in detecting and responding to mental health issues; and connect children, youth, and families who may experience behavioral health issues with appropriate services. These funds shall be allocated annually in the General Appropriations Act or other law to each eligible school district. Each school district shall receive a minimum of $100,000, with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student

enrollment. Charter schools that submit a plan separate from the school district are entitled to a proportionate share of district funding. The allocated funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.

(b) The plans required under paragraph (a) must be focused on a multitiered system of supports to deliver evidence-based mental health care assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses. The provision of these services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care. At a minimum, the plans must include the following elements:

1. Direct employment of school-based mental health services providers to expand and enhance school-based student services and to reduce the ratio of students to staff in order to better align with nationally recommended ratio models. These providers include, but are not limited to, certified school counselors, school psychologists, school social workers, and other licensed mental health professionals. The plan also must identify strategies to increase the amount of time that school-based student services personnel spend providing direct services to students, which may include the review and revision of district staffing resource allocations based on school or student mental

health assistance needs.

2. Contracts or interagency agreements with one or more local community behavioral health providers or providers of Community Action Team services to provide a behavioral health staff presence and services at district schools. Services may include, but are not limited to, mental health screenings and assessments, individual counseling, family counseling, group counseling, psychiatric or psychological services, trauma-informed care, mobile crisis services, and behavior modification. These behavioral health services may be provided on or off the school campus and may be supplemented by telehealth.

3. Policies and procedures, including contracts with service providers, which will ensure that students who are referred to a school-based or community-based mental health service provider for mental health screening for the identification of mental health concerns and ensure that the assessment of students at risk for mental health disorders occurs within 15 days of referral. School-based mental health services must be initiated within 15 days after identification and assessment, and support by community-based mental health service providers for students who are referred for community-based mental health services must be initiated within 30 days after the school or district makes a referral.

4. Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems, depression, anxiety disorders, suicidal tendencies, or substance use disorders.

5. Strategies to improve the early identification of

social, emotional, or behavioral problems or substance use disorders, to improve the provision of early intervention services, and to assist students in dealing with trauma and violence.

6. Procedures to assist a mental health services provider or a behavioral health provider as described in subparagraph 1. or subparagraph 2., respectively, or a school resource officer or school safety officer who has completed mental health crisis intervention training in attempting to verbally deescalate a student's crisis situation before initiating an involuntary examination pursuant to s. 394.463. Such procedures must include strategies to deescalate a crisis situation for a student with a developmental disability as that term is defined in s. 393.063.

7. A memorandum of understanding with a local mobile crisis response service. Policies of the school district and the terms of the memorandum of understanding must require that, in a student crisis situation, school or law enforcement personnel must contact the local mobile crisis response service before initiating an involuntary examination pursuant to s. 394.463. Such contact may be in person or by using telehealth as defined in s. 456.47. School districts shall provide all school resource officers and school safety officers with training on protocols established under the memorandum of understanding developed pursuant to this subparagraph.

Section 9. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

590
Bill Number (if applicable)

73110
Amendment Barcode (if applicable)

Topic Involuntary Examination of Minors

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy
Street

Orlando FL 32809
City *State* *Zip*

Phone 407 855 7604

Email vp.education@floridapta.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

	S90
Meeting Date	*Bill Number (if applicable)*
	358862
	Amendment Barcode (if applicable)

Topic Involuntary Examination of Minors

Name Angie Gallo

Job Title

Address _____ Phone 407-718-9925
Street

_____ Email
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Alliance for public schools

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	S90 *Bill Number (if applicable)*
Topic Involuntary Examinations of Minors	W/D 832246 *Amendment Barcode (if applicable)*
Name Angie Gallo	
Job Title	
Address *Street*	Phone
City *State* *Zip*	Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami for public schools

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

590 WD
Bill Number (if applicable)

8675566
Amendment Barcode (if applicable)

Topic Involuntary Examination of Minors

Name Angie Gallo

Job Title _____

Address _____ Phone 407-718-9925
Street

_____ Email _____
City *State* *Zip*

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

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

Representing Alliance for public schools

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

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

590
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Involuntary Examinations

Name Karen Woodall

Job Title Exec. Director

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Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SPLC Action Fund & FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21 AP 10-6
Meeting Date

590
Bill Number (if applicable)

Topic Involuntary Examinations of Minors

Amendment Barcode (if applicable)

Name David Cullen

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Email cullenasea@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Advocacy Institute for Children

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

590
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Involuntary Examination of Minors

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy
Street
Orlando, FL 32809
City *State* *Zip*

Phone 407 855 7604

Email vp.education@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

590
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Baker Act

Name Nancy Daniels

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

590
Bill Number (if applicable)

Topic Involuntary Examinations of Minors

Amendment Barcode (if applicable)

Name Angie Gallo

Job Title

Address
Street

Phone 407 718 9925

City *State* *Zip*

Email

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

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

Representing Alliance for public schools

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

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

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 606
INTRODUCER:	Senator Bean
SUBJECT:	Domestic Violence
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Favorable**
2.	Sneed	Kidd	AHS	**Recommend: Favorable**
3.	Sneed	Sadberry	AP	**Favorable**

I. Summary:

SB 606 amends current law to recognize that domestic violence is a significant public health threat that has adverse physical, emotional, and financial impact on Florida families. The bill also amends current law to add nonresidential outreach services to the list of minimum services a certified domestic violence center must provide. It amends current law to require certified domestic violence centers to obtain public and private funding in an amount of at least 25 percent of the amount of funding the center receives from the Domestic Violence Trust Fund and permits certified domestic violence centers to carry forward, from one fiscal year to the next, unexpended state funds in a cumulative amount not to exceed eight percent of their total contract with the DCF.

The bill revives, reenacts, and amends s. 741.327, F.S., to authorize the DCF to certify and monitor Batterers' Intervention Programs (BIPs). The bill also amends current law to permit certified BIPs to use a cognitive behavioral model or a psychoeducational model in its program content.

The bill has an insignificant fiscal impact on state government.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Background

Domestic Violence

Domestic violence is a pattern of behavior, violence, or threats of violence that a person uses to gain power and control over a current or former intimate partner.[1] The use of threats, intimidation, isolation, and using children as pawns are examples of the tactics domestic violence perpetrators use against victims.[2]

Florida law defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.[3] A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.[4]

In 2018, a total of 104,914 domestic violence offenses were reported to law enforcement.[5] That same year, 215 individuals died as a result of domestic violence homicide, which equals approximately 19 percent of all homicides in Florida.[6] Law enforcement made 64,573 arrests for domestic violence related crimes.[7]

Domestic Violence Program

The Legislature acknowledges that certain perpetrators and victims of domestic violence are in need of treatment and rehabilitation.[8] It is the intent of the Legislature to assist in the development of domestic violence centers for the victims of domestic violence and to provide a place where the parties involved may be separated until they can be properly assisted.[9]

The Domestic Violence Program protects adults and their children from domestic violence and helps survivors develop ways to avoid further harm. The Department of Children and Families (DCF) is statutorily responsible for the statewide domestic violence program and is responsible

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[1] Florida Coalition Against Domestic Violence, *Leading Florida Higher, Lifting Survivors Upward, Florida's Commitment to Ending Domestic Violence and Saving Lives*, p. 3, available at https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf (last visited April 1, 2021).
[2] *Id*.
[3] Section 741.28(1), F.S.
[4] Section 741.28(2), F.S.
[5] Florida Coalition Against Domestic Violence, *Leading Florida Higher, Lifting Survivors Upward, Florida's Commitment to Ending Domestic Violence and Saving Lives*, p. 4, available at https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf (last visited April 1, 2021).
[6] *Id*.
[7] *Id*.
[8] Section 39.901, F.S.
[9] *Id*.

for performing specified duties and functions with respect to domestic violence. Section 39.903, F.S., requires the DCF to:

- Operate the domestic violence program and coordinate and administer statewide activities;
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter;
- Inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification;
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the circuits;
- Coordinate with state agencies that have health, education, or criminal justice responsibilities;
- Cooperate with, assist in and participate in, programs of other properly qualified state agencies;
- Contract with an entity or entities for the delivery and management of services for the state's domestic violence program if it is in the best interest of the state;
- Consider applications from certified domestic violence centers for capital improvement grants and award those grants; and
- Adopt rules to administer this section.

Domestic Violence Centers

Domestic violence centers provide services to survivors of domestic violence.[10] Florida has 41 certified domestic violence centers. The certified domestic violence centers provide crisis counseling and support services to victims of domestic violence and their children.[11]

The certified domestic violence centers provide all of the following services free of charge:

- Emergency shelter.
- A 24-hour crisis and information hotline.
- Safety planning.
- Counseling, case management, and child assessments.
- Education for community awareness.
- Training for law enforcement and other professionals.
- Other ancillary services such as relocation assistance, daycare, and transitional housing.[12]

Certified domestic violence centers also provide nonresidential outreach services.

Domestic violence centers must be certified by the DCF in order to receive state funding.[13] The DCF sets criteria for certification and minimum standards to ensure the health and safety of clients served.[14] To be eligible for certification as a domestic violence center, an applicant must

[10] Section 39.902(2), F.S.; Rule 65H-1.011, F.A.C.
[11] Department of Children and Families, *Domestic Violence Overview*, available at https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml (last visited April 1, 2021).
[12] *Id*.
[13] Section 39.905(6)(a), F.S.
[14] Sections 39.903(9) and 39.905(1), F.S.; Rule 65H-1, F.A.C.

apply to the DCF and be a not-for-profit entity.[15] A domestic violence center's primary mission must be to provide services to survivors of domestic violence.

An applicant may seek certification to serve an area that has an existing certified domestic violence center; however, the applicant must show there is an unmet need in the area.[16] One of the minimum criteria that an applicant must meet is that the domestic violence center has been providing services to survivors for 18 consecutive months, including 12 months as an emergency shelter.[17] After the DCF certifies a domestic violence center, the certification is good for one year and automatically expires on June 30. If there is a favorable report from the DCF, it will annually renew a domestic violence center's certification.[18]

Certified domestic violence centers employ staff and rely on volunteers to provide services to survivors. A domestic violence advocate is an employee or a volunteer of a certified center who has 30 hours of training in assisting victims of domestic violence and is an employee or volunteer for a program for survivors of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to survivors of domestic violence.[19] A volunteer is an unpaid staff member who provides direct or indirect services for a certified domestic violence center. All employees and volunteers receive some degree of training on domestic violence.[20]

Section 39.905(6)(b), F.S., requires certified domestic violence centers to obtain at least 25 percent of funding from one or more local, municipal or county sources, public or private. Contributions in kind may be counted toward the 25 percent local funding requirement. When this provision was enacted, centers received funding from the Domestic Violence Trust Fund established in s. 741.01, F.S.

Section 39.905, F.S., currently does not permit certified domestic violence centers to carry forward documented unexpended state funds from one fiscal year to the next. The current annual funding model requires certified domestic violence centers to spend all funds within the fiscal year, potentially creating an incentive for inappropriate use of funds.

Batterers' Intervention Program

Batterer intervention programs (BIPs) emerged in the United States in the late 1970's as one component of the social response to domestic violence.[21] BIPs are designed to address the root

[15] The DCF, *Domestic Violence Center, Application for Certification, Form CF613*, p. 3, January 2015, available at https://www.myflfamilies.com/service-programs/domestic-violence/docs/CF-613_Application-for-Certification.pdf (last visited March 15, 2021).
[16] Section 39.905(1)(i), F.S.; Rule 65H-1.012, F.A.C.
[17] Section 39.905(1)(h), F.S.; Rule 65H-1.012, F.A.C.
[18] Section 39.905(3), F.S.; Rule 65H-1.012, F.A.C.
[19] Section 90.5036. F.S.; R. 65H-1.011(9), F.A.C., states "'domestic violence advocate' means an employee or volunteer of a certified domestic violence center who: provides direct services to individuals victimized by domestic violence; has received 30 hours of domestic violence core competency training; and, has been identified by the domestic violence center as an individual who may assert a claim to privileged communications with domestic violence victims under section 39.905, F.S."
[20] Rule 65H-1.011(17), F.A.C., states "'volunteer' means unpaid staff members trained in the dynamics of domestic violence who provide direct and indirect services to those seeking and receiving services from a domestic violence center".
[21] Battered Women's Justice Project, *Current Research on Batterer Intervention Programs and Implications for Policy*, p. 1, December 2017, available at https://www.bwjp.org/assets/batterer-intervention-paper-final-2018.pdf (last visited April 1, 2021) (hereinafter cited as "Research on BIP and Policy Implications").

cause of domestic violence and deter participants from committing acts of domestic violence in the future.[22]

Alleged perpetrators may be ordered, and in some cases must be ordered, by the court to a BIP. An alleged perpetrator may come to the attention of the court after a petition for protection against domestic violence is filed against him or her. This petition may be filed by any person who either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of domestic violence.[23] The person can file a petition against a current or former spouse, any person related by blood or marriage, any person who is or was residing within a single dwelling unit, or is a person with whom the petitioner had a child.[24] When it appears to the court that the petitioner either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger, the court may order the alleged perpetrator to participate in treatment, intervention, or counseling services.[25] When the court orders the alleged perpetrator to participate in a BIP, the court must provide a list of batterers' intervention programs.[26] If a person is found guilty of, has adjudication withheld, or pleads no contest[27] to an offense defined as domestic violence, the court must order the defendant to complete a BIP as a condition of probation.[28]

Section 741.32, F.S., recognizes the need for standardized programming for domestic violence BIPs, but does not reference any state agency to certify and monitor BIPs to ensure compliance with program standards. The DCF performed this role from 2001 through 2012 under s. 741.325, F.S. However, the General Appropriations Act of 2011-2012[29] eliminated funding for the DCF's BIP certification staff, and the Legislature repealed s. 741.32(2), F.S., which removed the DCF's Office of Certification and Monitoring of Batterers' Intervention and repealed the statutory requirement that batterers' intervention programs be certified by the DCF. There has been no state certification or monitoring of BIPs since 2012.

Judges, domestic violence advocates, prosecutors, survivors, and BIP providers have raised concerns that lack of state certification and monitoring has adversely impacted the overall quality of BIPs in their communities.[30]

Section 741.325, F.S., sets requirements for BIPs to meet, including that the:

- Primary purpose of the program must be the safety of the victim and children, if present;
- Batterer must be held accountable for acts of domestic violence;
- Program must be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming;

[22] *Id.* at pp. 3, 6.
[23] Section 741.30(1)(a), F.S.
[24] Section 741.30(3)(f), F.S.
[25] Section 741.30(6)(a)5., F.S.
[26] *Id*.
[27] A no contest plea (also referred to as a nolo contendere plea) means a criminal defendant will not dispute the charge.
[28] Section 741.281, F.S.
[29] Chapter 2011-69, Laws of Florida.
[30] The DCF, *Agency Analysis for SB 606*, p. 2, January 29, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DCF Analysis").

- Program content must be based on a psychoeducational model that addresses tactics of power and control by one person over another; and
- Program shall be funded by user fees paid by the batterers who attend the program, which allows them to take responsibility for their acts of violence.[31]

Florida is one of 47 states that has BIP laws that require adherence to a psychoeducational type of model, referred to as the Duluth model.[32] The Duluth model, named after a city in Minnesota where it was developed, is a coordinated service approach that requires batterers to acknowledge the various forms of violence they use to exert power and control over their intimate partners.[33]

While the Duluth model remains one of the primary BIP models today, BIP programs also utilize or incorporate a cognitive behavioral model, which has been more recently recognized as effective in changing batterer behavior.[34]

III. Effect of Proposed Changes:

The bill updates the legislative intent expressed in s. 39.901, F.S., to reflect the current s. 741.28, F.S., statutory definition of domestic violence which includes as victims spouses, ex-spouses, and those persons who share a child in common. The new language recognizes that domestic violence is a significant public health threat that has adverse physical, emotional, and financial impact on Florida families. It also recognizes the critical need for victims and their dependents to have access to emergency shelter and crisis intervention services to help them live free of violence.

The bill amends language to recognize that the DCF certifies and monitors domestic violence centers to ensure statewide consistency and effective service provision. This new language reflects the 2020 amendments to ch. 39, F.S., that removed references to the Florida Coalition Against Domestic Violence and named the DCF as the agency responsible for certifying and monitoring domestic violence centers.

The bill amends s. 39.905(1)(c), F.S., to add nonresidential outreach services to the list of minimum services that certified domestic violence centers must provide to victims. This change reflects the fact that all 41 certified domestic violence centers currently provide nonresidential outreach services as a core service. The addition of nonresidential outreach services also recognizes that not all victims require emergency shelter services, but they may require critical outreach support services to help them to safely separate from and remain separate from abusers.

The bill amends s. 39.905(6)(b), F.S., to specify that to be eligible for state funds, certified domestic violence centers must obtain public and private funding in an amount equal to at least 25 percent of the amount of funding the center receives from the Domestic Violence Trust Fund established in s. 741.01, F.S. This change will reduce the amount of match from other funding sources that certified domestic violence centers must provide to receive state funds.

[31] Section 741.325(1)(e), F.S., provides that there is an exception for local, state, or federal programs that are wholly or partly fund batterers' intervention programs.
[32] The DCF Analysis at p. 3.
[33] *Id*.
[34] *Id*. (citing Research on BIP and Policy Implications).

The bill permits certified domestic violence centers to carry forward, from one fiscal year to the next, unexpended state funds in a cumulative amount not to exceed eight percent of their total contract with the DCF. Current law allows the carrying forward of funds in the same manner for child welfare community-based care lead agencies. This change will promote a more effective use of state funds for certified domestic violence services. Funds carried forward may not be used in a way that would increase future recurring obligations, and such funds may not be used for any type of program or service that is not authorized by the existing contract. The bill requires the certified domestic violence centers to report expenditures of funds carried forward separately to the DCF, and any unexpended funds that remain at the end of the contract period must be returned to the DCF. Funds carried forward may be retained through any contract renewal so long as the same certified domestic violence center is retained by the DCF.

The bill revives, reenacts, and amends s. 741.327, F.S., to authorize the DCF to certify and monitor BIPs. The bill authorizes the DCF to adopt rules to administer this section, including but not limited to, developing criteria for the approval, suspension, or rejection of certification of BIPs. The bill removes the annual certification fee and user fee amounts from s. 741.327, F.S. It also removes the requirement that such fees assessed and collected from BIPs be deposited in the Executive Office of the Governor's Trust Fund established in s. 741.01, F.S. Finally, the bill removes the requirement for the DCF to fund the costs of certifying and monitoring BIPs.

The bill amends s. 741.325, F.S., to permit certified BIPs to use a cognitive behavioral model or a psychoeducational model in its program content. This change will give BIPs flexibility in their programs and reflects current research that BIPs that utilize a cognitive behavioral model are effective in changing behavior.

The bill amends s. 741.30, F.S., to remove language allowing the court to direct an alleged perpetrator to obtain treatment for domestic violence under s. 39.901, F.S. This deletion was necessary to conform to the changes to s. 39.901, F.S., which removes the reference to "treatment" of perpetrators of domestic violence. The court can still direct the alleged perpetrator to participate in a BIP.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 606 may have a negative fiscal impact to BIP providers if the DCF denies an application for certification. If a BIP provider is not certified, it will not be able to conduct business and provide services. Further, a BIP provider will have to go through the ch. 120, F.S., process if it chooses to challenge a denial of certification, which may result in legal costs.

The certified domestic violence centers may incur a positive fiscal impact if the bill's provision allowing the centers to carryforward funding is enacted. Certification may be easier for domestic violence centers because the amount of matching funds the center must provide may decrease.

C. Government Sector Impact:

The DCF indicates that two additional FTE positions will be required to certify and monitor BIPs statewide, as required under the bill. The department projects the cost of the positions to total $166,359 from the General Revenue Fund.[35] It is anticipated that two vacant positions and funding can be redirected from elsewhere within the agency to meet the provisions of the bill.

There is an indeterminate impact on the DCF for legal costs associated with potential administrative hearings pursuant to ch. 120, F.S., if entities denied BIP certification challenge such denial.[36]

The State Courts Administrator reports the bill would have a minimum fiscal impact on expenditures of the State Courts System.[37]

[35] The DCF Analysis at pp. 5-6.
[36] *Id.* at p. 6.
[37] Office of the State Courts Administrator, *2021 Judicial Impact Statement*, March 10, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.901, 39.905, 741.32, 741.325, 741.327, and 741.30.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Bean

4-00322-21 2021606__

A bill to be entitled

An act relating to domestic violence; amending s. 39.901, F.S.; revising legislative findings; amending s. 39.905, F.S.; adding nonresidential outreach services to the list of services certified domestic violence centers must provide; revising requirements for receipt of state funds; authorizing certified domestic violence centers to carry forward unexpended state funds in a specified amount from one fiscal year to the next during the contract period; providing limitations on and reporting requirements for the use of such funds; requiring centers to return to the department any remaining unexpended funds at the end of the contract period; authorizing certain centers to carry forward unexpended funds through contract renewals; amending s. 741.32, F.S.; revising legislative findings; amending s. 741.325, F.S.; revising the program content requirements for batterers' intervention programs; reviving, reenacting, and amending s. 741.327, F.S., relating to the certification and monitoring of batterers' intervention programs; requiring the Department of Children and Families to certify and monitor batterers' intervention programs; requiring the department to adopt certain rules; amending s. 741.30, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

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

4-00322-21 2021606__

Section 1. Section 39.901, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.901, F.S., for present text.)

39.901 Domestic violence centers; legislative findings; requirements.—

(1) The Legislature recognizes that the perpetration of violence by persons against their intimate partners, spouses, ex-spouses, or those with whom they share a child in common poses a significant public health threat that has adverse physical, emotional, and financial impacts on families and communities in this state. The Legislature further finds that it is critical that victims of domestic violence and their dependents have access to safe emergency shelter, advocacy, and crisis intervention services to assist them with the resources necessary to be safe and live free of violence.

(2) To ensure statewide consistency in the provision of confidential, comprehensive, and effective services to victims of domestic violence and their families, the Department of Children and Families shall certify and monitor domestic violence centers. The department and certified domestic violence centers shall serve as partners and together provide a coordinated response to address victim safety, hold batterers accountable, and prevent future violence in this state.

Section 2. Paragraph (c) of subsection (1) and paragraph (b) of subsection (6) of section 39.905, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

39.905 Domestic violence centers.—

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

(1) Domestic violence centers certified under this part must:

(c) Provide minimum services that include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, nonresidential outreach services, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of domestic violence, the prevention of such violence, and the services available for persons engaged in or subject to domestic violence. If a 24-hour hotline, professional training, or community education is already provided by a certified domestic violence center within its designated service area, the department may exempt such certification requirements for a new center serving the same service area in order to avoid duplication of services.

(6) In order to receive state funds, a center must:

(b) Obtain public or private ~~Receive at least 25 percent of its~~ funding from one or more local, municipal, or county sources~~, public or private~~ in an amount that equals at least 25 percent of the amount of funding the center receives from the Domestic Violence Trust Fund established in s. 741.01. Contributions in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

(8) A certified domestic violence center may carry forward from one fiscal year to the next during the contract period

documented unexpended state funds in a cumulative amount that does not exceed 8 percent of its total contract with the department.

(a) The funds carried forward may not be used in a manner that would increase future recurring obligations or for any program or service that is not authorized by the existing contract.

(b) Expenditures of funds carried forward must be separately reported to the department.

(c) Any unexpended funds that remain at the end of the contract period must be returned to the department.

(d) Funds carried forward under this subsection may be retained through any contract renewals as long as the same certified domestic violence center is retained by the department.

Section 3. Section 741.32, Florida Statutes, is amended to read:

741.32 Batterers' intervention programs.—The Legislature finds that the incidence of domestic violence in this state is disturbingly high and that, despite the efforts of many to curb this violence, one person dies at the hands of a spouse, ex-spouse, or cohabitant approximately every 3 days. Further, a child who witnesses the perpetration of this violence becomes a victim as he or she hears or sees it occurring. This child is at high risk of also being the victim of physical abuse by the parent who is perpetrating the violence and, to a lesser extent, by the parent who is the victim. These children are also at a high risk of perpetrating violent crimes as juveniles and, later, becoming perpetrators of the same violence that they

witnessed as children. The Legislature finds that there should be standardized programming available to the justice system to protect victims and their children and to hold the perpetrators of domestic violence accountable for their acts. To ensure statewide consistency in such programming, the Department of Children and Families shall certify and monitor batterers' intervention programs to be used by the justice system. Finally, the Legislature recognizes that in order for batterers' intervention programs to be successful in protecting victims and their children, all participants in the justice system as well as social service agencies and local and state governments must coordinate their efforts at the community level.

Section 4. Paragraph (d) of subsection (1) of section 741.325, Florida Statutes, is amended to read:

741.325 Requirements for batterers' intervention programs.—

(1) A batterers' intervention program must meet the following requirements:

(d) The program content shall be based on a cognitive behavioral therapy model or psychoeducational model that addresses tactics of power and control by one person over another.

Section 5. Notwithstanding the repeal of section 741.327, Florida Statutes, in section 14 of chapter 2012-147, Laws of Florida, that section is revived, reenacted, and amended to read:

741.327 Certification and monitoring of batterers' intervention programs; rules ~~fees~~.—

(1) Pursuant to s. 741.32, the Department of Children and Families shall ~~Family Services is authorized to~~ certify and

monitor batterers' intervention programs ~~assess and collect:~~

~~(a) An annual certification fee not to exceed $300 for the certification and monitoring of batterers' intervention programs.~~

~~(b) An annual certification fee not to exceed $200 for the certification and monitoring of assessment personnel providing direct services to persons who:~~

~~1. Are ordered by the court to participate in a domestic violence prevention program;~~

~~2. Are adjudged to have committed an act of domestic violence as defined in s. 741.28;~~

~~3. Have an injunction entered for protection against domestic violence; or~~

~~4. Agree to attend a program as part of a diversion or pretrial intervention agreement by the offender with the state attorney~~.

(2) The department shall adopt by rule procedures to administer this section, including, but not limited to, procedures related to the development of criteria for the approval, suspension, or rejection of certification of batterers' intervention programs ~~All persons required by the court to attend domestic violence programs certified by the Department of Children and Family Services' Office for Certification and Monitoring of Batterers' Intervention Programs shall pay an additional $30 fee for each 29-week program to the Department of Children and Family Services.~~

~~(3) The fees assessed and collected under this section shall be deposited in the Executive Office of the Governor's Domestic Violence Trust Fund established in s. 741.01 and~~

~~directed to the Department of Children and Family Services to fund the cost of certifying and monitoring batterers' intervention programs~~.

Section 6. Subsection (3) of section 741.30, Florida Statutes, is amended to read:

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

(3)(a) The sworn petition must ~~shall~~ allege the existence of such domestic violence and must ~~shall~~ include the specific facts and circumstances upon the basis of which relief is sought.

(b) The sworn petition shall be in substantially the following form:

PETITION FOR
INJUNCTION FOR PROTECTION
AGAINST DOMESTIC VIOLENCE

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

(a) Petitioner resides at: ...(address)...

(Petitioner may furnish address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.)

(b) Respondent resides at: ...(last known address)...

(c) Respondent's last known place of employment: ...(name of business and address)...

(d) Physical description of respondent:....

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

(e) Aliases of respondent:....

(f) Respondent is the spouse or former spouse of the petitioner or is any other person related by blood or marriage to the petitioner or is any other person who is or was residing within a single dwelling unit with the petitioner, as if a family, or is a person with whom the petitioner has a child in common, regardless of whether the petitioner and respondent are or were married or residing together, as if a family.

(g) The following describes any other cause of action currently pending between the petitioner and respondent:

The petitioner should also describe any previous or pending attempts by the petitioner to obtain an injunction for protection against domestic violence in this or any other circuit, and the results of that attempt:

Case numbers should be included if available.

(h) Petitioner is either a victim of domestic violence or

has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence because respondent has: (mark all sections that apply and describe in the spaces below the incidents of violence or threats of violence, specifying when and where they occurred, including, but not limited to, locations such as a home, school, place of employment, or visitation exchange)

....committed or threatened to commit domestic violence defined in s. 741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

....previously threatened, harassed, stalked, or physically abused the petitioner.

....attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

....threatened to conceal, kidnap, or harm the petitioner's child or children.

....intentionally injured or killed a family pet.

....used, or has threatened to use, against the petitioner any weapons such as guns or knives.

....physically restrained the petitioner from leaving the home or calling law enforcement.

....a criminal history involving violence or the threat of violence (if known).

....another order of protection issued against him or her previously or from another jurisdiction (if known).

....destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.

....engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.

(i) Petitioner alleges the following additional specific facts: (mark appropriate sections)

....A minor child or minor children reside with the petitioner whose names and ages are as follows:

....Petitioner needs the exclusive use and possession of the dwelling that the parties share.

....Petitioner is unable to obtain safe alternative housing because:

....Petitioner genuinely fears that respondent imminently will abuse, remove, or hide the minor child or children from petitioner because:

(j) Petitioner genuinely fears imminent domestic violence by respondent.

(k) Petitioner seeks an injunction: (mark appropriate section or sections)

....Immediately restraining the respondent from committing any acts of domestic violence.

....Restraining the respondent from committing any acts of domestic violence.

....Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

....Providing a temporary parenting plan, including a temporary time-sharing schedule, with regard to the minor child or children of the parties which might involve prohibiting or limiting time-sharing or requiring that it be supervised by a third party.

....Establishing temporary support for the minor child or children or the petitioner.

....Directing the respondent to participate in a batterers' intervention program ~~or other treatment pursuant to s. 39.901, Florida Statutes~~.

....Providing any terms the court deems necessary for the protection of a victim of domestic violence, or any minor children of the victim, including any injunctions or directives to law enforcement agencies.

(c)

Every petition for an injunction against domestic violence must ~~shall~~ contain, directly above the signature line, a statement in all capital letters and bold type not smaller than the surrounding text, as follows:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN

SECTION 837.02, FLORIDA STATUTES.

...(initials)...

(d) If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the minor child or children of the parties, the sworn petition must ~~shall~~ be accompanied by or must ~~shall~~ incorporate the allegations required by s. 61.522 of the Uniform Child Custody Jurisdiction and Enforcement Act.

Section 7. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #606**, relating to Domestic Violence, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

SB 606
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Domestic Violence

Name Sean Burnfin

Job Title Chief of Legislative Affairs, OSCA

Address 500 South Duval Street
Street
Tallahassee Florida 32399
City *State* *Zip*

Phone (850) 922 - 0358

Email burnfins@flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Steering Committee on Families and Children in the Court

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-2021
Meeting Date

606
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Domestic Violence

Name Tim Parson

Job Title

Address 118 E College Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-910-2678

Email tim@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lutheran Services Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 606
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 606 - Domestic Violence

Name Michael Wickersheim

Job Title DCF Director of Legislative Affairs

Address 1317 Winewood Blvd.
Street
Tallahassee FL 32399
City *State* *Zip*

Phone (850) 488-9410

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Children and Families

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 676 (108614)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Baxley and others
SUBJECT:	Special and Specialty License Plates
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Wells	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Wells	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 676 creates 14 new specialty license plates: Florida State Parks; Support Healthcare Heroes; Inter Miami CF; Toastmasters; Gopher Tortoise; Orlando United; Biscayne Bay; Disease Prevention and Early Detection; Honor Flight; Ethical Ecotourism; Protect Marine Wildlife; Margaritaville; 30A.com/Scenic Walton; and Florida Swims.

The bill also creates one new special military plate for recipients of the Army of Occupation Award, amends three existing specialty license plates (Florida Indian River Lagoon, Wildlife Foundation of Florida, and Divine Nine), and revises requirements for the issuance of certain special license plates.

According to the DHSMV, the bill will have a negative, but insignificant, fiscal impact associated with programming costs. These costs can be absorbed within existing resources.

The bill is effective October 1, 2021.

II. Present Situation:

Specialty License Plates

Presently, there are 121 specialty license plates available for purchase in Florida[1] and another 33 specialty license plates available for pre-sale.[2] Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from $15 to $25, paid in addition to the required license taxes and service fees.[3] The annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in statute.[4]

In order to establish a specialty license plate, s. 320.08053, F.S., requires the following actions within certain timelines after the plate is approved by law:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the specialty license plate; and
- Within 24 months after the pre-sale vouchers are established, the organization must obtain a minimum of 3,000 voucher sales, or in the case of an out-of-state college or university license plate, 4,000 voucher sales, before manufacturing of the plate may begin.

If the minimum sales requirement has not been met by the end of the 24-month pre-sale period, then the DHSMV will discontinue the plate and issuance of pre-sale vouchers. Upon discontinuation, a purchaser of a presale voucher may use the annual use fee as a credit towards any other specialty license plate or apply for a refund from the DHSMV.[5]

New specialty license plates that have been approved by law but are awaiting issuance will be issued in the order they appear in s. 320.08058, F.S., provided that they have met the presale requirement. If the next awaiting specialty license plate has not met the presale requirement, the department will proceed in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement.[6]

If the Legislature has approved 150 or more specialty license plates, then the DHSMV may not make any new specialty license plates available for design or issuance until a sufficient number of plates are discontinued so that the number of plates being issued does not exceed 150.[7]

The annual use fees collected by an organization and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of specified

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[1] A list of Florida's specialty license plates is available on the DHSMV website (*Florida License Plates Brochure*) at http://www.flhsmv.gov/dmv/specialtytags/ (last visited March 19, 2021).
[2] A list of Florida's pre-sale specialty license plates is available on the DHSMV website at https://www.flhsmv.gov/motor-vehicles-tags-titles/personalized-specialty-license-plates/specialty-license-plates/pre-sale-data/ (last visited March 19, 2021).
[3] Section 320.08056(3)(d), F.S., provides that except if specifically provided in s. 320.08056(4), the annual use fee for a specialty license plate is $25.
[4] *See* s. 320.08058, F.S.
[5] Section 320.08053(2)(b), F.S.
[6] Section 320.08053(3)(a), F.S.
[7] Section 320.08053(3)(b), F.S.

United States Armed Forces and veterans-related specialty plates.[8] Additionally, organizations must adhere to certain accountability requirements, including an annual audit or attestation document affirming that funds received have been spent in accordance with applicable statutes.[9]

DHSMV Costs Defrayed

The DHSMV is authorized to retain a sufficient portion of annual use fees collected from the sale of specialty plates to defray its costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.[10]

Discontinuance of Specialty Plates

The DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty license plate registrations is below 1,000 plates. Collegiate plates for Florida universities are exempt from the minimum specialty license plate requirement.[11] In addition, the DHSMV is authorized to discontinue any specialty license plate if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.[12]

However, effective July 1, 2023, the requirement increases so that the DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid registrations falls below 3,000 or in the case of an out-of-state college or university license plate, 4,000, for at least 12 consecutive months. The DHSMV must mail a warning letter to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 3,000, or in the case of an out-of-state college or university license plate, 4,000. This does not apply to in-state collegiate license plates established under s. 320.08058(3), F.S., license plates of institutions in and entities of the State University System, specialty license plates that have statutory eligibility limitations for purchase, specialty license plates for which annual use fees are distributed by a foundation for student and teacher leadership programs and teacher recruitment and retention, or Florida professional sports team license plates established under s. 320.08058(9), F.S.[13]

Existing Specialty License Plates

Florida Indian River Lagoon Specialty License Plate

Section 320.08058(10), F.S., provides that the first $5 million in revenues collected annually from the Florida Indian River Lagoon (IRL) license plate must be transferred to the St. Johns River Water Management District. The district must account for these funds separate from all other funds received and must distribute the funds to the applicants awarded funds.

[8] Section 320.08056(10)(a), F.S.
[9] Section 320.08062, F.S.
[10] Section 320.08056(7), F.S.
[11] Section 320.08056(8)(a), F.S.
[12] Section 320.08056(8)(b), F.S.
[13] Section 320.08056(8)(a), F.S.

The application for award of the Florida IRL license plate annual use fees is administered by the St. Johns River and South Florida Water Management Districts for IRL projects and in accordance with their contracting and purchasing policies and procedures, within the select restrictions on how the fees are to be used.[14]

Section 320.08058(10)(d), F.S., provides that it is the intent of the Legislature that revenues generated by the Florida IRL license plate annual use fees must not be used as replacement funds for Surface Water Improvement and Management Act funds, but must be used solely for the enhancement of the IRL area.

Fish & Wildlife Foundation of Florida Specialty License Plate

The Fish & Wildlife Foundation of Florida, Inc., a nonprofit 501(c)(3) organization, was formed on September 29, 1994, "to support the health and well-being of Florida's fish and wildlife resources and their habitats." The foundation is the citizen-support organization of the Florida Fish and Wildlife Conservation Commission and works with a variety of other public and private organizations to achieve science-based conservation, research, education, and outdoor recreation goals. The foundation awards grants that focus on "providing outdoor education and recreational opportunities for youth, combatting invasive species like lionfish, improving management of wildlife habitats and fisheries, protecting Florida's freshwater springs, and improving public access to hunting, fishing, and boating resources."[15]

Divine Nine Specialty License Plate

Section 320.08058(101), F.S., requires the annual use fees from the Divine Nine license plates to be distributed as follows:

- Five percent of the proceeds to the United Negro College Fund, Inc., for college scholarships for Florida residents attending Florida's historically black colleges and universities.
- The remaining 95 percent of the proceeds to one of the participating fraternities or sororities as selected by the purchaser of the plate. Each of those organizations may use 10 percent for marketing the plate.

Because each of the nine fraternities and sororities under the Divine Nine license plate has its own official plate, the total sales of all the license plates created under s. 320.08058(101), F.S., is combined for the purpose of meeting the minimum license plate sales threshold and for determining the license plate limits.

Military Service Special License Plates

Currently, s. 320.089, F.S., authorizes 23 special license plates available to military service members or veterans for certain types of military service. Examples of service include veteran of the U.S. Armed Forces, World War II veteran, and woman veteran. While anyone who pays the appropriate fees may purchase most specialty license plates, a person must provide proof of eligibility to obtain a military special license plate.

[14] Section 320.08058(10)(c), F.S.
[15] Fish & Wildlife Foundation of Florida, *About Us*, https://wildlifeflorida.org/our-mission/ (last visited April 1, 2021). *See also* s. 379.223, F.S.

Military special license plates are each stamped with words consistent with the type of special license plate issued. A likeness of the related campaign medal or badge appears on the plate followed by the license plate serial number.

Applicants for special license plates are required to pay the annual license tax[16] with the exception of certain disabled veterans who qualify for the Pearl Harbor, Purple Heart, or Prisoner of War plate, to whom such plates are issued at no cost.[17] The first $100,000 of the revenue generated annually from the issuance of special use plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act. Any additional revenue is deposited into the Operations and Maintenance Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[18]

Army of Occupation Medal

The Army Occupation Medal was established in 1946 to recognize servicemembers who had performed occupation service after World War II. The medal was awarded for 30 days of consecutive service while the servicemember was assigned to Germany, Austria, Italy, Japan, and Korea during specific periods of time during 1945 to 1990.[19] "Because of the legal status of West Berlin, as an occupied territory until the unification of Germany, the Army of Occupation Medal was issued for forty-five years making it one of the longest active military awards of both the Second World War and the Cold War."[20] The medal was designed by Mr. Thomas Hudson Jones and was originally intended only for members of the United States Army. When the United States Air Force was created, the use of the medal was expanded in 1948 to include those members as well. The first medal was presented to General Eisenhower on April 2, 1947. The ribbon design uses the color black to represent Germany and the color red to represent Japan. There is also a related Navy Occupation Service Medal for servicemembers of the United States Navy and Marines.[21]

Emergency Medical Services Trust Fund

Funds deposited into the Emergency Medical Services Trust Fund must be used solely to improve and expand prehospital emergency medical services in the state. The Department of Health (DOH) must annually dispense funds contained in the Emergency Medical Services Trust Fund as follows:

[16] The annual license tax is provided in s. 320.08, F.S.
[17] Section 320.089(2)(a), F.S.
[18] Section 320.089(1)(c), F.S.
[19] United States Army Veteran Medals, *U.S. Army Service, Campaign Medals and Foreign Awards Information*, https://veteranmedals.army.mil/awardg&d.nsf/374fbd6468877ab385256b6600590a90/48884fdf2638ab8185256b660066c86a!OpenDocument (last visited April 2, 2021).
[20] Military Wiki, *Army of Occupation Medal*, https://military.wikia.org/wiki/Army_of_Occupation_Medal (last visited April 2, 2021)
[21] *Ibid* and *supra* note 20.

- Forty-five percent of funds must be divided among the counties according to the proportion of the combined amount deposited in the trust fund from the county.[22] These funds may not be used to match grant funds identified below. An individual board of county commissioners may distribute these funds to emergency medical services organizations and youth athletic organizations within the county, as it deems appropriate;
- Forty percent of funds must be used by the DOH for making matching grants to local agencies, municipalities, emergency medical services organizations, and youth athletic organizations for the purpose of conducting research, increasing existing levels of emergency medical services, evaluation, community education, injury-prevention programs, and training in cardiopulmonary resuscitation and other lifesaving and first aid techniques; and
- Fifteen percent of funds must be used by the DOH for capital equipment outlay, personnel, community education, evaluation, and other costs associated with the administration of ch. 401, F.S. (Medical Telecommunications and Transportation). Any funds not annually used for this purpose must be used for making additional rural grant funds available.[23]

Community Organizations

Florida State Parks Foundation, Inc.

The Florida State Parks Foundation, Inc., founded in 1993, supports the Florida State Park system through programs that preserve and protect state parks, educate visitors about the value of state parks, encourage community engagement and active use of state parks, and provide financial support to supplement state funding. The foundation is a nonprofit Florida corporation organized under s. 501(3)(c) of the Internal Revenue Code.[24]

Inter Miami CF

The Inter Miami CF Foundation Corporation[25] is an organization which uses "the game of soccer as a catalyst for positive change in the South Florida community." It focuses on education, inclusion, and wellness for kids and young adults in underserved communities. The Inter Miami CF Foundation Corporation uses the soccer club's reach, expertise, and resources to strategically plan and execute sports-based development and direct-service community programs, initiatives, and events.[26]

Toastmasters International

Toastmasters began as a series of speaking clubs organized by Ralph C. Smedley while he was working for the YMCA. Mr. Smedley was director of education at the YMCA and he saw a need

[22] Funds for the trust fund come from a $5 fine from crashes involving damage to a vehicle or other property and reckless driving incidents, portions of civil penalty fines for traffic infractions imposed by county courts, and a $25 fine for driving or boating under the influence.
[23] Section 401.113, F.S.
[24] Florida State Parks Foundation, *Mission*, https://floridastateparksfoundation.org/About-Us1 (last visited April 2, 2021).
[25] Department of State, Sunbiz.org, Detail by Entity Name, *Inter Miami CF Foundation Corp.*, Document No. P20000013003. Throughout this analysis, references to Department of State, Division of Corporations documents filed by entities can be found by searching at http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (last visited April 4, 2021) by entity name or by document number.
[26] *See* Department of State, Sunbiz.org, Detail by Entity Name, *Inter Miami CF Foundation Corporation*, *Articles of Incorporation*. The corporation is registered with the state as a for-profit corporation, but its articles state that it is a nonprofit, charitable organization. The filing with the state may be incorrect.

for the men in the community to learn how to speak, conduct meetings, plan programs, and work on committees. He decided to organize a club where they could learn these skills in a social environment. He named this group the Toastmasters Club, at the time "toastmaster" was a popular term to refer to a person who gave toasts at banquets and other occasions.[27] Since 1924, Toastmasters has helped people from diverse backgrounds become more confident speakers, communicators, and leaders.

"Toastmasters International is a nonprofit educational organization that teaches public speaking and leadership skills through a worldwide network of clubs." The membership of the organization is over 364,000 people in over 16,200 clubs in 145 countries.[28] Toastmasters International is not registered with the Florida Department of State Division of Corporations.

The Ralph C. Smedley Memorial Fund was established in 1965 to honor Mr. Smedley's legacy and to provide opportunities for future Toastmasters. Though initially the fund was intended for local impact, the international organization still maintains the fund's original purpose – to advance communication and leadership education through the research, development, and distribution of educational programs and materials.[29]

Wildlands Conservation, Inc.

The Wildlands Conservation is a nonprofit organization founded in 2003[30] to specialize in conservation planning and policy, land management, land protection, research, education, and outreach. The Wildlands Conservation works on conservation projects throughout Florida. It strives to work with landowners and others around the state to maximize land conservation and minimize costly impacts.[31] For example, the organizations offers gopher tortoise relocation in an attempt to save tortoises from sites permitted for development. The organization is committed to ensuring that gopher tortoise survey and relocation work is done thoroughly and as professionally as possible to protect gopher tortoises across the state.[32]

Mental Health Association of Central Florida, Inc.

The Mental Health Association of Central Florida[33] has been serving the mental health needs of Orange, Osceola, Seminole, Brevard, and Lake counties since 1946. Their mission is to provide mental health services, support, and information to the Orlando and surrounding Central Florida community.[34]

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[27] Toastmasters International, *History: The Toastmasters Journey*, https://www.toastmasters.org/about/history (last visited April 4, 2021).
[28] Toastmasters International, *All About Toastmasters*, https://www.toastmasters.org/about/all-about-toastmasters (last visited April 4, 2021).
[29] Toastmasters International, *Ralph C. Smedley Memorial Fund*, https://www.toastmasters.org/about/smedley-fund (last visited April 4, 2021).
[30] Department of State, Sunbiz.org, Detail by Entity Name, *Wildlands Conservation, Inc.*, Document No. N03000002778.
[31] Wildlands Conservation, http://www.wildlandsconservation.org/ (last visited April 4, 2021).
[32] Wildlands Conservation, *Gopher Tortoise Conservation*, https://www.wildlandsconservation.org/gopher-tortoise-conservation/ (last visited April 4, 2021).
[33] Department of State, Sunbiz.org, Detail by Entity Name, *The Mental Health Association of Central Florida, Inc.*, Document No. 709672.
[34] Mental Health Association of Central Florida, *The Mission of The Mental Health Association of Central Florida*, https://www.mhacf.org/ (last visited April 4, 2021).

onePULSE Foundation, Inc.

The onePULSE Foundation[35] is a nonprofit organization established to create a sanctuary of hope following the tragic day of June 12, 2016. The foundation was created to honor the 117 victims and the first responders and healthcare professionals who treated them. The foundation is intended to support a memorial, a museum, educational programs, and endowed scholarships. All donations are used for the construction and operation of the National Pulse Memorial and Museum, educational programs, and 49 Legacy Scholarships.[36]

26 Health, Inc.

26 Health[37] is a nonprofit organization established in 2011. The organization provides comprehensive physical and mental health services to individuals in the lesbian, gay, bisexual, and transgender community who live in and around the Central Florida area, regardless of their ability to pay. In part, it offers medical care, mental health care, adoption counseling, and other multidisciplinary services.[38]

The Miami Foundation, Inc.

The Miami Foundation,[39] founded in 1967, seeks to encourage philanthropy and charitable giving in Miami by maintaining an endowment to meet current and future emerging charitable needs. It currently manages around $350 million in assets. The organization work to make grants in broad program areas including education, health, human services, arts and culture, the environment, and community and economic development. The organization also mobilizes special initiatives to address the current needs of the community.[40]

SFC Charitable Foundation, Inc.

The SFC Charitable Foundation, Inc., was founded in 1994.[41] The foundation, also known as Singing for Change, is a private foundation established in 1995 by Jimmy Buffett, as a way of saying thank you to the friends, fans, and concert-goers around the country who have loyally supported his music career.[42]

Initially funded with contributions from Jimmy Buffett's 1995 summer tour, Singing for Change continues to receive one dollar from each concert ticket sold during his tours. Funds are used to provide grants to small, grassroots organizations located primarily in communities where concerts are held. Singing for Change has disbursed over $11 million in grants in its over 25-year history.[43]

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[35] Department of State, Sunbiz.org, Detail by Entity Name, *onePULSE Foundation, Inc.*, Document No. N16000006750.
[36] OnePULSE Foundation, *About Us*, https://onepulsefoundation.org/onepulse-foundation/ (last visited April 4, 2021).
[37] Department of State, Sunbiz.org, Detail by Entity Name, *26 Health, Inc.*, Document No. N11000003516. *See also* at *10/22/2019 – Amendment and Name Change*.
[38] 26 Health, https://26health.org/ (last visited April 4, 2021).
[39] Department of State, Sunbiz.org, Detail by Entity Name, *The Miami Foundation, Inc.*, Document No. N50007.
[40] *See generally* The Miami Foundation, https://miamifoundation.org/ (last visited April 4, 2021).
[41] Department of State, Sunbiz.org, Detail by Entity Name, *SFC Charitable Foundation, Inc.*, Document No. N94000005329.
[42] Singing For Change, https://www.singingforchange.org/ (last visited April 4, 2021).
[43] *Id.*

Protect Wild Dolphins Alliance, Inc.

Protect Wild Dolphins Alliance, Inc., also known as Protect Wild Dolphins,[44] supports and conducts research, scientific, and educational activities for the protection and preservation of marine mammals. Activities include rescue, rehabilitation, and release to the wild programs as well as a program for a safe haven for unwanted and/or surplus dolphins and other marine mammals. "Protect Wild Dolphins Alliance rescues and rehabilitates stranded marine mammals in order to advance science and education in marine wildlife health and conservation and believes in the humane treatment of all sick and injured marine animals." The organization seeks to advance the One Ocean One Health concept in order to protect ocean heritage.[45]

The Women's Breast & Heart Initiative, Florida Affiliate, Inc.

The Women's Breast & Heart Initiative[46] was established in 2005 with a goal to provide at-risk women access to early detection and proper treatment for breast cancer by going door-to-door with outreach efforts. The organization operates a grassroots campaign of education and screening initiatives to encourage and support social responsibility, community organization, and the good health of women. The organization works to establish a network of dedicated and compassionate volunteers through strategic partnerships with local colleges and universities, health care partners, and professional entities.[47]

Honor Flight

Honor Flight's mission is to transport America's veterans to Washington, D.C., to visit the memorials dedicated to honoring them. It is a national network of independent hubs working together to further this mission. The network currently serves veterans from World War II, the Korean War, and the Vietnam War, as well as terminally ill veterans who served during any era.[48] Florida's Honor Flight Network hubs are Collier-Lee, First Coast, Central Florida, West Central Florida, South Florida, Tallahassee, Southeast Florida, Southwest Florida, Space Coast, and the Villages.[49]

Florida Society for Ethical Ecotourism

In 1998, the CREW Land and Water Trust and the Florida Department of Environmental Protection Rookery Bay National Estuarine Research Reserve received a grant from the Advisory Council of Environmental Education, within the Florida Game and Fresh Water Fish Commission, to provide an educational workshop for ecotour providers of Southwest Florida. As a result of the grant, a day-long Southwest Florida Eco/Heritage Tourism Workshop took place in downtown Ft. Myers in which 85 people participated.[50]

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[44] Department of State, Sunbiz.org, Detail by Entity Name, *Protect Wild Dolphins Alliance, Inc.*, Document No. N94000001086; and Fictitious Name Detail, *Protect Wild Dolphins*, Registration No. G20000005363.
[45] Protect Wild Dolphins Alliance, https://protectwilddolphinsalliance.com/index.html (last visited April 4, 2021).
[46] Department of State, Sunbiz.org, Detail by Entity Name, *The Women's Breast & Heart Initiative, Florida Affiliate, Inc.*, Document No. N05000011278.
[47] The Women's Breast & Heart Initiative, *About Us*, https://flbreasthealth.com/about-us/ (last visited April 4, 2021).
[48] Honor Flight Network, *About Us*, https://www.honorflight.org/about-us.html (last visited April 4, 2021).
[49] Honor Flight Network, *Regional Honor Flight Hubs*, https://www.honorflight.org/regional-honor-flight-hubs.html#florida (last visited April 4, 2021).
[50] Florida Society for Ethical Ecotourism, *History of the "Florida Society for Ethical Ecotourism"*, https://www.floridasee.com/docs/Florida%20SEE%20History.pdf (last visited April 4, 2021).

Following the workshop, a group of volunteers from Southwest Florida communities met and formed the Society for Ethical Ecotourism in Southwest Florida. In 2011 they changed their name to the Florida Society for Ethical Ecotourism, Inc.[51] The Florida Society for Ethical Ecotourism, Inc., is registered as an active nonprofit corporation with the DOS.[52]

Paddle Florida, Inc.

Paddle Florida, Inc., is a nonprofit corporation[53] organized to support canoeing and kayaking in Florida. The organization supports multi-day paddling/camping trips in each of Florida's five water management districts, showcasing the state's natural beauty and rich cultural heritage while promoting water conservation, wildlife preservation, springs restoration, and waterways protection. Paddle Florida seeks to promote Florida as an international destination for nature-based tourism.[54]

Scenic Walton, Inc.

Scenic Walton, Inc., is a nonprofit corporation[55] created in 2008 as a chapter of Scenic America. The organization works to preserve Walton County's scenic beauty by improving landscaping along commercial corridors, working towards underground utilities, promoting pedestrian and cycling paths, removing litter, and controlling billboards and signage.[56]

Swimming Pool Education and Safety Foundation, Inc.

Swimming Pool Education and Safety Foundation, Inc., also known as Florida Swims Foundation,[57] is a nonprofit organization that funds swimming lessons and distributes safety information throughout the state. The foundation awards scholarships to college students and provides grants for swimming lessons. The foundation also collaborates with local organizations, such as the YMCA and Boys & Girls Clubs, to bring water safety measures and swimming lessons to families with young children.[58]

III. Effect of Proposed Changes:

Existing Specialty License Plates (Section 3)

Florida Indian River Lagoon Specialty License Plate

The Indian River Lagoon (IRL) was formally established as an Estuary of National Significance and joined the National Estuary Program in 1991 under the sponsorship of the St. Johns and

[51] *Id*.
[52] Department of State, Sunbiz.org, Detail by Entity Name, *Florida Society for Ethical Ecotourism, Inc.*, Document No. N01000000235.
[53] Department of State, Sunbiz.org, Detail by Entity Name, *Paddle Florida, Inc.*, Document No. N11000000503.
[54] Paddle Florida, http://www.paddleflorida.org/ (last visited April 4, 2021).
[55] Department of State, Sunbiz.org, Detail by Entity Name, Scenic Walton, Inc., Document No. N08000009559.
[56] Scenic Walton, https://www.scenic.org/chapters-affiliates/walton/ (last visited April 7, 2021),
[57] Department of State, Sunbiz.org, Detail by Entity Name, *Swimming Pool Education And Safety Foundation Inc.*, Document No. N07000000242; and Fictitious Name Detail, *Florida Swims*, Registration No. G19000066440.
[58] Florida Swimming Pool Association, *SPESF*, *https://floridapoolpro.portals7.gomembers.com/About/FloridaSwimsFoundation.aspx* (last visited April 7, 2021).

South Florida Water Management Districts. The IRL National Estuary Program is part of a national network of 28 estuary programs established under the Federal Clean Water Act and administered nationally by the United States Environmental Protection Agency.[59]

The IRL Council was established in February 2015 as a special district of Florida. The IRL Council includes representatives of five counties bordering the lagoon (Volusia, Brevard, St. Lucie, and Martin counties and the Indian River County Lagoon Coalition), the St. Johns River and South Florida Water Management Districts, and the Florida Department of Environmental Protection.[60]

The bill amends s. 320.08058(10), F.S., to direct the distribution of the first $5 million collected each year to the IRL Council, instead of the St. Johns River Water Management District. The bill provides that the Legislature intends for the license plate to provide a continuous source of funding in the area due to:

- The creation of the IRL Council and subsequent adoption of a comprehensive conservation and management plan in 2019 developed by the council and local, state, and federal partners;
- The St. Johns Water Management District continued support of competitive cost-share projects in counties administered by the council; and
- The legislative support of the restoration efforts of the IRL National Estuary Program and its partners.

IRL Council is responsible for accounting for the transfer and distribution of proceeds from the sale of the plate. The bill directs the IRL Council to administer projects in Volusia, Brevard, and Indian River Counties from funds derived from the appropriate percentage of license plate revenues and for the South Florida Water Management District to administer projects in St. Lucie, Martin, and Palm Beach Counties. The bill expands the use of the funds to include monitoring projects.

Specific to counties, the bill provides that:

- In Volusia County, project implementation may occur in all estuarine waters extending north to and including the IRL National Estuary Program's Indian River Lagoon-Halifax River planning boundary amendments that include the Tomoka Basin.
- In Palm Beach County, second priority is amended to be given to projects within adjacent estuarine waters, *including* the Loxahatchee River and other tributaries to the Indian River Lagoon.

The bill provides that it is the intent of the Legislature that proceeds from the sale of the plate not be used as replacement funds for other available funding sources, not just funds from the Surface Water Improvement and Management Act. The proceeds of the plate must be used solely for the enhancement of the lagoon *and* tributaries in the IRL watershed, as defined by the IRL National Estuary Program project boundary defined in the IRL Comprehensive Conservation and Management Plan or as provided in the bill.

[59] One Lagoon, *The Indian River Lagoon NEP*, https://onelagoon.org/irlnep/ (last visited April 4, 2021).
[60] *Id*.

Wildlife Foundation of Florida Specialty License Plate

The bill amends s. 320.08058(46), F.S., to update the name of the Florida Fish and Wildlife Conservation Commission citizen support organization to the Fish & Wildlife Foundation of Florida, Inc. The bill expands the uses of the proceeds from the sale of the plate to be used to fund programs and projects that promote hunting and shooting sports. The bill allows the proceeds to be *encumbered* instead of *used* for the allowed activities. Unencumbered funds from one year may be carried over to the following year, but must be spent within 2 years of receipt or dedicated to a project within 2 years of receipt in the form of a contract, a grant award, or an approved plan by the governing board of the Fish & Wildlife Foundation of Florida, Inc.

Divine Nine Specialty License Plate

The mission of the Association to Preserve African American Society, History, and Tradition is to collect, preserve, and exhibit historical artifacts and information which illustrate the meaningful role African Americans have played in Florida more specifically in the Orlando area. The association operates the Wells' Built Museum and "is dedicated to collecting and exhibiting memorabilia which commemorate the achievements of African Americans educators, athletes, musicians, religious, civic, and cultural leaders."[61]

The bill amends s. 320.08058(101), F.S., to repeal distributions to the various Divine Nine organizations and instead directs the distribution of 10 percent of the proceeds from sales of the plate to the Association to Preserve African-American Society, History, and Tradition, Inc., solely for the marketing of the plate.

The bill also limits eligibility for issuance of a Divine Nine license plate to a person who is a resident of Florida, the registered owner of a motor vehicle, and a member of the applicable organization. The person must also present proof of membership in the organization, which may be established by:

- A card distributed by the organization indicating the person's membership in the organization; or
- A written letter on the organization's letterhead which is signed by the organization's national president or his or her designated official and which states that the person was inducted into the organization.

Proof of membership in an eligible organization is required only for initial issuance of a Divine Nine license plate. A person need not present such proof for renewal of the license plate.

In addition, a Divine Nine license plate:

- May be personalized; and
- May not be transferred between vehicle owners.

[61] Department of State, Sunbiz.org, Detail by Entity Name, *The Association to Preserve African American Society, History and Tradition, Inc.*, Document No. N51255. GuideStar, *Association to Preserve African American Society, History and Tradition, Inc.*, https://www.guidestar.org/profile/59-3205047 (last visited April 4, 2021).

New Specialty License Plates (Section 3)

Florida State Parks License Plate

The bill creates the Florida State Parks license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Explore Our State Parks" appears at the bottom of the plate.

The annual use fees are distributed to the Florida State Parks Foundation, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder for preserving, protecting, sustaining, and growing Florida state parks.

Support Healthcare Heroes License Plate

The bill creates the Support Healthcare Heroes license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Support Healthcare Heroes" appears at the bottom of the plate.

The annual use fees are distributed annually into the Emergency Medical Services Trust Fund within the Department of Health to provide financial support for prehospital medical services pursuant to s. 401.113, F.S.

Inter Miami CF License Plate

The bill creates the Florida Inter Miami CF license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Inter Miami CF" appears at the bottom of the plate.

The annual use fees are distributed to the Inter Miami CF Foundation Corporation, a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to plan and execute sports-based development and direct-service community programs, initiatives, and events.

Currently, it appears that Florida Inter Miami CF is registered with the state as a for-profit corporation, but its articles state that it is a nonprofit, charitable organization. The filing with the state may be incorrect.

Toastmasters License Plate

The bill creates the Florida Toastmasters International license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "www.Toastmasters.org" appears at the bottom of the plate.

The annual use fees are distributed to the Ralph C. Smedley Memorial Fund of Toastmasters International to be used as follows:

- Twenty-five percent to develop charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in established Toastmasters programs.
  - Up to 5 percent of this distribution for administrative costs.
- Seventy-five percent proportionally redistributed to the divisions of Districts 47, 48, 77, and 84 of Toastmasters International which reside in this state.
  - Up to 5 percent of this distribution to market the plate.
  - The remainder for educators, nonprofits, governmental organizations, scholarships, materials, and computers and other equipment for the purpose of implementing the charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in the established Toastmasters programs.

Gopher Tortoise License Plate

The bill creates the Florida Gopher Tortoise license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect the Gopher Tortoise" appears at the bottom of the plate.

The annual use fees are distributed to the Wildlands Conservation, Inc., to fund gopher tortoise and commensal species research, education, and conservation, as well as upland habitat protection, restoration, and management in this state. Distributions must be used as follows:
- Up to 10 percent for administrative costs of the gopher tortoise protection program and to market the plate.
- The remainder to use and distribute to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise and upland habitat research, conservation, and management.

Orlando United License Plate

The bill creates the Florida Orlando United license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Orlando United" appears at the bottom of the plate.

The bill directs the annual use fees to be distributed as follows:
- Five percent to the Mental Health Association of Central Florida, Inc., to market the plate.
- Thirty-one percent to the Mental Health Association of Central Florida, Inc.
  - Up to 5 percent of this distribution for administrative costs.
  - The remainder to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.
- Two percent to onePULSE Foundation, Inc., to market the plate.
- Thirty-one percent to onePULSE Foundation, Inc.
  - Up to 5 percent of this distribution for administrative costs.
  - The remainder to support the construction and maintenance of the onePULSE Foundation Memorial.
- Thirty-one percent to 26 Health, Inc.
  - Up to 5 percent of this distribution for administrative costs.

- The remainder to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

Biscayne Bay License Plate

The bill creates the Florida Biscayne Bay license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect Biscayne Bay" appears at the bottom of the plate.

The annual use fees are distributed to the Miami Foundation, Inc., to be used as follows:

- Up to 10 percent:
  - For direct reimbursement of administrative costs, startup costs, and costs incurred in the development approval process of the plate; all vendors associated with administrative costs must be selected by competitive bid; and
  - To promote and market the plate.
- The remainder to raise awareness and support the mission and efforts of conserving Biscayne Bay. The Miami Foundation Board of Trustees must approve and is accountable for all such expenditures.

Disease Prevention & Early Detection License Plate

The bill creates the Florida Disease Prevention & Early Detection license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Disease Prevention & Early Detection" appears at the bottom of the plate.

The annual use fees are distributed to the Women's Breast & Heart Initiative, Florida Affiliate, Inc., to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

Honor Flight License Plate

The bill creates the Florida Honor Flight license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Honor Flight" appears at the bottom of the plate.

The annual use fees are distributed equally among the Honor Flight Network hubs in this state to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

The bill also amends s. 320.08056(10)(a), F.S., (**Section 2**) to exclude the Honor Flight license plate from the restriction that all fees and any interest earned from the fees may be expended only for use in this state.

Ethical Ecotourism License Plate

The bill creates the Florida Ethical Ecotourism license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and words approved by the DHSMV appear at the bottom of the plate.

The annual use fees are distributed equally between the Florida Society for Ethical Ecotourism and Paddle Florida, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder:
  - By Florida Society for Ethical Ecotourism to provide environmental education and awareness that encourage behaviors that contribute to the sustainability of Florida's natural ecosystems and resources; and
  - By Paddle Florida, Inc., to raise awareness about water conservation, wildlife preservation, restoration of springs, and protection of waterways in Florida.

Protect Marine Wildlife License Plate

The bill creates the Protect Marine Wildlife license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect Marine Wildlife" appears at the bottom of the plate.

The annual use fees are distributed to the Protect Wild Dolphins Alliance, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to promote and market the plate.
- The remainder to fund the organization's conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

Margaritaville License Plate

The bill creates the Margaritaville license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Margaritaville" appears at the bottom of the plate.

The annual use fees are distributed to the SFC Charitable Foundation, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to promote and market the plate.
- The remainder to be used to:
  - Provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for purposes of recovery, rebuilding, and future sustainability; and
  - Promote and inspire local grassroots leaders who work to improve the quality of life in those impacted communities and other communities in this state.

30A.com/Scenic Walton License Plate

The bill creates the 30A.com/Scenic Walton license plate. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Support Scenic Walton" appears at the bottom of the plate.

The annual use fees are distributed to Scenic Walton, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder to preserve and enhance the beauty and safety of Walton County.

Florida Swims License Plate

The bill creates the Florida Swims license plate. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Swim for Life" appears at the bottom of the plate.

The annual use fees are distributed to the Swimming Pool and Education Foundation, Inc., doing business as Florida Swims, to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder to promote swimming pool and water safety and to provide grants and scholarships for childhood swimming lessons in the state.

Special License Plates (Section 4)

The bill amends s. 320.0807(5), F.S., to repeal the time limitation on applicants for a license plate stamped "Senate President" and "House Speaker." Currently, limits the plate to applicants that served as President of the Senate or Speaker of the House of Representatives prior to January 1, 2021.

Military Service Special License Plates (Section 5)

Army of Occupation Veterans License Plate

The bill amends s. 320.089, F.S., to create the Army of Occupation Veterans license plate. An owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle[62] which is not used for hire or commercial use can apply to the DHSMV for such a plate. The applicant must be:

- A resident of Florida.
- A current or former member of the United States military who was permanently assigned to occupation forces in specific overseas locations during the Cold War between May 9, 1945, and October 2, 1990.

The applicant must also provide proof of active membership or former active duty status during the period at one of the locations and pay the license tax for the vehicle to be issued a plate. Proof that the applicant was awarded the Army of Occupation Medal will be sufficient to establish eligibility for the license plate.

The plate will be stamped with the words "Army of Occupation" and a likeness of the Army of Occupation Medal, followed by the registration license number of the plate.

[62] As provided for in s. 320.08(9)(c) or (d), F.S.

Miscellaneous

The bill amends s. 320.08053(3)(b), F.S., (**Section 1**) to clarify that the DHSMV may not *issue* any new specialty license plates, instead of *make* the plates available for design or issuance, until there are less than 150 issued specialty license plates.

The bill has an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None. Section 320.08056(3)(d), F.S., currently provides that the annual use fee for a specialty license plate is $25, except as otherwise provided.

B. Private Sector Impact:

Once the license plates goes into production, organizations authorized for a distribution from the proceeds of the sale of the license plate will benefit.

Current law prohibits the redesign of a specialty license plate unless the inventory of the license plate has been depleted. However, the organization may purchase the remaining inventory of the specialty license plate from the DHSMV at the DHSMV's cost.[63] Should any of the organizations associated with specialty license plates that have been amended desire to redesign their plates they may be required to purchase the remaining inventory

[63] Section 320.08056(9), F.S.

of its specialty license plates at the DHSMV's cost prior to the authorized redesign of these specialty license plates.

C. Government Sector Impact:

Programming will be required initially to allow the DHSMV to accept vouchers, but the DHSMV may not finalize a design or issue the new license plate if the 150 cap is reached prior to the license plate selling 3,000 vouchers. The amount of programming is determined by the number of plates and the number of distributions per plate. One specialty license plate with a single distribution recipient will require between 200 to 250 hours of programming. Additional distributions will generally require an additional 5 to 10 hours per distribution.[64]

The DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.[65]

The first $100,000 of the revenue generated annually from the issuance of special use plates under s. 320.089, F.S., (to now include the Army of Occupation Veterans license plate) is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act to be used by the home for the benefit of the home and its residents.[66] Any additional revenue is deposited into the Operations and Maintenance Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[67] There may be indeterminate, positive fiscal impacts to these trust funds to the extent that eligible individuals choose to purchase these license plates.

Additionally, the DHSMV states the cost to perform an audit every 3 years of each specialty license plate may result in an insignificant workload impact that can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[64] DHSMV, *2021 Agency Legislative Bill Analysis SB 676*, February 25, 2021 (on file with the Senate Committee on Transportation).
[65] Section 320.08056(7), F.S.
[66] Section 296.38(2), F.S., requires the home to use the funds in the Grants and Donations Trust Fund "for the common benefit of the residents of the home, such as recreational equipment, improved facilities, recreational supplies, and goods and services offered or available to all residents."
[67] Section 320.089(1), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08053, 320.08056, 320.08058, 320.0807, and 320.089.

IX. Additional Information:

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

PCS 108614 by Appropriations (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development):
The committee substitute:

- Creates two new specialty license plates (30A and Florida Swims)
- Removes unnecessary language related to allowing placement of plates on vehicles for the Divine Nine plate.
- Reduces the allowed marketing amount for the Gopher Tortoise Plate from 15 percent to 10 percent, consistent with other plates;
- Corrects the reference to Two Spirit Health Services, Inc., to 26 Health, Inc., as a recipient from the proceeds of the Orlando United plate.
- Removes obsolete language and specifically directs the distributions to the organizations for the Protect Marine Wildlife and Margaritaville plates.
- Clarifies that DHSMV does not have to *issue* any new specialty license plates until a sufficient number of plates are discontinued.

CS by Transportation on March 16, 2021:

- Creates 12 new specialty license plates;
- Creates one new military plate for recipients of the Army of Occupation Award;
- Amends three existing specialty license plates; and
- Amends the requirements for the issuance of certain special license plates.

B. Amendments:

None.

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

576-03916-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to special and specialty license plates; amending s. 320.08053, F.S.; clarifying when the department may not issue new specialty license plates; amending s. 320.08056, F.S.; providing an exception to the requirement that specialty license plate annual use fees and interest earned from those fees be expended only in this state; amending s. 320.08058, F.S.; revising legislative intent; revising distribution and application of annual use fees from the sale of Florida Indian River Lagoon license plates; revising distribution of annual use fees from the sale of Wildlife Foundation of Florida license plates; revising distribution of annual use fees from the sale of Divine Nine license plates; providing eligibility requirements for issuance of such plates; authorizing such plates to be personalized; prohibiting the transfer of such plates between vehicle owners; requiring the Department of Highway Safety and Motor Vehicles to develop certain specialty license plates; providing for the distribution and use of fees collected from the sale of such plates; amending s. 320.0807, F.S.; revising requirements for the issuance of certain special license plates; amending s. 320.089, F.S.; authorizing the department to issue Army of Occupation license plates; specifying

576-03916-21

qualifications and requirements for the license plates; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 320.08053, Florida Statutes, is amended to read:

320.08053 Establishment of specialty license plates.—

(3)

(b) If the Legislature has approved 150 or more specialty license plates, the department may not issue ~~make~~ any new specialty license plates ~~available for design or issuance~~ until a sufficient number of plates are discontinued pursuant to s. 320.08056(8) such that the number of plates being issued does not exceed 150. Notwithstanding s. 320.08056(8)(a), the 150-license-plate limit includes license plates above the minimum sales threshold and those exempt from that threshold.

Section 2. Paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license

plates pursuant to paragraph (3)(d) for the Support Our Troops, ~~and~~ American Legion, and Honor Flight license plates; paragraphs (4)(b), (q), and (v) for the Florida Salutes Veterans, United States Marine Corps, and Military Services license plates, respectively; and s. 320.0891 for the U.S. Paratrooper license plate.

Section 3. Subsections (10), (46), and (101) of section 320.08058, Florida Statutes, are amended, and subsections (112) through (125) are added to that section, to read:

320.08058 Specialty license plates.—

(10) FLORIDA INDIAN RIVER LAGOON LICENSE PLATES.—

(a) Because the Indian River Lagoon system has been targeted by the state as a priority water body for restoration and preservation since the 1987 Surface Water Improvement and Management Act, and because the St. Johns River and South Florida Water Management Districts have joined with local, regional, and state partners to create the Indian River Lagoon (IRL) Council by Interlocal Agreement in 2015 to serve as the host agency for the Indian River Lagoon National Estuary Program, and because the program has worked with local, state, and federal partners to develop and adopt the Indian River Lagoon Comprehensive Conservation and Management Plan in 2019, and because the St. Johns River Water Management District has been distributing funds collected from the plate from Volusia, Brevard, and Indian River Counties to support competitive local cost-share projects in each of these counties administered by the IRL Council, including ~~jointly developed a management plan that includes~~ water quality improvement, habitat restoration, and public awareness and education, and because the United

States Environmental Protection Agency has declared the Indian River Lagoon to be an estuary of national significance, and because coastal lagoon activities relating to saltwater fishing account for a multibillion dollar economic base, and because the Legislature supports the restoration efforts of the Indian River Lagoon National Estuary Program and its partners ~~water management districts~~, the Legislature intends for the ~~establishes a~~ Florida Indian River Lagoon license plate to provide ~~for the purpose of providing~~ a continuous funding source to support this worthwhile effort and to heighten public awareness of this economically significant resource. Florida Indian River Lagoon license plates must contain the fish "snook," ~~which has been used as the Indian River Lagoon Surface Water Improvement and Management logo, suspended over seagrass,~~ and must bear the colors and design approved by the department.

(b) The license plate annual use fees are to be distributed annually as follows:

1. The first $5 million collected annually must be transferred to the IRL Council, which must separately ~~St. Johns River Water Management District. The district shall~~ account for the transferred ~~these~~ funds, and such ~~separate from all other funds received. These~~ funds must be distributed as follows:

a. Based on Florida Indian River Lagoon license plate sales data from each county tax collector for Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach Counties, each county's total number of Florida Indian River Lagoon license plates sold between October 1 and September 30 must represent a percentage of the six-county total, calculated as follows: the total number sold for county A divided by the total number sold for counties

A, B, C, D, E, and F is multiplied by 100. The percentage determined for St. Lucie, Martin, and Palm Beach Counties must be totaled, and that total percentage of the statewide Florida Indian River Lagoon license plate revenues must be transferred to the South Florida Water Management District special Indian River Lagoon License Plate Revenue Account and distributed proportionately among St. Lucie, Martin, and Palm Beach Counties. The remaining funds in the IRL Council ~~St. Johns River Water Management District~~ Revenue Account must be divided proportionately between Volusia, Brevard, and Indian River Counties.

b. The IRL Council shall administer ~~Each water management district is responsible for administering~~ projects in Volusia, Brevard, and Indian River ~~its respective~~ Counties from funds derived from ~~funded with~~ the appropriate percentage of license plate revenues. The South Florida Water Management District shall administer projects in St. Lucie, Martin, and Palm Beach Counties.

2. Up to 5 percent of the proceeds from the annual use fee may be used for continuing promotion and marketing of the license plate.

3. Any additional fees must be deposited into the General Revenue Fund. Fees are not to be deposited into the general revenue funds of the IRL Council ~~water management districts~~.

(c) The application of Florida Indian River Lagoon license plate annual use fees is to be administered by the IRL Council ~~St. Johns River~~ and the South Florida Water Management District ~~Districts~~ for Indian River Lagoon projects ~~and~~ in accordance with their contracting and purchasing policies and procedures,

with the following restrictions:

1. An annual amount of the total license plate use fees must be earmarked for each of the six lagoon basin counties, as determined in sub-subparagraph (b)1.a., to be expended in those counties on habitat restoration, including water quality improvement, monitoring, and environmental education projects. At least 80 percent of the use fees must be used for restoration projects, and not more than 20 percent may be used for environmental education and monitoring projects in each county. These project funds may serve as matching funds for other local, state, or federal funds or grants. Unencumbered funds from one year may be carried over to the following year but must be dedicated to a project within 2 years in the form of a contract, an interlocal agreement, or an approved plan by the governing board of the respective district.

2. Florida Indian River Lagoon license plate annual use fees may not be used for administrative salaries or overhead within the IRL Council or the South Florida Water Management District; ~~the water management districts, nor~~ for any general coordination fees or overhead that ~~outside of the districts which~~ is not specifically related to a project;~~, nor~~ for any projects which are considered to be research, studies, inventories, or evaluations; or~~, nor~~ for administrative salaries or overhead related to environmental education or ongoing regular maintenance. Annual use fees may be used for acquisition of rights-of-way specific to the implementation of restoration or improvement projects, if acquisition expenditures do not exceed 20 percent of a county's appropriation.

3. In Volusia County, project implementation may occur in

all estuarine waters extending north to and including the Indian River Lagoon National Estuary Program's Indian River Lagoon-Halifax River planning boundary amendments that include the Tomoka Basin.

4. In Palm Beach County, first priority must be given to projects within the Indian River Lagoon. Second priority must be given to projects within adjacent estuarine waters, including the Loxahatchee River and other tributaries to the Indian River Lagoon.

(d) It is the intent of the Legislature that revenues generated by the Florida Indian River Lagoon license plate annual use fees must not be used as replacement funds for other available funding sources ~~Surface Water Improvement and Management Act funds~~, but must be used solely for the enhancement of the Indian River Lagoon and tributaries in the Indian River Lagoon watershed as defined by the Indian River Lagoon National Estuary Program project boundary defined in the Indian River Lagoon Comprehensive Conservation and Management Plan or as provided in this subsection ~~area~~.

(46) WILDLIFE FOUNDATION OF FLORIDA LICENSE PLATES.—

(a) The department shall develop a Wildlife Foundation of Florida license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Wildlife Foundation of Florida" must appear at the bottom of the plate.

(b) The annual revenues from the sales of the license plate shall be distributed to the Fish & Wildlife Foundation of Florida, Inc., a citizen support organization created pursuant to s. 379.223. Such annual revenues must be used in the

following manner:

1. Seventy-five percent must be encumbered ~~used~~ to fund programs and projects within the state that preserve open space and wildlife habitat, promote conservation, promote hunting and shooting sports, improve wildlife habitat, and establish open space for the perpetual use of the public. Unencumbered funds from one year may be carried over to the following year, but must be spent within 2 years of receipt or dedicated to a project within 2 years of receipt in the form of a contract, a grant award, or an approved plan by the governing board of the Fish & Wildlife Foundation of Florida, Inc.

2. Twenty-five percent may be used for promotion, marketing, and administrative costs directly associated with operation of the foundation.

~~(c) When the provisions of subparagraph (b)1. are met, those annual revenues shall be used for the purposes of subparagraph (b)2.~~

(101) DIVINE NINE LICENSE PLATES.—

(a) The department shall develop a Divine Nine license plate as provided in this section and s. 320.08053 using a standard template and a unique logo, graphic, or color for each of the organizations listed in sub-subparagraphs (b)3.a.-i. ~~(b)2.a.-i.~~ The plate must bear the colors and design approved by the department~~,~~ and must include the official logo, graphic, or color as appropriate for each organization. The word "Florida" must appear at the top of the plate, and the words "Divine Nine" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed as follows:

1. Five percent of the proceeds shall be distributed to the United Negro College Fund, Inc., for college scholarships for Florida residents attending Florida's historically black colleges and universities.

2. Ten percent of the proceeds shall be distributed to the Association to Preserve African American Society, History and Tradition, Inc., solely for the marketing of the plate.

3.~~2.~~ The remaining 85 ~~95~~ percent of the proceeds shall be distributed to one of the following organizations as selected by the purchaser of the plate who, upon fulfilling the requirements of paragraph (c), shall receive a license plate with the logo, graphic, or color associated with the appropriate recipient organization:

a. Alpha Phi Alpha Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Florida Federation of Alpha Chapters, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Florida Federation of Alpha Chapters, Inc., solely for the marketing of the plate.~~

b. Alpha Kappa Alpha Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Alpha Kappa Alpha Educational Advancement Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Alpha Kappa Alpha Educational Advancement Foundation, Inc., solely for the marketing of the plate.~~

c. Kappa Alpha Psi Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Southern Province of Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Southern Province of Kappa Alpha Psi Fraternity, Inc., solely for the marketing of the plate.~~

d. Omega Psi Phi Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the State of Florida Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the State of Florida Omega Friendship Foundation, Inc., solely for the marketing of the plate.~~

e. Delta Sigma Theta Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Delta Research and Educational Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Delta Research and Educational Foundation, Inc., solely for the marketing of the plate.~~

f. Phi Beta Sigma Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the TMB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the TMB Charitable Foundation, Inc., solely for the marketing of the plate.~~

g. Zeta Phi Beta Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Florida Pearls, Inc., solely for the marketing of the plate.~~

h. Sigma Gamma Rho Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Sigma Gamma Rho Sorority National Education Fund, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Sigma Gamma Rho Sorority National Education Fund, Inc., solely for the marketing of the plate.~~

i. Iota Phi Theta Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the National Iota Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the National Iota Foundation, Inc., solely for the marketing of the plate.~~

(c)1. To be eligible for issuance of a Divine Nine license plate representing an organization listed in sub-subparagraphs (b)3.a.-i., a person must be a resident of this state who is the registered owner of a motor vehicle and who is a member of the applicable organization. The person must also present proof of

membership in the organization, which may be established by:

a. A card distributed by the organization indicating the person's membership in the organization; or

b. A written letter on the organization's letterhead which is signed by the organization's national president or his or her designated official and which states that the person was inducted into the organization.

2. Proof of membership in an organization listed in sub-subparagraphs (b)3.a.-i. is required only for initial issuance of a Divine Nine license plate. A person need not present such proof for renewal of the license plate.

(d) A Divine Nine license plate:

1. May be personalized.

2. May not be transferred between vehicle owners.

License plates created pursuant to this subsection shall have their plate sales combined for the purpose of meeting the minimum license plate sales threshold in s. 320.08056(8)(a) and for determining the license plate limit in s. 320.08053(3)(b). License plates created pursuant to this subsection must be ordered directly from the department.

(112) FLORIDA STATE PARKS LICENSE PLATES.—

(a) The department shall develop a Florida State Parks license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Explore Our State Parks" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be

distributed to the Florida State Parks Foundation, Inc., a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to be used to preserve, protect, sustain, and grow Florida state parks. Up to 10 percent of the proceeds may be used for marketing of the plate and costs directly associated with administration of the foundation.

(113) SUPPORT HEALTHCARE HEROES LICENSE PLATES.—

(a) The department shall develop a Support Healthcare Heroes license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Healthcare Heroes" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed annually into the Emergency Medical Services Trust Fund within the Department of Health to provide financial support for prehospital medical services pursuant to s. 401.113.

(114) INTER MIAMI CF LICENSE PLATES.—

(a) The department shall develop an Inter Miami CF license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Inter Miami CF" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Inter Miami CF Foundation Corporation, a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by Inter Miami CF Foundation Corporation to plan

and execute sports-based development and direct-service community programs, initiatives, and events.

(115) TOASTMASTERS LICENSE PLATES.—

(a) The department shall develop a Toastmasters license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "www.Toastmasters.org" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Ralph C. Smedley Memorial Fund of Toastmasters International, a s. 501(c)(3) nonprofit organization, of which:

1. Twenty-five percent shall be used to develop charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in established Toastmasters programs. Up to 5 percent of this distribution may be used for administrative expenses.

2. Seventy-five percent shall be proportionally redistributed to the divisions of Districts 47, 48, 77, and 84 of Toastmasters International which reside in this state. Up to 5 percent of this distribution may be used for marketing of the plate, and the remainder shall be used for educators, nonprofits, governmental organizations, scholarships, materials, and computers and other equipment for the purpose of implementing the charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to

participate in the established Toastmasters programs.

(116) GOPHER TORTOISE LICENSE PLATES.—

(a) The department shall develop a Gopher Tortoise license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect the Gopher Tortoise" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Wildlands Conservation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to fund gopher tortoise and commensal species research, education, and conservation, as well as upland habitat protection, restoration, and management in this state. Up to 10 percent of the funds received by Wildlands Conservation, Inc., may be used for marketing of the plate and costs directly associated with the administration of the gopher tortoise protection program. Wildlands Conservation, Inc., shall use and distribute the funds to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise and upland habitat research, conservation, and management.

(117) ORLANDO UNITED LICENSE PLATES.—

(a) The department shall develop an Orlando United license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Orlando United" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed as follows:

1. Five percent shall be distributed to the Mental Health Association of Central Florida, Inc., to be used for marketing of the license plate.

2. Thirty-one percent shall be distributed to the Mental Health Association of Central Florida, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

3. Two percent shall be distributed to onePULSE Foundation, Inc., a charitable, nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, to be used for marketing of the license plate.

4. Thirty-one percent shall be distributed to onePULSE Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to support the construction and maintenance of the onePULSE Foundation Memorial.

5. Thirty-one percent shall be distributed to 26 Health, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

(118) BISCAYNE BAY LICENSE PLATES.—

(a) The department shall develop a Biscayne Bay license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect Biscayne Bay" must appear at the bottom of the

plate.

(b) The annual use fees from the sale of the plate shall be distributed to The Miami Foundation, Inc., a Florida nonprofit corporation, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate and for direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process of the license plate. All vendors associated with administrative costs shall be selected by competitive bid.

2. The remaining fees shall be used to raise awareness and support the mission and efforts of conserving Biscayne Bay. The Miami Foundation Board of Trustees must approve and is accountable for all such expenditures.

(119) DISEASE PREVENTION & EARLY DETECTION LICENSE PLATES.—

(a) The department shall develop a Disease Prevention & Early Detection license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Disease Prevention & Early Detection" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to The Women's Breast & Heart Initiative, Florida Affiliate, Inc., a Florida nonprofit corporation, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by The Women's Breast & Heart Initiative, Florida Affiliate, Inc., to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

(120) HONOR FLIGHT LICENSE PLATES.—

(a) The department shall develop an Honor Flight license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Honor Flight" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed equally among the Honor Flight Network hubs in this state, each of which is a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate.

2. The remaining fees shall be used to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

(121) ETHICAL ECOTOURISM LICENSE PLATES.—

(a) The department shall develop an Ethical Ecotourism license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and words approved by the department must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed equally between the Florida Society for Ethical Ecotourism and Paddle Florida, Inc., each of which may use up to 10 percent of such proceeds for administrative costs and the marketing of the plate. The remaining proceeds must be used by the Florida Society for Ethical Ecotourism to provide

environmental education and awareness that encourage behaviors that contribute to the sustainability of Florida's natural ecosystems and resources and by Paddle Florida, Inc., to raise awareness about water conservation, wildlife preservation, restoration of springs, and protection of waterways in this state.

(122) PROTECT MARINE WILDLIFE LICENSE PLATES.—

(a) The department shall develop a Protect Marine Wildlife license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect Marine Wildlife" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Protect Wild Dolphins Alliance, Inc., which may use up to 10 percent of the proceeds for administration, promotion, and marketing of the plate. All remaining proceeds shall be used by the Protect Wild Dolphins Alliance, Inc., to fund its conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

(123) MARGARITAVILLE LICENSE PLATES.—

(a) The department shall develop a Margaritaville license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the word "Margaritaville" must appear at the bottom or the side of the plate.

(b) The annual use fees shall be distributed to the SFC Charitable Foundation, Inc., which may use up to 10 percent of

the proceeds for administration, promotion, and marketing of the specialty license plate. All remaining proceeds shall be used by the SFC Charitable Foundation, Inc., to provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for purposes of recovery, rebuilding, and future sustainability and to promote and inspire local grassroots leaders who work to improve the quality of life in those communities and other communities in this state.

(124) 30A.COM/SCENIC WALTON LICENSE PLATES.—

(a) The department shall develop a 30A.com/Scenic Walton license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Scenic Walton" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Scenic Walton, Inc., a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to be used to preserve and enhance the beauty and safety of Walton County. Up to 10 percent of the fees may be used for marketing of the plate and costs directly associated with administration of Scenic Walton, Inc.

(125) FLORIDA SWIMS LICENSE PLATES.—

(a) The department shall develop a Florida Swims license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Swim for Life" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be

distributed to Swimming Pool Education and Safety Foundation, Inc., doing business as Florida Swims, a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, which may use up to 10 percent of the fees for administration and marketing of the plate. The remaining proceeds shall be used by Swimming Pool Education and Safety Foundation, Inc., doing business as Florida Swims, to promote swimming pool and water safety and to provide grants and scholarships for childhood swimming lessons in Florida.

Section 4. Subsection (5) of section 320.0807, Florida Statutes, is amended to read:

320.0807 Special license plates for Governor and federal and state legislators.—

(5) Upon application by any current or former President of the Senate and payment of the fees prescribed by s. 320.0805, the department may issue a license plate stamped "Senate President" followed by the number assigned by the department or chosen by the applicant if it is not already in use. Upon application by any current or former Speaker of the House of Representatives and payment of the fees prescribed by s. 320.0805, the department may issue a license plate stamped "House Speaker" followed by the number assigned by the department or chosen by the applicant if it is not already in use. ~~The applicant must have served as President of the Senate or Speaker of the House of Representatives prior to January 1, 2021.~~

Section 5. Section 320.089, Florida Statutes, is amended to read:

320.089 Veterans of the United States Armed Forces; members

of National Guard; survivors of Pearl Harbor; Purple Heart medal recipients; Bronze Star recipients; active or retired United States Armed Forces reservists; Combat Infantry Badge, Combat Medical Badge, or Combat Action Badge recipients; Combat Action Ribbon recipients; Air Force Combat Action Medal recipients; Distinguished Flying Cross recipients; former prisoners of war; Korean War Veterans; Vietnam War Veterans; Operation Desert Shield Veterans; Operation Desert Storm Veterans; Operation Enduring Freedom Veterans; Operation Iraqi Freedom Veterans; Women Veterans; World War II Veterans; ~~and~~ Navy Submariners; and Army of Occupation Veterans; special license plates; fee.—

(1)(a) Each owner or lessee of an automobile or truck for private use or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and a veteran of the United States Armed Forces, a Woman Veteran, a World War II Veteran, a Navy Submariner, an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, a recipient of the Bronze Star, an active or retired member of any branch of the United States Armed Forces Reserve, or a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, upon application to the department, accompanied by proof of release or discharge from any branch of the United States Armed Forces, proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof

of being a Purple Heart medal recipient, proof of being a Bronze Star recipient, proof of active or retired membership in any branch of the United States Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., proof of being a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, and upon payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial numbers prescribed by s. 320.06, is stamped with the words "Veteran," "Woman Veteran," "WWII Veteran," "Navy Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," "Bronze Star," "U.S. Reserve," "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," "Air Force Combat Action Medal," or "Distinguished Flying Cross," as appropriate, and a likeness of the related campaign medal or badge, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

(b) The military members listed in paragraph (a) are eligible to be issued special veteran's motorcycle license plates. The veteran's motorcycle license plate design shall be the same as the design for the motor vehicle "Veteran" and "Woman Veteran" special license plate. The word "Veteran" or "Woman Veteran" shall be displayed at the bottom of the motorcycle license plate.

(c) Notwithstanding any other provision of law to the

contrary, beginning with fiscal year 2002-2003 and annually thereafter, the first $100,000 in general revenue generated from the sale of license plates issued under this section shall be deposited into the Grants and Donations Trust Fund, as described in s. 296.38(2), to be used for the purposes established by law for that trust fund. Any additional general revenue generated from the sale of such plates shall be deposited into the Operations and Maintenance Trust Fund within the Department of Veterans' Affairs and used to support program operations that benefit veterans or the operation, maintenance, or construction of domiciliary and nursing homes for veterans, subject to the requirements of chapter 216.

(d) Any revenue generated from the sale of Woman Veteran license plates must be deposited into the Operations and Maintenance Trust Fund administered by the Department of Veterans' Affairs pursuant to s. 20.375(3) and must be used solely for the purpose of creating and implementing programs to benefit women veterans. Notwithstanding any provisions of law to the contrary, an applicant for a Pearl Harbor Survivor license plate or a Purple Heart license plate who also qualifies for a disabled veteran's license plate under s. 320.084 shall be issued the appropriate special license plate without payment of the license tax imposed by s. 320.08.

(2) Each owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use who is a resident of this state and who is a former prisoner of war, or his or her unremarried surviving spouse, upon application to the

department, shall be issued a license plate as provided in s. 320.06, stamped with the words "Ex-POW" followed by the serial number. Each application shall be accompanied by proof that the applicant meets the qualifications specified in paragraph (a) or paragraph (b).

(a) A citizen of the United States who served as a member of the Armed Forces of the United States or the armed forces of a nation allied with the United States who was held as a prisoner of war at such time as the Armed Forces of the United States were engaged in combat, or his or her unremarried surviving spouse, may be issued the special license plate provided for in this subsection without payment of the license tax imposed by s. 320.08.

(b) A person who was serving as a civilian with the consent of the United States Government, or a person who was a member of the Armed Forces of the United States while he or she was not a United States citizen and was held as a prisoner of war when the Armed Forces of the United States were engaged in combat, or his or her unremarried surviving spouse, may be issued the special license plate provided for in this subsection upon payment of the license tax imposed by s. 320.08.

(3) Each owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use who is a resident of this state and who is the unremarried surviving spouse of a recipient of the Purple Heart medal, upon application to the department accompanied by the payment of the required fees, shall be issued a license plate as provided in s. 320.06 which

is stamped with the words "Purple Heart" and the likeness of the Purple Heart medal followed by the serial number. Each application shall be accompanied by proof that the applicant is the unremarried surviving spouse of a recipient of the Purple Heart medal.

(4) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States Armed Forces who was deployed and served in Korea during the Korean War as defined in s. 1.01(14), upon application to the department accompanied by proof of active membership or former active duty status during the Korean War and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Korean War Veteran" and a likeness of the Korean Service Medal, followed by the registration license number of the plate. Proof that the applicant was awarded the Korean Service Medal is sufficient to establish eligibility for the license plate.

(5) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was deployed and served in Vietnam during United States military deployment in Indochina, upon application

to the department accompanied by proof of active membership or former active duty status during these operations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Vietnam War Veteran" and a likeness of the Vietnam Service Medal, followed by the registration license number of the plate. Proof that the applicant was awarded the Vietnam Service Medal is sufficient to establish eligibility for the license plate.

(6) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was deployed and served in Saudi Arabia, Kuwait, or another area of the Persian Gulf during Operation Desert Shield or Operation Desert Storm; in Afghanistan during Operation Enduring Freedom; or in Iraq during Operation Iraqi Freedom, upon application to the department accompanied by proof of active membership or former active duty status during one of these operations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Operation Desert Shield," "Operation Desert Storm," "Operation Enduring Freedom," or "Operation Iraqi Freedom," as appropriate, and a likeness of the related campaign medal followed by the registration license number of the plate. Proof that the

applicant was awarded the Southwest Asia Service Medal, Iraq Campaign Medal, Afghanistan Campaign Medal, or Global War on Terrorism Expeditionary Medal is sufficient to establish eligibility for the appropriate license plate.

(7) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was permanently assigned to occupation forces in specific overseas locations during the Cold War between May 9, 1945, and October 2, 1990, upon application to the department accompanied by proof of active membership or former active duty status during this period at one of these locations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Army of Occupation" and a likeness of the subject medal, followed by the registration license number of the plate. Proof that the applicant was awarded the Army of Occupation Medal is sufficient to establish eligibility for the license plate.

Section 6. This act shall take effect October 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 676
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Baxley and others
SUBJECT:	Special and Specialty License Plates
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Wells	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Wells	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 676 creates 14 new specialty license plates: Florida State Parks; Support Healthcare Heroes; Inter Miami CF; Toastmasters; Gopher Tortoise; Orlando United; Biscayne Bay; Disease Prevention and Early Detection; Honor Flight; Ethical Ecotourism; Protect Marine Wildlife; Margaritaville; 30A.com/Scenic Walton; and Florida Swims.

The bill also creates one new special military plate for recipients of the Army of Occupation Award, amends three existing specialty license plates (Florida Indian River Lagoon, Wildlife Foundation of Florida, and Divine Nine), and revises requirements for the issuance of certain special license plates.

According to the DHSMV, the bill will have a negative, but insignificant, fiscal impact associated with programming costs. These costs can be absorbed within existing resources.

The bill is effective October 1, 2021.

II. Present Situation:

Specialty License Plates

Presently, there are 121 specialty license plates available for purchase in Florida[1] and another 33 specialty license plates available for pre-sale.[2] Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from $15 to $25, paid in addition to the required license taxes and service fees.[3] The annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in statute.[4]

In order to establish a specialty license plate, s. 320.08053, F.S., requires the following actions within certain timelines after the plate is approved by law:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the specialty license plate; and
- Within 24 months after the pre-sale vouchers are established, the organization must obtain a minimum of 3,000 voucher sales, or in the case of an out-of-state college or university license plate, 4,000 voucher sales, before manufacturing of the plate may begin.

If the minimum sales requirement has not been met by the end of the 24-month pre-sale period, then the DHSMV will discontinue the plate and issuance of pre-sale vouchers. Upon discontinuation, a purchaser of a presale voucher may use the annual use fee as a credit towards any other specialty license plate or apply for a refund from the DHSMV.[5]

New specialty license plates that have been approved by law but are awaiting issuance will be issued in the order they appear in s. 320.08058, F.S., provided that they have met the presale requirement. If the next awaiting specialty license plate has not met the presale requirement, the department will proceed in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement.[6]

If the Legislature has approved 150 or more specialty license plates, then the DHSMV may not make any new specialty license plates available for design or issuance until a sufficient number of plates are discontinued so that the number of plates being issued does not exceed 150.[7]

The annual use fees collected by an organization and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of specified

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[1] A list of Florida's specialty license plates is available on the DHSMV website (*Florida License Plates Brochure*) at http://www.flhsmv.gov/dmv/specialtytags/ (last visited March 19, 2021).
[2] A list of Florida's pre-sale specialty license plates is available on the DHSMV website at https://www.flhsmv.gov/motor-vehicles-tags-titles/personalized-specialty-license-plates/specialty-license-plates/pre-sale-data/ (last visited March 19, 2021).
[3] Section 320.08056(3)(d), F.S., provides that except if specifically provided in s. 320.08056(4), the annual use fee for a specialty license plate is $25.
[4] *See* s. 320.08058, F.S.
[5] Section 320.08053(2)(b), F.S.
[6] Section 320.08053(3)(a), F.S.
[7] Section 320.08053(3)(b), F.S.

United States Armed Forces and veterans-related specialty plates.[8] Additionally, organizations must adhere to certain accountability requirements, including an annual audit or attestation document affirming that funds received have been spent in accordance with applicable statutes.[9]

DHSMV Costs Defrayed

The DHSMV is authorized to retain a sufficient portion of annual use fees collected from the sale of specialty plates to defray its costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.[10]

Discontinuance of Specialty Plates

The DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty license plate registrations is below 1,000 plates. Collegiate plates for Florida universities are exempt from the minimum specialty license plate requirement.[11] In addition, the DHSMV is authorized to discontinue any specialty license plate if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.[12]

However, effective July 1, 2023, the requirement increases so that the DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid registrations falls below 3,000 or in the case of an out-of-state college or university license plate, 4,000, for at least 12 consecutive months. The DHSMV must mail a warning letter to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 3,000, or in the case of an out-of-state college or university license plate, 4,000. This does not apply to in-state collegiate license plates established under s. 320.08058(3), F.S., license plates of institutions in and entities of the State University System, specialty license plates that have statutory eligibility limitations for purchase, specialty license plates for which annual use fees are distributed by a foundation for student and teacher leadership programs and teacher recruitment and retention, or Florida professional sports team license plates established under s. 320.08058(9), F.S.[13]

Existing Specialty License Plates

Florida Indian River Lagoon Specialty License Plate

Section 320.08058(10), F.S., provides that the first $5 million in revenues collected annually from the Florida Indian River Lagoon (IRL) license plate must be transferred to the St. Johns River Water Management District. The district must account for these funds separate from all other funds received and must distribute the funds to the applicants awarded funds.

[8] Section 320.08056(10)(a), F.S.
[9] Section 320.08062, F.S.
[10] Section 320.08056(7), F.S.
[11] Section 320.08056(8)(a), F.S.
[12] Section 320.08056(8)(b), F.S.
[13] Section 320.08056(8)(a), F.S.

The application for award of the Florida IRL license plate annual use fees is administered by the St. Johns River and South Florida Water Management Districts for IRL projects and in accordance with their contracting and purchasing policies and procedures, within the select restrictions on how the fees are to be used.[14]

Section 320.08058(10)(d), F.S., provides that it is the intent of the Legislature that revenues generated by the Florida IRL license plate annual use fees must not be used as replacement funds for Surface Water Improvement and Management Act funds, but must be used solely for the enhancement of the IRL area.

Fish & Wildlife Foundation of Florida Specialty License Plate

The Fish & Wildlife Foundation of Florida, Inc., a nonprofit 501(c)(3) organization, was formed on September 29, 1994, "to support the health and well-being of Florida's fish and wildlife resources and their habitats." The foundation is the citizen-support organization of the Florida Fish and Wildlife Conservation Commission and works with a variety of other public and private organizations to achieve science-based conservation, research, education, and outdoor recreation goals. The foundation awards grants that focus on "providing outdoor education and recreational opportunities for youth, combatting invasive species like lionfish, improving management of wildlife habitats and fisheries, protecting Florida's freshwater springs, and improving public access to hunting, fishing, and boating resources."[15]

Divine Nine Specialty License Plate

Section 320.08058(101), F.S., requires the annual use fees from the Divine Nine license plates to be distributed as follows:

- Five percent of the proceeds to the United Negro College Fund, Inc., for college scholarships for Florida residents attending Florida's historically black colleges and universities.
- The remaining 95 percent of the proceeds to one of the participating fraternities or sororities as selected by the purchaser of the plate. Each of those organizations may use 10 percent for marketing the plate.

Because each of the nine fraternities and sororities under the Divine Nine license plate has its own official plate, the total sales of all the license plates created under s. 320.08058(101), F.S., is combined for the purpose of meeting the minimum license plate sales threshold and for determining the license plate limits.

Military Service Special License Plates

Currently, s. 320.089, F.S., authorizes 23 special license plates available to military service members or veterans for certain types of military service. Examples of service include veteran of the U.S. Armed Forces, World War II veteran, and woman veteran. While anyone who pays the appropriate fees may purchase most specialty license plates, a person must provide proof of eligibility to obtain a military special license plate.

[14] Section 320.08058(10)(c), F.S.
[15] Fish & Wildlife Foundation of Florida, *About Us*, https://wildlifeflorida.org/our-mission/ (last visited April 1, 2021). *See also* s. 379.223, F.S.

Military special license plates are each stamped with words consistent with the type of special license plate issued. A likeness of the related campaign medal or badge appears on the plate followed by the license plate serial number.

Applicants for special license plates are required to pay the annual license tax[16] with the exception of certain disabled veterans who qualify for the Pearl Harbor, Purple Heart, or Prisoner of War plate, to whom such plates are issued at no cost.[17] The first $100,000 of the revenue generated annually from the issuance of special use plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act. Any additional revenue is deposited into the Operations and Maintenance Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[18]

Army of Occupation Medal

The Army Occupation Medal was established in 1946 to recognize servicemembers who had performed occupation service after World War II. The medal was awarded for 30 days of consecutive service while the servicemember was assigned to Germany, Austria, Italy, Japan, and Korea during specific periods of time during 1945 to 1990.[19] "Because of the legal status of West Berlin, as an occupied territory until the unification of Germany, the Army of Occupation Medal was issued for forty-five years making it one of the longest active military awards of both the Second World War and the Cold War."[20] The medal was designed by Mr. Thomas Hudson Jones and was originally intended only for members of the United States Army. When the United States Air Force was created, the use of the medal was expanded in 1948 to include those members as well. The first medal was presented to General Eisenhower on April 2, 1947. The ribbon design uses the color black to represent Germany and the color red to represent Japan. There is also a related Navy Occupation Service Medal for servicemembers of the United States Navy and Marines.[21]

Emergency Medical Services Trust Fund

Funds deposited into the Emergency Medical Services Trust Fund must be used solely to improve and expand prehospital emergency medical services in the state. The Department of Health (DOH) must annually dispense funds contained in the Emergency Medical Services Trust Fund as follows:

[16] The annual license tax is provided in s. 320.08, F.S.
[17] Section 320.089(2)(a), F.S.
[18] Section 320.089(1)(c), F.S.
[19] United States Army Veteran Medals, *U.S. Army Service, Campaign Medals and Foreign Awards Information*, https://veteranmedals.army.mil/awardg&d.nsf/374fbd6468877ab385256b6600590a90/48884fdf2638ab8185256b660066c86a!OpenDocument (last visited April 2, 2021).
[20] Military Wiki, *Army of Occupation Medal*, https://military.wikia.org/wiki/Army_of_Occupation_Medal (last visited April 2, 2021)
[21] *Ibid* and *supra* note 20.

- Forty-five percent of funds must be divided among the counties according to the proportion of the combined amount deposited in the trust fund from the county.[22] These funds may not be used to match grant funds identified below. An individual board of county commissioners may distribute these funds to emergency medical services organizations and youth athletic organizations within the county, as it deems appropriate;
- Forty percent of funds must be used by the DOH for making matching grants to local agencies, municipalities, emergency medical services organizations, and youth athletic organizations for the purpose of conducting research, increasing existing levels of emergency medical services, evaluation, community education, injury-prevention programs, and training in cardiopulmonary resuscitation and other lifesaving and first aid techniques; and
- Fifteen percent of funds must be used by the DOH for capital equipment outlay, personnel, community education, evaluation, and other costs associated with the administration of ch. 401, F.S. (Medical Telecommunications and Transportation). Any funds not annually used for this purpose must be used for making additional rural grant funds available.[23]

Community Organizations

Florida State Parks Foundation, Inc.

The Florida State Parks Foundation, Inc., founded in 1993, supports the Florida State Park system through programs that preserve and protect state parks, educate visitors about the value of state parks, encourage community engagement and active use of state parks, and provide financial support to supplement state funding. The foundation is a nonprofit Florida corporation organized under s. 501(3)(c) of the Internal Revenue Code.[24]

Inter Miami CF

The Inter Miami CF Foundation Corporation[25] is an organization which uses "the game of soccer as a catalyst for positive change in the South Florida community." It focuses on education, inclusion, and wellness for kids and young adults in underserved communities. The Inter Miami CF Foundation Corporation uses the soccer club's reach, expertise, and resources to strategically plan and execute sports-based development and direct-service community programs, initiatives, and events.[26]

Toastmasters International

Toastmasters began as a series of speaking clubs organized by Ralph C. Smedley while he was working for the YMCA. Mr. Smedley was director of education at the YMCA and he saw a need

[22] Funds for the trust fund come from a $5 fine from crashes involving damage to a vehicle or other property and reckless driving incidents, portions of civil penalty fines for traffic infractions imposed by county courts, and a $25 fine for driving or boating under the influence.
[23] Section 401.113, F.S.
[24] Florida State Parks Foundation, *Mission*, https://floridastateparksfoundation.org/About-Us1 (last visited April 2, 2021).
[25] Department of State, Sunbiz.org, Detail by Entity Name, *Inter Miami CF Foundation Corp.*, Document No. P20000013003. Throughout this analysis, references to Department of State, Division of Corporations documents filed by entities can be found by searching at http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (last visited April 4, 2021) by entity name or by document number.
[26] *See* Department of State, Sunbiz.org, Detail by Entity Name, *Inter Miami CF Foundation Corporation*, *Articles of Incorporation*. The corporation is registered with the state as a for-profit corporation, but its articles state that it is a nonprofit, charitable organization. The filing with the state may be incorrect.

for the men in the community to learn how to speak, conduct meetings, plan programs, and work on committees. He decided to organize a club where they could learn these skills in a social environment. He named this group the Toastmasters Club, at the time "toastmaster" was a popular term to refer to a person who gave toasts at banquets and other occasions.[27] Since 1924, Toastmasters has helped people from diverse backgrounds become more confident speakers, communicators, and leaders.

"Toastmasters International is a nonprofit educational organization that teaches public speaking and leadership skills through a worldwide network of clubs." The membership of the organization is over 364,000 people in over 16,200 clubs in 145 countries.[28] Toastmasters International is not registered with the Florida Department of State Division of Corporations.

The Ralph C. Smedley Memorial Fund was established in 1965 to honor Mr. Smedley's legacy and to provide opportunities for future Toastmasters. Though initially the fund was intended for local impact, the international organization still maintains the fund's original purpose – to advance communication and leadership education through the research, development, and distribution of educational programs and materials.[29]

Wildlands Conservation, Inc.

The Wildlands Conservation is a nonprofit organization founded in 2003[30] to specialize in conservation planning and policy, land management, land protection, research, education, and outreach. The Wildlands Conservation works on conservation projects throughout Florida. It strives to work with landowners and others around the state to maximize land conservation and minimize costly impacts.[31] For example, the organizations offers gopher tortoise relocation in an attempt to save tortoises from sites permitted for development. The organization is committed to ensuring that gopher tortoise survey and relocation work is done thoroughly and as professionally as possible to protect gopher tortoises across the state.[32]

Mental Health Association of Central Florida, Inc.

The Mental Health Association of Central Florida[33] has been serving the mental health needs of Orange, Osceola, Seminole, Brevard, and Lake counties since 1946. Their mission is to provide mental health services, support, and information to the Orlando and surrounding Central Florida community.[34]

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[27] Toastmasters International, *History: The Toastmasters Journey*, https://www.toastmasters.org/about/history (last visited April 4, 2021).
[28] Toastmasters International, *All About Toastmasters*, https://www.toastmasters.org/about/all-about-toastmasters (last visited April 4, 2021).
[29] Toastmasters International, *Ralph C. Smedley Memorial Fund*, https://www.toastmasters.org/about/smedley-fund (last visited April 4, 2021).
[30] Department of State, Sunbiz.org, Detail by Entity Name, *Wildlands Conservation, Inc.*, Document No. N03000002778.
[31] Wildlands Conservation, http://www.wildlandsconservation.org/ (last visited April 4, 2021).
[32] Wildlands Conservation, *Gopher Tortoise Conservation*, https://www.wildlandsconservation.org/gopher-tortoise-conservation/ (last visited April 4, 2021).
[33] Department of State, Sunbiz.org, Detail by Entity Name, *The Mental Health Association of Central Florida, Inc.*, Document No. 709672.
[34] Mental Health Association of Central Florida, *The Mission of The Mental Health Association of Central Florida*, https://www.mhacf.org/ (last visited April 4, 2021).

onePULSE Foundation, Inc.

The onePULSE Foundation[35] is a nonprofit organization established to create a sanctuary of hope following the tragic day of June 12, 2016. The foundation was created to honor the 117 victims and the first responders and healthcare professionals who treated them. The foundation is intended to support a memorial, a museum, educational programs, and endowed scholarships. All donations are used for the construction and operation of the National Pulse Memorial and Museum, educational programs, and 49 Legacy Scholarships.[36]

26 Health, Inc.

26 Health[37] is a nonprofit organization established in 2011. The organization provides comprehensive physical and mental health services to individuals in the lesbian, gay, bisexual, and transgender community who live in and around the Central Florida area, regardless of their ability to pay. In part, it offers medical care, mental health care, adoption counseling, and other multidisciplinary services.[38]

The Miami Foundation, Inc.

The Miami Foundation,[39] founded in 1967, seeks to encourage philanthropy and charitable giving in Miami by maintaining an endowment to meet current and future emerging charitable needs. It currently manages around $350 million in assets. The organization work to make grants in broad program areas including education, health, human services, arts and culture, the environment, and community and economic development. The organization also mobilizes special initiatives to address the current needs of the community.[40]

SFC Charitable Foundation, Inc.

The SFC Charitable Foundation, Inc., was founded in 1994.[41] The foundation, also known as Singing for Change, is a private foundation established in 1995 by Jimmy Buffett, as a way of saying thank you to the friends, fans, and concert-goers around the country who have loyally supported his music career.[42]

Initially funded with contributions from Jimmy Buffett's 1995 summer tour, Singing for Change continues to receive one dollar from each concert ticket sold during his tours. Funds are used to provide grants to small, grassroots organizations located primarily in communities where concerts are held. Singing for Change has disbursed over $11 million in grants in its over 25-year history.[43]

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[35] Department of State, Sunbiz.org, Detail by Entity Name, *onePULSE Foundation, Inc.*, Document No. N16000006750.
[36] OnePULSE Foundation, *About Us*, https://onepulsefoundation.org/onepulse-foundation/ (last visited April 4, 2021).
[37] Department of State, Sunbiz.org, Detail by Entity Name, *26 Health, Inc.*, Document No. N11000003516. *See also* at *10/22/2019 – Amendment and Name Change*.
[38] 26 Health, https://26health.org/ (last visited April 4, 2021).
[39] Department of State, Sunbiz.org, Detail by Entity Name, *The Miami Foundation, Inc.*, Document No. N50007.
[40] *See generally* The Miami Foundation, https://miamifoundation.org/ (last visited April 4, 2021).
[41] Department of State, Sunbiz.org, Detail by Entity Name, *SFC Charitable Foundation, Inc.*, Document No. N94000005329.
[42] Singing For Change, https://www.singingforchange.org/ (last visited April 4, 2021).
[43] *Id.*

Protect Wild Dolphins Alliance, Inc.

Protect Wild Dolphins Alliance, Inc., also known as Protect Wild Dolphins,[44] supports and conducts research, scientific, and educational activities for the protection and preservation of marine mammals. Activities include rescue, rehabilitation, and release to the wild programs as well as a program for a safe haven for unwanted and/or surplus dolphins and other marine mammals. "Protect Wild Dolphins Alliance rescues and rehabilitates stranded marine mammals in order to advance science and education in marine wildlife health and conservation and believes in the humane treatment of all sick and injured marine animals." The organization seeks to advance the One Ocean One Health concept in order to protect ocean heritage.[45]

The Women's Breast & Heart Initiative, Florida Affiliate, Inc.

The Women's Breast & Heart Initiative[46] was established in 2005 with a goal to provide at-risk women access to early detection and proper treatment for breast cancer by going door-to-door with outreach efforts. The organization operates a grassroots campaign of education and screening initiatives to encourage and support social responsibility, community organization, and the good health of women. The organization works to establish a network of dedicated and compassionate volunteers through strategic partnerships with local colleges and universities, health care partners, and professional entities.[47]

Honor Flight

Honor Flight's mission is to transport America's veterans to Washington, D.C., to visit the memorials dedicated to honoring them. It is a national network of independent hubs working together to further this mission. The network currently serves veterans from World War II, the Korean War, and the Vietnam War, as well as terminally ill veterans who served during any era.[48] Florida's Honor Flight Network hubs are Collier-Lee, First Coast, Central Florida, West Central Florida, South Florida, Tallahassee, Southeast Florida, Southwest Florida, Space Coast, and the Villages.[49]

Florida Society for Ethical Ecotourism

In 1998, the CREW Land and Water Trust and the Florida Department of Environmental Protection Rookery Bay National Estuarine Research Reserve received a grant from the Advisory Council of Environmental Education, within the Florida Game and Fresh Water Fish Commission, to provide an educational workshop for ecotour providers of Southwest Florida. As a result of the grant, a day-long Southwest Florida Eco/Heritage Tourism Workshop took place in downtown Ft. Myers in which 85 people participated.[50]

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[44] Department of State, Sunbiz.org, Detail by Entity Name, *Protect Wild Dolphins Alliance, Inc.*, Document No. N94000001086; and Fictitious Name Detail, *Protect Wild Dolphins*, Registration No. G20000005363.
[45] Protect Wild Dolphins Alliance, https://protectwilddolphinsalliance.com/index.html (last visited April 4, 2021).
[46] Department of State, Sunbiz.org, Detail by Entity Name, *The Women's Breast & Heart Initiative, Florida Affiliate, Inc.*, Document No. N05000011278.
[47] The Women's Breast & Heart Initiative, *About Us*, https://flbreasthealth.com/about-us/ (last visited April 4, 2021).
[48] Honor Flight Network, *About Us*, https://www.honorflight.org/about-us.html (last visited April 4, 2021).
[49] Honor Flight Network, *Regional Honor Flight Hubs*, https://www.honorflight.org/regional-honor-flight-hubs.html#florida (last visited April 4, 2021).
[50] Florida Society for Ethical Ecotourism, *History of the "Florida Society for Ethical Ecotourism"*, https://www.floridasee.com/docs/Florida%20SEE%20History.pdf (last visited April 4, 2021).

Following the workshop, a group of volunteers from Southwest Florida communities met and formed the Society for Ethical Ecotourism in Southwest Florida. In 2011 they changed their name to the Florida Society for Ethical Ecotourism, Inc.[51] The Florida Society for Ethical Ecotourism, Inc., is registered as an active nonprofit corporation with the DOS.[52]

Paddle Florida, Inc.

Paddle Florida, Inc., is a nonprofit corporation[53] organized to support canoeing and kayaking in Florida. The organization supports multi-day paddling/camping trips in each of Florida's five water management districts, showcasing the state's natural beauty and rich cultural heritage while promoting water conservation, wildlife preservation, springs restoration, and waterways protection. Paddle Florida seeks to promote Florida as an international destination for nature-based tourism.[54]

Scenic Walton, Inc.

Scenic Walton, Inc., is a nonprofit corporation[55] created in 2008 as a chapter of Scenic America. The organization works to preserve Walton County's scenic beauty by improving landscaping along commercial corridors, working towards underground utilities, promoting pedestrian and cycling paths, removing litter, and controlling billboards and signage.[56]

Swimming Pool Education and Safety Foundation, Inc.

Swimming Pool Education and Safety Foundation, Inc., also known as Florida Swims Foundation,[57] is a nonprofit organization that funds swimming lessons and distributes safety information throughout the state. The foundation awards scholarships to college students and provides grants for swimming lessons. The foundation also collaborates with local organizations, such as the YMCA and Boys & Girls Clubs, to bring water safety measures and swimming lessons to families with young children.[58]

III. Effect of Proposed Changes:

Existing Specialty License Plates (Section 3)

Florida Indian River Lagoon Specialty License Plate

The Indian River Lagoon (IRL) was formally established as an Estuary of National Significance and joined the National Estuary Program in 1991 under the sponsorship of the St. Johns and

[51] *Id*.
[52] Department of State, Sunbiz.org, Detail by Entity Name, *Florida Society for Ethical Ecotourism, Inc.*, Document No. N01000000235.
[53] Department of State, Sunbiz.org, Detail by Entity Name, *Paddle Florida, Inc.*, Document No. N11000000503.
[54] Paddle Florida, http://www.paddleflorida.org/ (last visited April 4, 2021).
[55] Department of State, Sunbiz.org, Detail by Entity Name, Scenic Walton, Inc., Document No. N08000009559.
[56] Scenic Walton, https://www.scenic.org/chapters-affiliates/walton/ (last visited April 7, 2021),
[57] Department of State, Sunbiz.org, Detail by Entity Name, *Swimming Pool Education And Safety Foundation Inc.*, Document No. N07000000242; and Fictitious Name Detail, *Florida Swims*, Registration No. G19000066440.
[58] Florida Swimming Pool Association, *SPESF*, *https://floridapoolpro.portals7.gomembers.com/About/FloridaSwimsFoundation.aspx* (last visited April 7, 2021).

South Florida Water Management Districts. The IRL National Estuary Program is part of a national network of 28 estuary programs established under the Federal Clean Water Act and administered nationally by the United States Environmental Protection Agency.[59]

The IRL Council was established in February 2015 as a special district of Florida. The IRL Council includes representatives of five counties bordering the lagoon (Volusia, Brevard, St. Lucie, and Martin counties and the Indian River County Lagoon Coalition), the St. Johns River and South Florida Water Management Districts, and the Florida Department of Environmental Protection.[60]

The bill amends s. 320.08058(10), F.S., to direct the distribution of the first $5 million collected each year to the IRL Council, instead of the St. Johns River Water Management District. The bill provides that the Legislature intends for the license plate to provide a continuous source of funding in the area due to:

- The creation of the IRL Council and subsequent adoption of a comprehensive conservation and management plan in 2019 developed by the council and local, state, and federal partners;
- The St. Johns Water Management District continued support of competitive cost-share projects in counties administered by the council; and
- The legislative support of the restoration efforts of the IRL National Estuary Program and its partners.

IRL Council is responsible for accounting for the transfer and distribution of proceeds from the sale of the plate. The bill directs the IRL Council to administer projects in Volusia, Brevard, and Indian River Counties from funds derived from the appropriate percentage of license plate revenues and for the South Florida Water Management District to administer projects in St. Lucie, Martin, and Palm Beach Counties. The bill expands the use of the funds to include monitoring projects.

Specific to counties, the bill provides that:

- In Volusia County, project implementation may occur in all estuarine waters extending north to and including the IRL National Estuary Program's Indian River Lagoon-Halifax River planning boundary amendments that include the Tomoka Basin.
- In Palm Beach County, second priority is amended to be given to projects within adjacent estuarine waters, *including* the Loxahatchee River and other tributaries to the Indian River Lagoon.

The bill provides that it is the intent of the Legislature that proceeds from the sale of the plate not be used as replacement funds for other available funding sources, not just funds from the Surface Water Improvement and Management Act. The proceeds of the plate must be used solely for the enhancement of the lagoon *and* tributaries in the IRL watershed, as defined by the IRL National Estuary Program project boundary defined in the IRL Comprehensive Conservation and Management Plan or as provided in the bill.

[59] One Lagoon, *The Indian River Lagoon NEP*, https://onelagoon.org/irlnep/ (last visited April 4, 2021).
[60] *Id*.

Wildlife Foundation of Florida Specialty License Plate

The bill amends s. 320.08058(46), F.S., to update the name of the Florida Fish and Wildlife Conservation Commission citizen support organization to the Fish & Wildlife Foundation of Florida, Inc. The bill expands the uses of the proceeds from the sale of the plate to be used to fund programs and projects that promote hunting and shooting sports. The bill allows the proceeds to be *encumbered* instead of *used* for the allowed activities. Unencumbered funds from one year may be carried over to the following year, but must be spent within 2 years of receipt or dedicated to a project within 2 years of receipt in the form of a contract, a grant award, or an approved plan by the governing board of the Fish & Wildlife Foundation of Florida, Inc.

Divine Nine Specialty License Plate

The mission of the Association to Preserve African American Society, History, and Tradition is to collect, preserve, and exhibit historical artifacts and information which illustrate the meaningful role African Americans have played in Florida more specifically in the Orlando area. The association operates the Wells' Built Museum and "is dedicated to collecting and exhibiting memorabilia which commemorate the achievements of African Americans educators, athletes, musicians, religious, civic, and cultural leaders."[61]

The bill amends s. 320.08058(101), F.S., to repeal distributions to the various Divine Nine organizations and instead directs the distribution of 10 percent of the proceeds from sales of the plate to the Association to Preserve African-American Society, History, and Tradition, Inc., solely for the marketing of the plate.

The bill also limits eligibility for issuance of a Divine Nine license plate to a person who is a resident of Florida, the registered owner of a motor vehicle, and a member of the applicable organization. The person must also present proof of membership in the organization, which may be established by:

- A card distributed by the organization indicating the person's membership in the organization; or
- A written letter on the organization's letterhead which is signed by the organization's national president or his or her designated official and which states that the person was inducted into the organization.

Proof of membership in an eligible organization is required only for initial issuance of a Divine Nine license plate. A person need not present such proof for renewal of the license plate.

In addition, a Divine Nine license plate:

- May be personalized; and
- May not be transferred between vehicle owners.

[61] Department of State, Sunbiz.org, Detail by Entity Name, *The Association to Preserve African American Society, History and Tradition, Inc.*, Document No. N51255. GuideStar, *Association to Preserve African American Society, History and Tradition, Inc.*, https://www.guidestar.org/profile/59-3205047 (last visited April 4, 2021).

New Specialty License Plates (Section 3)

Florida State Parks License Plate

The bill creates the Florida State Parks license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Explore Our State Parks" appears at the bottom of the plate.

The annual use fees are distributed to the Florida State Parks Foundation, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder for preserving, protecting, sustaining, and growing Florida state parks.

Support Healthcare Heroes License Plate

The bill creates the Support Healthcare Heroes license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Support Healthcare Heroes" appears at the bottom of the plate.

The annual use fees are distributed annually into the Emergency Medical Services Trust Fund within the Department of Health to provide financial support for prehospital medical services pursuant to s. 401.113, F.S.

Inter Miami CF License Plate

The bill creates the Florida Inter Miami CF license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Inter Miami CF" appears at the bottom of the plate.

The annual use fees are distributed to the Inter Miami CF Foundation Corporation, a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to plan and execute sports-based development and direct-service community programs, initiatives, and events.

Currently, it appears that Florida Inter Miami CF is registered with the state as a for-profit corporation, but its articles state that it is a nonprofit, charitable organization. The filing with the state may be incorrect.

Toastmasters License Plate

The bill creates the Florida Toastmasters International license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "www.Toastmasters.org" appears at the bottom of the plate.

The annual use fees are distributed to the Ralph C. Smedley Memorial Fund of Toastmasters International to be used as follows:

- Twenty-five percent to develop charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in established Toastmasters programs.
  - Up to 5 percent of this distribution for administrative costs.
- Seventy-five percent proportionally redistributed to the divisions of Districts 47, 48, 77, and 84 of Toastmasters International which reside in this state.
  - Up to 5 percent of this distribution to market the plate.
  - The remainder for educators, nonprofits, governmental organizations, scholarships, materials, and computers and other equipment for the purpose of implementing the charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in the established Toastmasters programs.

Gopher Tortoise License Plate

The bill creates the Florida Gopher Tortoise license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect the Gopher Tortoise" appears at the bottom of the plate.

The annual use fees are distributed to the Wildlands Conservation, Inc., to fund gopher tortoise and commensal species research, education, and conservation, as well as upland habitat protection, restoration, and management in this state. Distributions must be used as follows:
- Up to 10 percent for administrative costs of the gopher tortoise protection program and to market the plate.
- The remainder to use and distribute to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise and upland habitat research, conservation, and management.

Orlando United License Plate

The bill creates the Florida Orlando United license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Orlando United" appears at the bottom of the plate.

The bill directs the annual use fees to be distributed as follows:
- Five percent to the Mental Health Association of Central Florida, Inc., to market the plate.
- Thirty-one percent to the Mental Health Association of Central Florida, Inc.
  - Up to 5 percent of this distribution for administrative costs.
  - The remainder to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.
- Two percent to onePULSE Foundation, Inc., to market the plate.
- Thirty-one percent to onePULSE Foundation, Inc.
  - Up to 5 percent of this distribution for administrative costs.
  - The remainder to support the construction and maintenance of the onePULSE Foundation Memorial.
- Thirty-one percent to 26 Health, Inc.
  - Up to 5 percent of this distribution for administrative costs.

- The remainder to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

Biscayne Bay License Plate

The bill creates the Florida Biscayne Bay license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect Biscayne Bay" appears at the bottom of the plate.

The annual use fees are distributed to the Miami Foundation, Inc., to be used as follows:

- Up to 10 percent:
  - For direct reimbursement of administrative costs, startup costs, and costs incurred in the development approval process of the plate; all vendors associated with administrative costs must be selected by competitive bid; and
  - To promote and market the plate.
- The remainder to raise awareness and support the mission and efforts of conserving Biscayne Bay. The Miami Foundation Board of Trustees must approve and is accountable for all such expenditures.

Disease Prevention & Early Detection License Plate

The bill creates the Florida Disease Prevention & Early Detection license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Disease Prevention & Early Detection" appears at the bottom of the plate.

The annual use fees are distributed to the Women's Breast & Heart Initiative, Florida Affiliate, Inc., to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

Honor Flight License Plate

The bill creates the Florida Honor Flight license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Honor Flight" appears at the bottom of the plate.

The annual use fees are distributed equally among the Honor Flight Network hubs in this state to be used as follows:

- Up to 10 percent to promote and market the plate.
- The remainder to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

The bill also amends s. 320.08056(10)(a), F.S., (**Section 2**) to exclude the Honor Flight license plate from the restriction that all fees and any interest earned from the fees may be expended only for use in this state.

Ethical Ecotourism License Plate

The bill creates the Florida Ethical Ecotourism license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and words approved by the DHSMV appear at the bottom of the plate.

The annual use fees are distributed equally between the Florida Society for Ethical Ecotourism and Paddle Florida, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder:
  - By Florida Society for Ethical Ecotourism to provide environmental education and awareness that encourage behaviors that contribute to the sustainability of Florida's natural ecosystems and resources; and
  - By Paddle Florida, Inc., to raise awareness about water conservation, wildlife preservation, restoration of springs, and protection of waterways in Florida.

Protect Marine Wildlife License Plate

The bill creates the Protect Marine Wildlife license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect Marine Wildlife" appears at the bottom of the plate.

The annual use fees are distributed to the Protect Wild Dolphins Alliance, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to promote and market the plate.
- The remainder to fund the organization's conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

Margaritaville License Plate

The bill creates the Margaritaville license plate. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Margaritaville" appears at the bottom of the plate.

The annual use fees are distributed to the SFC Charitable Foundation, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to promote and market the plate.
- The remainder to be used to:
  - Provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for purposes of recovery, rebuilding, and future sustainability; and
  - Promote and inspire local grassroots leaders who work to improve the quality of life in those impacted communities and other communities in this state.

30A.com/Scenic Walton License Plate

The bill creates the 30A.com/Scenic Walton license plate. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Support Scenic Walton" appears at the bottom of the plate.

The annual use fees are distributed to Scenic Walton, Inc., to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder to preserve and enhance the beauty and safety of Walton County.

Florida Swims License Plate

The bill creates the Florida Swims license plate. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Swim for Life" appears at the bottom of the plate.

The annual use fees are distributed to the Swimming Pool and Education Foundation, Inc., doing business as Florida Swims, to be used as follows:

- Up to 10 percent for administrative costs and to market the plate.
- The remainder to promote swimming pool and water safety and to provide grants and scholarships for childhood swimming lessons in the state.

Special License Plates (Section 4)

The bill amends s. 320.0807(5), F.S., to repeal the time limitation on applicants for a license plate stamped "Senate President" and "House Speaker." Currently, limits the plate to applicants that served as President of the Senate or Speaker of the House of Representatives prior to January 1, 2021.

Military Service Special License Plates (Section 5)

Army of Occupation Veterans License Plate

The bill amends s. 320.089, F.S., to create the Army of Occupation Veterans license plate. An owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle[62] which is not used for hire or commercial use can apply to the DHSMV for such a plate. The applicant must be:

- A resident of Florida.
- A current or former member of the United States military who was permanently assigned to occupation forces in specific overseas locations during the Cold War between May 9, 1945, and October 2, 1990.

The applicant must also provide proof of active membership or former active duty status during the period at one of the locations and pay the license tax for the vehicle to be issued a plate. Proof that the applicant was awarded the Army of Occupation Medal will be sufficient to establish eligibility for the license plate.

The plate will be stamped with the words "Army of Occupation" and a likeness of the Army of Occupation Medal, followed by the registration license number of the plate.

[62] As provided for in s. 320.08(9)(c) or (d), F.S.

Miscellaneous

The bill amends s. 320.08053(3)(b), F.S., (**Section 1**) to clarify that the DHSMV may not *issue* any new specialty license plates, instead of *make* the plates available for design or issuance, until there are less than 150 issued specialty license plates.

The bill has an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None. Section 320.08056(3)(d), F.S., currently provides that the annual use fee for a specialty license plate is $25, except as otherwise provided.

B. Private Sector Impact:

Once the license plates goes into production, organizations authorized for a distribution from the proceeds of the sale of the license plate will benefit.

Current law prohibits the redesign of a specialty license plate unless the inventory of the license plate has been depleted. However, the organization may purchase the remaining inventory of the specialty license plate from the DHSMV at the DHSMV's cost.[63] Should any of the organizations associated with specialty license plates that have been amended desire to redesign their plates they may be required to purchase the remaining inventory

[63] Section 320.08056(9), F.S.

of its specialty license plates at the DHSMV's cost prior to the authorized redesign of these specialty license plates.

C. Government Sector Impact:

Programming will be required initially to allow the DHSMV to accept vouchers, but the DHSMV may not finalize a design or issue the new license plate if the 150 cap is reached prior to the license plate selling 3,000 vouchers. The amount of programming is determined by the number of plates and the number of distributions per plate. One specialty license plate with a single distribution recipient will require between 200 to 250 hours of programming. Additional distributions will generally require an additional 5 to 10 hours per distribution.[64]

The DHSMV is authorized to retain revenues from the first proceeds of specialty license plate sales to defray departmental expenditures related to the specialty license plate program.[65]

The first $100,000 of the revenue generated annually from the issuance of special use plates under s. 320.089, F.S., (to now include the Army of Occupation Veterans license plate) is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act to be used by the home for the benefit of the home and its residents.[66] Any additional revenue is deposited into the Operations and Maintenance Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[67] There may be indeterminate, positive fiscal impacts to these trust funds to the extent that eligible individuals choose to purchase these license plates.

Additionally, the DHSMV states the cost to perform an audit every 3 years of each specialty license plate may result in an insignificant workload impact that can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[64] DHSMV, *2021 Agency Legislative Bill Analysis SB 676*, February 25, 2021 (on file with the Senate Committee on Transportation).
[65] Section 320.08056(7), F.S.
[66] Section 296.38(2), F.S., requires the home to use the funds in the Grants and Donations Trust Fund "for the common benefit of the residents of the home, such as recreational equipment, improved facilities, recreational supplies, and goods and services offered or available to all residents."
[67] Section 320.089(1), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08053, 320.08056, 320.08058, 320.0807, and 320.089.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Creates two new specialty license plates (30A and Florida Swims)
- Removes unnecessary language related to allowing placement of plates on vehicles for the Divine Nine plate.
- Reduces the allowed marketing amount for the Gopher Tortoise Plate from 15 percent to 10 percent, consistent with other plates;
- Corrects the reference to Two Spirit Health Services, Inc., to 26 Health, Inc., as a recipient from the proceeds of the Orlando United plate.
- Removes obsolete language and specifically directs the distributions to the organizations for the Protect Marine Wildlife and Margaritaville plates.
- Clarifies that DHSMV does not have to *issue* any new specialty license plates until a sufficient number of plates are discontinued.

CS by Transportation on March 16, 2021:

- Creates 12 new specialty license plates;
- Creates one new military plate for recipients of the Army of Occupation Award;
- Amends three existing specialty license plates; and
- Amends the requirements for the issuance of certain special license plates.

B. Amendments:

None.

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

By the Committee on Transportation; and Senators Baxley, Pizzo, and Harrell

596-02900-21 2021676c1

A bill to be entitled

An act relating to special and specialty license plates; amending s. 320.08056, F.S.; providing an exception to the requirement that specialty license plate annual use fees and interest earned from those fees be expended only in this state; amending s. 320.08058, F.S.; revising legislative intent; revising distribution and application of annual fees from the sale of Florida Indian River Lagoon license plates; revising distribution of annual use fees from the sale of Wildlife Foundation of Florida license plates; revising distribution of annual use fees from the sale of Divine Nine license plates; providing eligibility requirements for issuance of such plates; authorizing such plates to be personalized and to be displayed on certain vehicles; prohibiting the transfer of such plates between vehicle owners; requiring the Department of Highway Safety and Motor Vehicles to develop certain specialty license plates; providing for the distribution and use of fees collected from the sale of such plates; amending s. 320.0807, F.S.; revising requirements for the issuance of certain special license plates; amending s. 320.089, F.S.; authorizing the department to issue Army of Occupation license plates; specifying qualifications and requirements for the license plates; providing an effective date.

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

596-02900-21 2021676c1

Section 1. Paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraph (3)(d) for the Support Our Troops, ~~and~~ American Legion, and Honor Flight license plates; paragraphs (4)(b), (q), and (v) for the Florida Salutes Veterans, United States Marine Corps, and Military Services license plates, respectively; and s. 320.0891 for the U.S. Paratrooper license plate.

Section 2. Subsections (10), (46), and (101) of section 320.08058, Florida Statutes, are amended, and subsections (112) through (123) are added to that section, to read:

320.08058 Specialty license plates.—

(10) FLORIDA INDIAN RIVER LAGOON LICENSE PLATES.—

(a) Because the Indian River Lagoon system has been targeted by the state as a priority water body for restoration and preservation since the 1987 Surface Water Improvement and Management Act, and because the St. Johns River and South Florida Water Management Districts have joined with local,

regional, and state partners to create the Indian River Lagoon (IRL) Council by Interlocal Agreement in 2015 to serve as the host agency for the Indian River Lagoon National Estuary Program, and because the program has worked with local, state, and federal partners to develop and adopt the Indian River Lagoon Comprehensive Conservation and Management Plan in 2019, and because the St. Johns River Water Management District has been distributing funds collected from the plate from Volusia, Brevard, and Indian River Counties to support competitive local cost-share projects in each of these counties administered by the IRL Council, including ~~jointly developed a management plan that includes~~ water quality improvement, habitat restoration, and public awareness and education, and because the United States Environmental Protection Agency has declared the Indian River Lagoon to be an estuary of national significance, and because coastal lagoon activities relating to saltwater fishing account for a multibillion dollar economic base, and because the Legislature supports the restoration efforts of the Indian River Lagoon National Estuary Program and its partners ~~water management districts~~, the Legislature intends for the ~~establishes a~~ Florida Indian River Lagoon license plate to provide ~~for the purpose of providing~~ a continuous funding source to support this worthwhile effort and to heighten public awareness of this economically significant resource. Florida Indian River Lagoon license plates must contain the fish "snook," ~~which has been used as the Indian River Lagoon Surface Water Improvement and Management logo, suspended over seagrass,~~ and must bear the colors and design approved by the department.

(b) The license plate annual use fees are to be distributed

annually as follows:

1. The first $5 million collected annually must be transferred to the IRL Council, which must separately ~~St. Johns River Water Management District. The district shall~~ account for the transferred ~~these~~ funds, and such ~~separate from all other funds received. These~~ funds must be distributed as follows:

a. Based on Florida Indian River Lagoon license plate sales data from each county tax collector for Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach Counties, each county's total number of Florida Indian River Lagoon license plates sold between October 1 and September 30 must represent a percentage of the six-county total, calculated as follows: the total number sold for county A divided by the total number sold for counties A, B, C, D, E, and F is multiplied by 100. The percentage determined for St. Lucie, Martin, and Palm Beach Counties must be totaled, and that total percentage of the statewide Florida Indian River Lagoon license plate revenues must be transferred to the South Florida Water Management District special Indian River Lagoon License Plate Revenue Account and distributed proportionately among St. Lucie, Martin, and Palm Beach Counties. The remaining funds in the IRL Council ~~St. Johns River Water Management District~~ Revenue Account must be divided proportionately between Volusia, Brevard, and Indian River Counties.

b. The IRL Council shall administer ~~Each water management district is responsible for administering~~ projects in Volusia, Brevard, and Indian River ~~its respective~~ Counties from funds derived from ~~funded with~~ the appropriate percentage of license plate revenues. The South Florida Water Management District

shall administer projects in St. Lucie, Martin, and Palm Beach Counties.

2. Up to 5 percent of the proceeds from the annual use fee may be used for continuing promotion and marketing of the license plate.

3. Any additional fees must be deposited into the General Revenue Fund. Fees are not to be deposited into the general revenue funds of the IRL Council ~~water management districts~~.

(c) The application of Florida Indian River Lagoon license plate annual use fees is to be administered by the IRL Council ~~St. Johns River~~ and the South Florida Water Management District ~~Districts~~ for Indian River Lagoon projects ~~and~~ in accordance with their contracting and purchasing policies and procedures, with the following restrictions:

1. An annual amount of the total license plate use fees must be earmarked for each of the six lagoon basin counties, as determined in sub-subparagraph (b)1.a., to be expended in those counties on habitat restoration, including water quality improvement, monitoring, and environmental education projects. At least 80 percent of the use fees must be used for restoration projects, and not more than 20 percent may be used for environmental education and monitoring projects in each county. These project funds may serve as matching funds for other local, state, or federal funds or grants. Unencumbered funds from one year may be carried over to the following year but must be dedicated to a project within 2 years in the form of a contract, an interlocal agreement, or an approved plan by the governing board of the respective district.

2. Florida Indian River Lagoon license plate annual use

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fees may not be used for administrative salaries or overhead within the IRL Council or the South Florida Water Management District; ~~the water management districts, nor~~ for any general coordination fees or overhead that ~~outside of the districts which~~ is not specifically related to a project;~~, nor~~ for any projects which are considered to be research, studies, inventories, or evaluations; or~~, nor~~ for administrative salaries or overhead related to environmental education or ongoing regular maintenance. Annual use fees may be used for acquisition of rights-of-way specific to the implementation of restoration or improvement projects, if acquisition expenditures do not exceed 20 percent of a county's appropriation.

3. In Volusia County, project implementation may occur in all estuarine waters extending north to and including the Indian River Lagoon National Estuary Program's Indian River Lagoon-Halifax River planning boundary amendments that include the Tomoka Basin.

4. In Palm Beach County, first priority must be given to projects within the Indian River Lagoon. Second priority must be given to projects within adjacent estuarine waters, including the Loxahatchee River and other tributaries to the Indian River Lagoon.

(d) It is the intent of the Legislature that revenues generated by the Florida Indian River Lagoon license plate annual use fees must not be used as replacement funds for other available funding sources ~~Surface Water Improvement and Management Act funds~~, but must be used solely for the enhancement of the Indian River Lagoon and tributaries in the Indian River Lagoon watershed as defined by the Indian River

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Lagoon National Estuary Program project boundary defined in the Indian River Lagoon Comprehensive Conservation and Management Plan or as provided in this section ~~area~~.

(46) WILDLIFE FOUNDATION OF FLORIDA LICENSE PLATES.—

(a) The department shall develop a Wildlife Foundation of Florida license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Wildlife Foundation of Florida" must appear at the bottom of the plate.

(b) The annual revenues from the sales of the license plate shall be distributed to the Fish & Wildlife Foundation of Florida, Inc., a citizen support organization created pursuant to s. 379.223. Such annual revenues must be used in the following manner:

1. Seventy-five percent must be encumbered ~~used~~ to fund programs and projects within the state that preserve open space and wildlife habitat, promote conservation, promote hunting and shooting sports, improve wildlife habitat, and establish open space for the perpetual use of the public. Unencumbered funds from one year may be carried over to the following year, but must be spent within 2 years of receipt or dedicated to a project within 2 years of receipt in the form of a contract, a grant award, or an approved plan by the governing board of the Fish & Wildlife Foundation of Florida, Inc.

2. Twenty-five percent may be used for promotion, marketing, and administrative costs directly associated with operation of the foundation.

~~(c) When the provisions of subparagraph (b)1. are met, those annual revenues shall be used for the purposes of~~

~~subparagraph (b)2.~~

(101) DIVINE NINE LICENSE PLATES.—

(a) The department shall develop a Divine Nine license plate as provided in this section and s. 320.08053 using a standard template and a unique logo, graphic, or color for each of the organizations listed in sub-subparagraphs (b)3.a.-i. ~~(b)2.a.-i.~~ The plate must bear the colors and design approved by the department~~,~~ and must include the official logo, graphic, or color as appropriate for each organization. The word "Florida" must appear at the top of the plate, and the words "Divine Nine" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed as follows:

1. Five percent of the proceeds shall be distributed to the United Negro College Fund, Inc., for college scholarships for Florida residents attending Florida's historically black colleges and universities.

2. Ten percent of the proceeds shall be distributed to the Association to Preserve African-American Society, History, and Tradition, Inc., solely for the marketing of the plate.

3.~~2.~~ The remaining 85 ~~95~~ percent of the proceeds shall be distributed to one of the following organizations as selected by the purchaser of the plate who, upon fulfilling the requirements of paragraph (c), shall receive a license plate with the logo, graphic, or color associated with the appropriate recipient organization:

a. Alpha Phi Alpha Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Florida Federation of Alpha Chapters, Inc., to promote community

awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Florida Federation of Alpha Chapters, Inc., solely for the marketing of the plate.~~

b. Alpha Kappa Alpha Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Alpha Kappa Alpha Educational Advancement Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Alpha Kappa Alpha Educational Advancement Foundation, Inc., solely for the marketing of the plate.~~

c. Kappa Alpha Psi Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Southern Province of Kappa Alpha Psi Fraternity, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Southern Province of Kappa Alpha Psi Fraternity, Inc., solely for the marketing of the plate.~~

d. Omega Psi Phi Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the State of Florida Omega Friendship Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the State of Florida Omega Friendship Foundation, Inc., solely for the marketing of the plate.~~

e. Delta Sigma Theta Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Delta Research and Educational Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Delta Research and Educational Foundation, Inc., solely for the marketing of the plate.~~

f. Phi Beta Sigma Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the TMB Charitable Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the TMB Charitable Foundation, Inc., solely for the marketing of the plate.~~

g. Zeta Phi Beta Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Florida Pearls, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Florida Pearls, Inc., solely for the marketing of the plate.~~

h. Sigma Gamma Rho Sorority, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the Sigma Gamma Rho Sorority National Education Fund, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the Sigma Gamma Rho Sorority National Education Fund, Inc., solely for the~~

~~marketing of the plate.~~

i. Iota Phi Theta Fraternity, Inc.—

~~(I)~~ Eighty-five percent shall be distributed to the National Iota Foundation, Inc., to promote community awareness and action through educational, economic, and cultural service activities within this state.

~~(II) Ten percent shall be distributed to the National Iota Foundation, Inc., solely for the marketing of the plate.~~

(c)1. To be eligible for issuance of a Divine Nine license plate representing an organization listed in sub-subparagraphs (b)3.a.-i., a person must be a resident of this state who is the registered owner of a motor vehicle and who is a member of the applicable organization. The person must also present proof of membership in the organization, which may be established by:

a. A card distributed by the organization indicating the person's membership in the organization; or

b. A written letter on the organization's letterhead which is signed by the organization's national president or his or her designated official and which states that the person was inducted into the organization.

2. Proof of membership in an organization listed in sub-subparagraphs (b)3.a.-i. is required only for initial issuance of a Divine Nine license plate. A person need not present such proof for renewal of the license plate.

(d) A Divine Nine license plate:

1. May be personalized.

2. Notwithstanding any other law to the contrary, may be displayed on a privately owned passenger motor vehicle, pickup truck, boat, or pleasure motor vehicle, including, but not

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limited to, a recreational vehicle.

3. May not be transferred between vehicle owners.

License plates created pursuant to this subsection shall have their plate sales combined for the purpose of meeting the minimum license plate sales threshold in s. 320.08056(8)(a) and for determining the license plate limit in s. 320.08053(3)(b). License plates created pursuant to this subsection must be ordered directly from the department.

(112) FLORIDA STATE PARKS LICENSE PLATES.—

(a) The department shall develop a Florida State Parks license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Explore Our State Parks" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Florida State Parks Foundation, Inc., a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to be used to preserve, protect, sustain, and grow Florida state parks. Up to 10 percent of the proceeds may be used for marketing of the plate and costs directly associated with administration of the foundation.

(113) SUPPORT HEALTHCARE HEROES LICENSE PLATES.-

(a) The department shall develop a Support Healthcare Heroes license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Support Healthcare Heroes" must appear at

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the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed annually into the Emergency Medical Services Trust Fund within the Department of Health to provide financial support for prehospital medical services pursuant to s. 401.113.

(114) INTER MIAMI CF LICENSE PLATES.—

(a) The department shall develop an Inter Miami CF license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Inter Miami CF" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to Inter Miami CF Foundation Corporation, a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by Inter Miami CF Foundation Corporation to plan and execute sports-based development and direct-service community programs, initiatives, and events.

(115) TOASTMASTERS LICENSE PLATES.—

(a) The department shall develop a Toastmasters license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "www.Toastmasters.org" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Ralph C. Smedley Memorial Fund of Toastmasters International, a s. 501(c)(3) nonprofit

organization, of which:

1. Twenty-five percent shall be used to develop charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in established Toastmasters programs. Up to 5 percent of this distribution may be used for administrative expenses.

2. Seventy-five percent shall be proportionally redistributed to the divisions of Districts 47, 48, 77, and 84 of Toastmasters International which reside in this state. Up to 5 percent of this distribution may be used for marketing of the plate, and the remainder shall be used for educators, nonprofits, governmental organizations, scholarships, materials, and computers and other equipment for the purpose of implementing the charitable and educational programs for the indigent, homeless, visually and hearing disabled, incarcerated, and youth populations that are unable to afford or to participate in the established Toastmasters programs.

(116) GOPHER TORTOISE LICENSE PLATES.—

(a) The department shall develop a Gopher Tortoise license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect the Gopher Tortoise" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Wildlands Conservation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to fund gopher tortoise and commensal species research, education,

and conservation, as well as upland habitat protection, restoration, and management in this state. Up to 15 percent of the funds received by Wildlands Conservation, Inc., may be used for marketing of the plate and costs directly associated with the administration of the gopher tortoise protection program. Wildlands Conservation, Inc., shall use and distribute the funds to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise and upland habitat research, conservation, and management.

(117) ORLANDO UNITED LICENSE PLATES.—

(a) The department shall develop an Orlando United license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Orlando United" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed as follows:

1. Five percent shall be distributed to the Mental Health Association of Central Florida, Inc., to be used for marketing of the license plate.

2. Thirty-one percent shall be distributed to the Mental Health Association of Central Florida, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

3. Two percent shall be distributed to onePULSE Foundation, Inc., a charitable, nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, to be used for marketing of the

license plate.

4. Thirty-one percent shall be distributed to onePULSE Foundation, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to support the construction and maintenance of the onePULSE Foundation Memorial.

5. Thirty-one percent shall be distributed to Two Spirit Health Services, Inc. Of this amount, up to 5 percent may be used for administrative expenses, and the remainder shall be used to offer free personalized counseling to any person affected by the shooting at the Pulse nightclub in Orlando on June 12, 2016.

(118) BISCAYNE BAY LICENSE PLATES.—

(a) The department shall develop a Biscayne Bay license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect Biscayne Bay" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to The Miami Foundation, Inc., a Florida nonprofit corporation, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate and for direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process of the license plate. All vendors associated with administrative costs shall be selected by competitive bid.

2. The remaining fees shall be used to raise awareness and

support the mission and efforts of conserving Biscayne Bay. The Miami Foundation Board of Trustees must approve and is accountable for all such expenditures.

(119) DISEASE PREVENTION & EARLY DETECTION LICENSE PLATES.—

(a) The department shall develop a Disease Prevention & Early Detection license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Disease Prevention & Early Detection" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed to The Women's Breast & Heart Initiative, Florida Affiliate, Inc., a Florida nonprofit corporation, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by The Women's Breast & Heart Initiative, Florida Affiliate, Inc., to provide increased education and awareness relating to early detection, prevention, and screening of breast and heart issues.

(120) HONOR FLIGHT LICENSE PLATES.—

(a) The department shall develop an Honor Flight license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Honor Flight" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed equally among the Honor Flight Network hubs in this state, each of which is a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion

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and marketing of the license plate.

2. The remaining fees shall be used to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

(121) ETHICAL ECOTOURISM LICENSE PLATES.—

(a) The department shall develop an Ethical Ecotourism license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and words approved by the department must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate must be distributed equally between the Florida Society for Ethical Ecotourism and Paddle Florida, Inc., each of which may use up to 10 percent of such proceeds for administrative costs and the marketing of the plate. The remaining proceeds must be used by the Florida Society for Ethical Ecotourism to provide environmental education and awareness that encourage behaviors that contribute to the sustainability of Florida's natural ecosystems and resources and by Paddle Florida, Inc., to raise awareness about water conservation, wildlife preservation, restoration of springs, and protection of waterways in this state.

(122) PROTECT MARINE WILDLIFE LICENSE PLATES.—

(a) The department shall develop a Protect Marine Wildlife license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the

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plate, and the words "Protect Marine Wildlife" must appear at the bottom of the plate.

(b)1. The department shall retain all annual use fees from the sale of the plate until all startup costs for developing and issuing the plate have been recovered.

2. Thereafter, up to 10 percent of the annual use fee revenue may be used for administration, promotion, and marketing of the specialty license plate. All remaining proceeds shall be used by the Protect Wild Dolphins Alliance, Inc., to fund its conservation, research, and educational programs that focus on the conservation of Florida's threatened and protected marine wildlife species.

(123) MARGARITAVILLE LICENSE PLATES.—

(a) The department shall develop a Margaritaville license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the word "Margaritaville" must appear at the bottom or the side of the plate.

(b)1. The department shall retain all annual use fees from the sale of the plate until all startup costs for developing and issuing the plate have been recovered.

2. Thereafter, up to 10 percent of the annual use fee revenue may be used for administration, promotion, and marketing of the specialty license plate. All remaining proceeds shall be used by the SFC Charitable Foundation, Inc., to provide grants to nonprofit organizations in communities impacted by natural or manmade disasters for purposes of recovery, rebuilding, and future sustainability and to promote and inspire local

grassroots leaders who work to improve the quality of life in those communities and other communities in this state.

Section 3. Subsection (5) of section 320.0807, Florida Statutes, is amended to read:

320.0807 Special license plates for Governor and federal and state legislators.—

(5) Upon application by any current or former President of the Senate and payment of the fees prescribed by s. 320.0805, the department may issue a license plate stamped "Senate President" followed by the number assigned by the department or chosen by the applicant if it is not already in use. Upon application by any current or former Speaker of the House of Representatives and payment of the fees prescribed by s. 320.0805, the department may issue a license plate stamped "House Speaker" followed by the number assigned by the department or chosen by the applicant if it is not already in use. ~~The applicant must have served as President of the Senate or Speaker of the House of Representatives prior to January 1, 2021.~~

Section 4. Section 320.089, Florida Statutes, is amended to read:

320.089 Veterans of the United States Armed Forces; members of National Guard; survivors of Pearl Harbor; Purple Heart medal recipients; Bronze Star recipients; active or retired United States Armed Forces reservists; Combat Infantry Badge, Combat Medical Badge, or Combat Action Badge recipients; Combat Action Ribbon recipients; Air Force Combat Action Medal recipients; Distinguished Flying Cross recipients; former prisoners of war; Korean War Veterans; Vietnam War Veterans; Operation Desert

Shield Veterans; Operation Desert Storm Veterans; Operation Enduring Freedom Veterans; Operation Iraqi Freedom Veterans; Women Veterans; World War II Veterans; ~~and~~ Navy Submariners; and Army of Occupation Veterans; special license plates; fee.—

(1)(a) Each owner or lessee of an automobile or truck for private use or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, who is a resident of the state and a veteran of the United States Armed Forces, a Woman Veteran, a World War II Veteran, a Navy Submariner, an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, a recipient of the Bronze Star, an active or retired member of any branch of the United States Armed Forces Reserve, or a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, upon application to the department, accompanied by proof of release or discharge from any branch of the United States Armed Forces, proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof of being a Purple Heart medal recipient, proof of being a Bronze Star recipient, proof of active or retired membership in any branch of the United States Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., proof of being a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, and

upon payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial numbers prescribed by s. 320.06, is stamped with the words "Veteran," "Woman Veteran," "WWII Veteran," "Navy Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," "Bronze Star," "U.S. Reserve," "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," "Air Force Combat Action Medal," or "Distinguished Flying Cross," as appropriate, and a likeness of the related campaign medal or badge, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

(b) The military members listed in paragraph (a) are eligible to be issued special veteran's motorcycle license plates. The veteran's motorcycle license plate design shall be the same as the design for the motor vehicle "Veteran" and "Woman Veteran" special license plate. The word "Veteran" or "Woman Veteran" shall be displayed at the bottom of the motorcycle license plate.

(c) Notwithstanding any other provision of law to the contrary, beginning with fiscal year 2002-2003 and annually thereafter, the first $100,000 in general revenue generated from the sale of license plates issued under this section shall be deposited into the Grants and Donations Trust Fund, as described in s. 296.38(2), to be used for the purposes established by law for that trust fund. Any additional general revenue generated from the sale of such plates shall be deposited into the

Operations and Maintenance Trust Fund within the Department of Veterans' Affairs and used to support program operations that benefit veterans or the operation, maintenance, or construction of domiciliary and nursing homes for veterans, subject to the requirements of chapter 216.

(d) Any revenue generated from the sale of Woman Veteran license plates must be deposited into the Operations and Maintenance Trust Fund administered by the Department of Veterans' Affairs pursuant to s. 20.375(3) and must be used solely for the purpose of creating and implementing programs to benefit women veterans. Notwithstanding any provisions of law to the contrary, an applicant for a Pearl Harbor Survivor license plate or a Purple Heart license plate who also qualifies for a disabled veteran's license plate under s. 320.084 shall be issued the appropriate special license plate without payment of the license tax imposed by s. 320.08.

(2) Each owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use who is a resident of this state and who is a former prisoner of war, or his or her unremarried surviving spouse, upon application to the department, shall be issued a license plate as provided in s. 320.06, stamped with the words "Ex-POW" followed by the serial number. Each application shall be accompanied by proof that the applicant meets the qualifications specified in paragraph (a) or paragraph (b).

(a) A citizen of the United States who served as a member of the Armed Forces of the United States or the armed forces of

a nation allied with the United States who was held as a prisoner of war at such time as the Armed Forces of the United States were engaged in combat, or his or her unremarried surviving spouse, may be issued the special license plate provided for in this subsection without payment of the license tax imposed by s. 320.08.

(b) A person who was serving as a civilian with the consent of the United States Government, or a person who was a member of the Armed Forces of the United States while he or she was not a United States citizen and was held as a prisoner of war when the Armed Forces of the United States were engaged in combat, or his or her unremarried surviving spouse, may be issued the special license plate provided for in this subsection upon payment of the license tax imposed by s. 320.08.

(3) Each owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use who is a resident of this state and who is the unremarried surviving spouse of a recipient of the Purple Heart medal, upon application to the department accompanied by the payment of the required fees, shall be issued a license plate as provided in s. 320.06 which is stamped with the words "Purple Heart" and the likeness of the Purple Heart medal followed by the serial number. Each application shall be accompanied by proof that the applicant is the unremarried surviving spouse of a recipient of the Purple Heart medal.

(4) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a

recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States Armed Forces who was deployed and served in Korea during the Korean War as defined in s. 1.01(14), upon application to the department accompanied by proof of active membership or former active duty status during the Korean War and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Korean War Veteran" and a likeness of the Korean Service Medal, followed by the registration license number of the plate. Proof that the applicant was awarded the Korean Service Medal is sufficient to establish eligibility for the license plate.

(5) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was deployed and served in Vietnam during United States military deployment in Indochina, upon application to the department accompanied by proof of active membership or former active duty status during these operations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Vietnam War Veteran" and a likeness of the Vietnam Service Medal, followed by the registration

license number of the plate. Proof that the applicant was awarded the Vietnam Service Medal is sufficient to establish eligibility for the license plate.

(6) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d) which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was deployed and served in Saudi Arabia, Kuwait, or another area of the Persian Gulf during Operation Desert Shield or Operation Desert Storm; in Afghanistan during Operation Enduring Freedom; or in Iraq during Operation Iraqi Freedom, upon application to the department accompanied by proof of active membership or former active duty status during one of these operations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Operation Desert Shield," "Operation Desert Storm," "Operation Enduring Freedom," or "Operation Iraqi Freedom," as appropriate, and a likeness of the related campaign medal followed by the registration license number of the plate. Proof that the applicant was awarded the Southwest Asia Service Medal, Iraq Campaign Medal, Afghanistan Campaign Medal, or Global War on Terrorism Expeditionary Medal is sufficient to establish eligibility for the appropriate license plate.

(7) The owner or lessee of an automobile or truck for private use, a truck weighing not more than 7,999 pounds, or a recreational vehicle as specified in s. 320.08(9)(c) or (d)

which is not used for hire or commercial use who is a resident of this state and a current or former member of the United States military who was permanently assigned to occupation forces in specific overseas locations during the Cold War between May 9, 1945, and October 2, 1990, upon application to the department accompanied by proof of active membership or former active duty status during this period at one of these locations and payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the registration license number prescribed by s. 320.06, is stamped with the words "Army of Occupation" and a likeness of the subject medal, followed by the registration license number of the plate. Proof that the applicant was awarded the Army of Occupation Medal is sufficient to establish eligibility for the license plate.

Section 5. This act shall take effect October 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DENNIS BAXLEY
12th District

April 8, 2021

The Honorable Chair Kelli Stargel
420 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Stargel,

I would like to request CS/CS/SB 676 Special and Specialty License Plate be heard in the next Appropriation Committee meeting.

This bill creates the following license plates: Florida State Parks, Healthcare Heroes, Inter Miami CF, Toastmasters, Gopher Tortoise, Orlando United, Biscayne Bay, Margaritaville, Protect Marine Wildlife, Disease Prevention & Early Detection, Honor Flight, Ethical & Ecotourism, and one new special military license plate, Army of Occupation Veterans.

This bill also makes some technical changes to the Florida Indian River Lagoon, Wildlife Foundation of Florida and the Divine Nine license plates and some DHSMV issues.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis K. Baxley
Senate District 12

DKB/dd

REPLY TO:
❒ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
❒ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

6760
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Specialty License Plates

Name Jeffrey Sharkey

Job Title Resident, Capitol Alliance Group

Address 100 E College Ave # 1110
Street

TLH FL
City *State* *Zip*

Phone 850 224 1660

Email jeffsharkey@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MARGARITAVILLE - SINGING FOR CHANGE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 726 (629046)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Taddeo
SUBJECT:	Workforce and Career Planning for Students with Disabilities
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 726 modifies communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Specifically, the bill requires:

- An IEP team to start the transition process during the student's seventh grade year, rather than at age 14, and have an operational plan in place that is implemented on the first day of the student's first year in high school or when he or she attains the age of 16, whichever occurs first.
- School districts to provide:
  - Information to parents and students on the school district's high school-level transition courses and vocational, career, and collegiate programs available to such students and how to access such programs.
  - Applications for Division of Vocational Rehabilitation services and Agency Persons with Disabilities services to students and parents at IEP meetings.
- Parents to attest in writing that they understand the process for deferment of a high school diploma and whether the student will defer the receipt of such diploma to no later than May 15 of the year the student will graduate.
- The Florida Department of Education (FDOE) to conduct a review of existing transition services and programs to establish uniform best practices for such programs to deliver

appropriate employment, pre-employment, and independent living skills education to enrolled students. The FDOE must publish best practices by July 1, 2022.

The bill has no impact on state revenues or expenditures. See Section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

Students with Disabilities

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education (FAPE).[1] It is the responsibility of each state and school district to develop procedures consistent with the requirement that all students with disabilities have access to a FAPE in the least restrictive environment.[2]

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a federal law that makes available a FAPE to eligible children with disabilities throughout the nation and ensures special education and related services are provided to those children. For the 2018-19 school year, more than 7.5 million eligible infants, toddlers, children, and youth with disabilities were provided early intervention, special education, and related services.

The stated purpose of the IDEA is to:

- Ensure that all children with disabilities have a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- Ensure that the rights of children with disabilities and parents of such children are protected;
- Assist states, localities, educational service agencies, and federal agencies to provide for the education of all children with disabilities;
- Assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- Ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- Assess, and ensure the effectiveness of, efforts to educate children with disabilities.[3]

The Individuals with Disabilities Education Act (IDEA) requires that:

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[1] Section 1003.5716, F.S.
[2] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.
[3] U.S. Department of Education, *IDEA Individuals with Disabilities Education Act*, https://sites.ed.gov/idea/about-idea/#IDEA-Purpose (last visited March 4, 2021).

- Students with disabilities who meet the criteria of one or more categories of disability specified in law and who need special education services have an Individual Education Plan (IEP);
- The IEP must be reviewed at least annually and revised as necessary;
- Due process rights are guaranteed;
- Student records are confidential;
- Parents are important partners in the IEP process and must be invited to all IEP meetings; and
- Student evaluation procedures are nondiscriminatory.[4]

Workforce Innovation and Opportunity Act of 2014 (WIOA)

The WIOA[5] aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.[6] The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services[7] to eligible individuals with a disability who:[8]

- Are between 14 and 21 years of age; and
- Have a current IEP; or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.[9]

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973[10] prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded programs or activities may devise an accommodation plan[11] for someone with a disability to allow the disabled person's participation in the program.[12]

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[4] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.
[5] Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).
[6] *See* U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, https://www.doleta.gov/wioa/about/overview/ (last visited March 5, 2020).
[7] "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including postsecondary education; vocational training; integrated employment; supported employment; continuing and adult education; adult services; independent living, or community participation. Section 413.20(26), F.S.
[8] States may elect a lower minimum age or higher maximum age for receipt of pre-employment services under IDEA.Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, http://www.wintac.org/topic-areas/pre-employment-transition-services (last visited March 5, 2021).
[9] Section 413.310(1), F.S.
[10] Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794.
[11] The Section 504 plan identifies the services and accommodations necessary for a student to access instruction and may include accommodations in the classroom and for local and state assessments. Florida Department of Education, *Accommodations, Assisting Students with Disabilities* (2018), *available a*t http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf, at 3.
[12] *See Alexander v. Choate*, 469 U.S. 287 (1985).

The Individual Education Plan

The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.[13] To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team begins the process of identifying the need for transition services before the student with a disability attains the age of 14 years. When the student attains the age of 16, the IEP must be updated annually to include a statement:[14]

- Addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals;
- Of intent to receive a standard high school diploma and a Scholar or Merit designation as determined by the parent; and[15]
- Of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching such goals.

IEP teams are required to invite agencies,[16] with parental consent if the student has not reached the age of majority consent, that may provide services after the student exits high school and include consideration of pre-employment transition services[17] through the Division of Vocational Rehabilitation (VR)[18] in the development of post-secondary and career goals.[19]

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[13] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.
[14] Section 1003.5716(2), F.S.
[15] *See* Section 1003.4285, F.S.
[16] Agency involvement in transition planning is based on the nature of the student's needs and the student's disability, whether the student is potentially eligible for services and the student's postsecondary education and career goals, such as further education, training, employment and independent living. Agencies frequently involved in the planning and delivery of transition services in Florida include: Agency for Persons with Disabilities; Center for Independent Living; Department of Children and Families; Division of Blind Services; Division of Vocational Rehabilitation (VR); Social Security Administration; Local career and technical schools, Florida colleges and universities; and other adult service providers. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 47.
[17] VR provides pre-employment services, which may include career exploration counseling, workplace readiness training, community-based work experiences, self-advocacy instruction, peer mentoring and postsecondary educational counseling for students with a disability. *Id.* at 48.
[18] The Division of VR is housed in the FDOE. VR and VR services mean any service, provided directly or through public or private entities, to enable an individual or group of individuals to achieve an employment outcome, including, but not limited to, medical and vocational diagnosis, an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel; counseling, guidance, and work-related placement services; vocational and other training services; physical and mental restoration services; maintenance for additional costs incurred while participating in rehabilitation; interpreter services for individuals who are deaf; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment; occupational licenses; tools, equipment, and initial stocks and supplies; transportation; telecommunications, sensory, and other technological aids and devices; rehabilitation technology services; referral services designed to secure needed services from other agencies; transition services; on-the-job or other related personal assistance services; and supported employment services. Section 413.20(8) and (28), F.S.
[19] Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

Deferral of Receipt of a Standard Diploma

A student with a disability who's IEP requires special education, transition planning, transition services or related services through age 21 may defer the receipt of their standard diploma. After deferral, the student must also be enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the requirements for scholar designation, or a structured workstudy, internship or pre-apprenticeship program to continue to receive FAPE.[20]
The district must work with the student and his or her parent to review the benefits of deferring and describe in writing the services and programs available to the student who wishes to defer. The decision to defer is made by the parent, or the student if 18 or over, along with the rest of the IEP team, during the year the student is expected to meet all of the requirements for a standard diploma. This decision must be noted on the student's IEP and the approval of the parent or student, if appropriate, may be documented on a separate form from the IEP.[21]

The parent and student must be informed in writing by January 30 of the year in which the student is expected to meet graduation requirements, that:

- Failure to defer releases the school district of the obligation to provide FAPE;
- The deadline for acceptance or deferral is May 15 of that year; and
- Failure to attend the graduation ceremony does not constitute deferral.[22]

Students do not need to defer every year after this decision is made. The deferral will last until the student is no longer eligible for FAPE or chooses to receive their diploma.[23]

III. Effect of Proposed Changes:

The bill amends s. 1003.5716, to modify communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Such modifications may provide parents and students with additional information and time to make informed decisions to meet the student's post-secondary needs for success. Specifically, the bill requires:

- An IEP team to start the transition process during the student's seventh grade year rather than before age 14, and have an operational plan in place that is implemented on the first day of the student's first year in high school or when he or she attains the age of 16, whichever occurs first.
- School districts to provide information to parents and students on the school district's high school-level transition courses and vocational, career, and collegiate programs available to students with disabilities, and how to access such programs, including:
  - School-based transition programs;

[20] Section 1003.4282(11)(c)-(d), F.S. Fla. Admin. Code R. 6A-1.09963(6).
[21] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 64.
[22] *Id.*
[23] Students with disabilities are no longer eligible for FAPE if awarded a standard high school diploma or attained age 22. *Id.* Fla. Admin. Code R. 6A-1.09963(6).

  - The Florida Center for Students with Unique Abilities (FSCUA);[24] and
  - Programs and services provided by the Division of Vocational Rehabilitation (VR), the Agency for Persons with Disabilities (APD)[25], and the Division of Blind Services.[26]
- School districts to provide applications[27] for VR services and APD services to students and parents at IEP meetings.
- School district IEP teams to discuss with parents restrictions on information sharing that come into effect without the appointment of guardianship upon a student with a disability turning 18 years of age.
- Parents to attest in writing that they understand the process for deferment of a high school diploma and whether the student will defer the receipt of such diploma to no later than May 15 of the year the student will graduate.
- The Florida Department of Education (FDOE) to conduct a review of existing transition services and programs to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to enrolled students.
- The FDOE to establish and publish on its website uniform best practices by July 1, 2022.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[24] In 2016, the Florida Legislature established FCSUA located at the University of Central Florida. The purpose of FSCUA is to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities through degree, certificate, or nondegree programs and to establish statewide coordination of the dissemination of information regarding programs and services for students with disabilities. Section 1004.6495, F.S.

[25] The APD is responsible for providing all services provided to persons with developmental disabilities pursuant to current law, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to person with developmental disabilities. Section 20.197, F.S.

[26] The Division of Blind Services is responsible developing and implement a state plan for vocational rehabilitation services for individual who are blind. Section 413.011, F.S.

[27] When an application is signed and dated by a customer or his/her representative, a 60-day clock begins to determine eligibility under federal law. Since students with disabilities who are 14-21 years of age are potentially eligible for Pre-Employment Transition Services, an application for traditional VR services is not required to receive these services. Providing students an "application" may create the unintended consequence of starting the clock for the Division to determine eligibility for "vocational rehabilitation services," as opposed to "pre-employment transition services," when such eligibility determination would be premature and unnecessary. Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 726 has no impact on state revenues or expenditures.

However, the Florida Department of Education (FDOE) may incur costs associated with conducting a review of existing transition services and programs for students with disabilities and establishing uniform best practices for such programs. The FDOE may also incur costs establishing and publishing uniform best practices on its website.[28]

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.5716 of the Florida Statutes.

IX. Additional Information:

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

PCS 629046 by Appropriations (Recommended by Appropriations Subcommittee on Education):

[28] Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

The proposed committee substitute changes the title from "An act relating to individual education plan requirements for student with disabilities" to "An act relating to workforce and career planning for students with disabilities."

CS by Education on March 9, 2021:
The committee substitute conforms language in the bill to denote that the deadlines for implementation of the individual education plan by the first day of high school or by age 16 are subject to whichever occurs first.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	

The Committee on Appropriations (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 1003.5716, Florida Statutes, are amended to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means

individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's 7th grade year or when the student attains the age of 12, whichever occurs first, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school or attains the age of 14 years, whichever occurs first, in order for his or her postsecondary goals and career goals to be identified. The plan must be operational and in place to begin implementation on the first day of the student's first year in high school ~~when he or she attains the age of 16 years~~. This process must include, but is not limited to:

(a) Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting; ~~and~~

(b) Preparation for the student to graduate from high school with a standard high school diploma pursuant to s. 1003.4282 with a Scholar designation unless the parent chooses a Merit designation; and

(c) Provision of the information to the student and his or her parent of the school district's high school-level transition services, career and technical education, and collegiate programs available to students with disabilities and how to access such programs. Information shall also be provided on school-based transition programs and programs and services available through Florida's Center for Students with Unique

Abilities, the Florida Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services. Referral forms, links, and technical support contacts for these services must be provided to students and parents at IEP meetings.

(2) Beginning not later than the first IEP to be in effect when the student enters high school, attains the age of 14 ~~16~~, or when ~~younger if~~ determined appropriate by the parent and the IEP team, whichever occurs first, the IEP must include the following statements that must be updated annually:

(a) A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, as determined by the parent.

1. The statement must document discussion of the process for a student with a disability who meets the requirements for a standard high school diploma to defer the receipt of such diploma pursuant to s. 1003.4282(10)(c).

2. For the IEP in effect at the beginning of the school year the student is expected to graduate, the statement must include a signed statement by the parent or guardian, or the student if the student has reached the age of majority and rights have transferred to the student, that he or she understands the process for deferment and identifying if the student will defer the receipt of his or her standard high school diploma.

(b) A statement of intent to receive a standard high school diploma before the student attains the age of 22 and a description of how the student will fully meet the requirements in s. 1003.4282, including, but not limited to, a portfolio

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pursuant to s. 1003.4282(10)(b) which meets the criteria specified in State Board of Education rule. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

(c) A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching those goals.

Section 2. The Department of Education, in conjunction with the Project 10: Transition Education Network, shall conduct a review of existing transition services and programs for students with disabilities to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to students enrolled in such transition programs. The department must establish and publish on its website such uniform best practices no later than July 1, 2022.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to individual education plan requirements for students with disabilities; amending

366332

s. 1003.5716, F.S.; revising the timeline for the development and implementation of an individual education plan (IEP) for transition services for a student with disabilities to a postsecondary education and career opportunities; revising the requirements for an IEP for the transitions to a postsecondary education and career opportunities; requiring certain information to be provided at IEP meetings; revising when a certain statement of intent must be included in the IEP; providing requirements for such statement; requiring a specified party to provide a signed statement relating to the deferment of a standard high school diploma; requiring the Department of Education to conduct a review of specified services and programs; requiring the department to establish and publish on its website uniform best practices for such services and programs by a specified date; providing an effective date.

629046

576-03005-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to workforce and career planning for students with disabilities; amending s. 1003.5716, F.S.; revising the timeline for the development and implementation of an individual education plan (IEP) for a student with disabilities to transition to postsecondary education and career opportunities; revising the requirements for an IEP for the transitions to a postsecondary education or career opportunities; requiring the parents of students with disabilities to provide a written notice relating to the deferment of a standard high school diploma by a specified date; conforming provisions to changes made by the act; requiring the Department of Education to conduct a review of specified services and programs; requiring the department to establish and publish on its website uniform best practices for such services and programs by a specified date; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 1003.5716, Florida Statutes, are amended to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate

629046

576-03005-21

public education. As used in this section, the term "IEP" means individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's seventh grade year, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school ~~attains the age of 14 years~~ in order for his or her postsecondary goals and career goals to be identified. The plan must be operational and in place to begin implementation on the first day of the student's first year in high school or when he or she attains the age of 16 years, whichever occurs first. This process must include, but is not limited to:

(a) Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting; ~~and~~

(b) Preparation for the student to graduate from high school with a standard high school diploma pursuant to s. 1003.4282 with a Scholar designation unless the parent chooses a Merit designation; ~~.~~

(c) The provision of information to parents and students about the school district's high school-level transition courses and vocational, career, and collegiate programs available to students with disabilities and how to access such programs, including, but not limited to, school-based transition programs; the Center for Students with Unique Abilities collegiate, career, and technical courses; and programs and services

576-03005-21

provided to youth and adults by the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services. Applications for Division of Vocational Rehabilitation services and Agency for Persons with Disabilities services shall be provided to parents and students at IEP meetings. An IEP team must also discuss with parents restrictions on information sharing which come into effect without the appointment of guardianship upon a student with a disability turning 18 years of age; and

(d) Discussion of the process for a student with a disability who meets the requirements for a standard high school diploma to defer the receipt of such diploma pursuant to s. 1003.4282(10)(c). The parent of such student must provide a notice in writing no later than May 15 of the year his or her student will graduate that he or she understands the process for deferment and whether his or her student will defer the receipt of such diploma.

(2) Beginning not later than the first IEP to be in effect when the student enters the first day of his or her first year in high school or attains the age of 16, whichever occurs first, or younger if determined appropriate by the parent and the IEP team, the IEP must include the following statements that must be updated annually:

(a) A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, as determined by the parent.

(b) A statement of intent to receive a standard high school diploma before the student attains the age of 22 and a description of how the student will fully meet the requirements

576-03005-21

in s. 1003.4282, including, but not limited to, a portfolio pursuant to s. 1003.4282(10)(b) which meets the criteria specified in State Board of Education rule. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

(c) A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching those goals.

Section 2. The Department of Education shall conduct a review of existing transition services and programs for students with disabilities to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to students enrolled in such transition programs. The department must establish and publish on its website such uniform best practices no later than July 1, 2022.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 726
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Taddeo
SUBJECT:	Workforce and Career Planning for Students with Disabilities
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 726 modifies communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Specifically, the bill requires:

- An IEP team to start the transition process during the student's seventh grade year, or when the student attains the age of 12, whichever occurs first.
- An IEP team to have an operational plan in place that is implemented on the first day of the student's first year in high school or when he or she attains the age of 14, whichever occurs first.
- School districts to provide to parents and students the following information on:
  - The school district's high school-level transition services, career and technical education, and collegiate programs available to such students and how to access such programs.
  - School-based transition programs and programs and services available through Florida's Center for Student's with Unique Abilities, the Florida Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services.
- The statement of the student's intent to pursue a standard high school diploma must document discussion of the process of deferment of a standard high school diploma for a student with a disability who meets the requirements for a standard high school diploma.

- The IEP in effect at the start of the student's graduation year must include a signed statement by the student's parent or guardian, or by the student if of majority age and rights have transferred, that documents understanding of the deferment process and identifies whether the student will defer the receipt of a standard high school diploma.
- The Florida Department of Education (FDOE) to conduct a review, in conjunction with the Project 10: Transition Education Network, of existing transition services and programs to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to enrolled students. The FDOE must publish best practices by July 1, 2022.

The bill has no impact on state revenues or expenditures. See Section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

Students with Disabilities

All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education (FAPE).[1] It is the responsibility of each state and school district to develop procedures consistent with the requirement that all students with disabilities have access to a FAPE in the least restrictive environment.[2]

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a federal law that makes available a FAPE to eligible children with disabilities throughout the nation and ensures special education and related services are provided to those children. For the 2018-19 school year, more than 7.5 million eligible infants, toddlers, children, and youth with disabilities were provided early intervention, special education, and related services.

The stated purpose of the IDEA is to:

- Ensure that all children with disabilities have a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- Ensure that the rights of children with disabilities and parents of such children are protected;
- Assist states, localities, educational service agencies, and federal agencies to provide for the education of all children with disabilities;
- Assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- Ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research

[1] Section 1003.5716, F.S.
[2] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.

and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- Assess, and ensure the effectiveness of, efforts to educate children with disabilities.[3]

The Individuals with Disabilities Education Act (IDEA) requires that:
- Students with disabilities who meet the criteria of one or more categories of disability specified in law and who need special education services have an Individual Education Plan (IEP);
- The IEP must be reviewed at least annually and revised as necessary;
- Due process rights are guaranteed;
- Student records are confidential;
- Parents are important partners in the IEP process and must be invited to all IEP meetings; and
- Student evaluation procedures are nondiscriminatory.[4]

Workforce Innovation and Opportunity Act of 2014 (WIOA)

The WIOA[5] aims to increase opportunities for individuals facing barriers to employment and focus on the connection between education and career preparation.[6] The WIOA requires that state vocational rehabilitation agencies set aside at least 15 percent of their federal funds to provide preemployment transition services[7] to eligible individuals with a disability who:[8]
- Are between 14 and 21 years of age; and
- Have a current IEP; or
- Have or are eligible for an accommodation plan pursuant to s. 504 of the Rehabilitation Act of 1973.[9]

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973[10] prohibits any program or activity that receives federal financial assistance from discriminating against an otherwise qualified individual solely by reason of his or her disability. State and local agencies that administer federally funded

[3] U.S. Department of Education, *IDEA Individuals with Disabilities Education Act*, https://sites.ed.gov/idea/about-idea/#IDEA-Purpose (last visited March 4, 2021).
[4] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.
[5] Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).
[6] *See* U.S. Department of Labor, Employment & Training Administration, *WIOA Overview*, https://www.doleta.gov/wioa/about/overview/ (last visited March 5, 2020).
[7] "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including postsecondary education; vocational training; integrated employment; supported employment; continuing and adult education; adult services; independent living, or community participation. Section 413.20(26), F.S.
[8] States may elect a lower minimum age or higher maximum age for receipt of pre-employment services under IDEA.Workforce Innovation Technical Assistance Center, *Preemployment Transition Services*, http://www.wintac.org/topic-areas/pre-employment-transition-services (last visited March 5, 2021).
[9] Section 413.310(1), F.S.
[10] Pub. L. No. 93-112, s. 504, 83 Stat. 355, 361 (1973), as amended and codified in 29 U.S.C. s. 794.

programs or activities may devise an accommodation plan[11] for someone with a disability to allow the disabled person's participation in the program.[12]

The Individual Education Plan

The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a Florida student with a disability.[13] To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, an IEP team begins the process of identifying the need for transition services before the student with a disability attains the age of 14 years. When the student attains the age of 16, the IEP must be updated annually to include a statement:[14]

- Addressing the intent for the student to pursue a standard high school diploma and other appropriate measurable long-term postsecondary education and career goals;
- Of intent to receive a standard high school diploma and a Scholar or Merit designation as determined by the parent; and[15]
- Of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching such goals.

IEP teams are required to invite agencies,[16] with parental consent if the student has not reached the age of majority consent, that may provide services after the student exits high school and

[11] The Section 504 plan identifies the services and accommodations necessary for a student to access instruction and may include accommodations in the classroom and for local and state assessments. Florida Department of Education, *Accommodations, Assisting Students with Disabilities* (2018), *available a*t http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf, at 3.
[12] *See Alexander v. Choate*, 469 U.S. 287 (1985).
[13] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 9.
[14] Section 1003.5716(2), F.S.
[15] *See* Section 1003.4285, F.S.
[16] Agency involvement in transition planning is based on the nature of the student's needs and the student's disability, whether the student is potentially eligible for services and the student's postsecondary education and career goals, such as further education, training, employment and independent living. Agencies frequently involved in the planning and delivery of transition services in Florida include: Agency for Persons with Disabilities; Center for Independent Living; Department of Children and Families; Division of Blind Services; Division of Vocational Rehabilitation (VR); Social Security Administration; Local career and technical schools, Florida colleges and universities; and other adult service providers. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 47.

include consideration of pre-employment transition services[17] through the Division of Vocational Rehabilitation (VR)[18] in the development of post-secondary and career goals.[19]

Deferral of Receipt of a Standard Diploma

A student with a disability who's IEP requires special education, transition planning, transition services or related services through age 21 may defer the receipt of their standard diploma. After deferral, the student must also be enrolled in accelerated college credit instruction, industry certification courses that lead to college credit, a collegiate high school program, courses necessary to satisfy the requirements for scholar designation, or a structured workstudy, internship or pre-apprenticeship program to continue to receive FAPE.[20]
The district must work with the student and his or her parent to review the benefits of deferring and describe in writing the services and programs available to the student who wishes to defer. The decision to defer is made by the parent, or the student if 18 or over, along with the rest of the IEP team, during the year the student is expected to meet all of the requirements for a standard diploma. This decision must be noted on the student's IEP and the approval of the parent or student, if appropriate, may be documented on a separate form from the IEP.[21]

The parent and student must be informed in writing by January 30 of the year in which the student is expected to meet graduation requirements, that:

- Failure to defer releases the school district of the obligation to provide FAPE;
- The deadline for acceptance or deferral is May 15 of that year; and
- Failure to attend the graduation ceremony does not constitute deferral.[22]

Students do not need to defer every year after this decision is made. The deferral will last until the student is no longer eligible for FAPE or chooses to receive their diploma.[23]

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[17] VR provides pre-employment services, which may include career exploration counseling, workplace readiness training, community-based work experiences, self-advocacy instruction, peer mentoring and postsecondary educational counseling for students with a disability. *Id.* at 48.
[18] The Division of VR is housed in the FDOE. VR and VR services mean any service, provided directly or through public or private entities, to enable an individual or group of individuals to achieve an employment outcome, including, but not limited to, medical and vocational diagnosis, an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel; counseling, guidance, and work-related placement services; vocational and other training services; physical and mental restoration services; maintenance for additional costs incurred while participating in rehabilitation; interpreter services for individuals who are deaf; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment; occupational licenses; tools, equipment, and initial stocks and supplies; transportation; telecommunications, sensory, and other technological aids and devices; rehabilitation technology services; referral services designed to secure needed services from other agencies; transition services; on-the-job or other related personal assistance services; and supported employment services. Section 413.20(8) and (28), F.S.
[19] Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).
[20] Section 1003.4282(11)(c)-(d), F.S. Fla. Admin. Code R. 6A-1.09963(6).
[21] Florida Department of Education, *Developing Quality Individual Education Plans* (2015), *available at* http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf, at 64.
[22] *Id.*
[23] Students with disabilities are no longer eligible for FAPE if awarded a standard high school diploma or attained age 22. *Id.* Fla. Admin. Code R. 6A-1.09963(6).

III. Effect of Proposed Changes:

The bill amends s. 1003.5716, to modify communication and timeline provisions for developing an Individual Education Plan (IEP) in order to ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities. Such modifications may provide parents and students with additional information and time to make informed decisions to meet the student's post-secondary needs for success. Specifically, the bill requires:

- An IEP team to start the transition process during the student's seventh grade year or when the student attains the age of 12, whichever occurs first..
- An IEP team to have an operational plan in place that is implemented on the first day of the student's first year in high school or when he or she attains the age of 14, whichever occurs first.
- School districts to provide information to parents and students on the school district's high school-level transition services, career and technical education, and collegiate programs available to students with disabilities, and how to access such programs, including:
  - School-based transition programs;
  - The Florida Center for Students with Unique Abilities (FSCUA);[24] and
  - Programs and services provided by the Division of Vocational Rehabilitation (VR), the Agency for Persons with Disabilities (APD)[25], and the Division of Blind Services.[26]
- That the statement of intent to pursue a standard high school diploma must include:
  - Documentation of a discussion of the process for a student with a disability who meets the requirements for a standard high school diploma may defer the receipt of such diploma.
  - For the IEP in effect at the beginning of the school year the student is expected to graduate, the statement must include a signed statement by the parent or guardian, or the student if the student has reached the age of majority and rights have transferred to the student, that he or she understands the process for deferment and identifying if the student will defer the receipt of his or her standard high school diploma.
- The Florida Department of Education (FDOE) to conduct a review, in conjunction with the Project 10: Transition Education Network, of existing transition services and programs to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to enrolled students.
- The FDOE to establish and publish on its website uniform best practices by July 1, 2022.

The bill takes effect on July 1, 2021.

[24] In 2016, the Florida Legislature established FCSUA located at the University of Central Florida. The purpose of FSCUA is to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities through degree, certificate, or nondegree programs and to establish statewide coordination of the dissemination of information regarding programs and services for students with disabilities. Section 1004.6495, F.S.

[25] The APD is responsible for providing all services provided to persons with developmental disabilities pursuant to current law, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to person with developmental disabilities. Section 20.197, F.S.

[26] The Division of Blind Services is responsible developing and implement a state plan for vocational rehabilitation services for individual who are blind. Section 413.011, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 726 has no impact on state revenues or expenditures.

However, the Florida Department of Education (FDOE) may incur costs associated with conducting a review of existing transition services and programs for students with disabilities and establishing uniform best practices for such programs. The FDOE may also incur costs establishing and publishing uniform best practices on its website.[27]

VI. Technical Deficiencies:

None

[27] Florida Department of Education, *Senate Bill 726 Fiscal Analysis* (January 25, 2020) (on file with the Senate Committee on Education).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.5716 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute makes the following changes:

- Changes the title from "An act relating to individual education plan requirements for student with disabilities" to "An act relating to workforce and career planning for students with disabilities."
- Adds the student's age of 12 to when the IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school.
- Removes the alternative timeframe, attainment of age 16, for when the IEP with transitional services should be in place.
- Removes the requirement to provide parents/students with applications for the Division of Vocational Rehabilitation services and Agency for Persons with Disabilities at IEP meetings.
- Removes the requirement that the IEP team must discuss restrictions on information sharing which come into effect without the appointment of guardianship upon a student with a disability turning 18 years of age.
- Changes the age from 16 to 14 for when the first IEP must be in effect.
- Specifies that the statement of intent to pursue a standard high school diploma must include:
    - Documentation of a discussion of the process for a student with a disability who meets the requirements for a standard high school diploma may defer the receipt of such diploma.
    - For the IEP in effect at the beginning of the school year the student is expected to graduate, the statement must include a signed statement by the parent or guardian, or the student if the student has reached the age of majority and rights have transferred to the student, that he or she understands the process for deferment and identifying if the student will defer the receipt of his or her standard high school diploma.
- Adds that the review of existing transition services and programs for students with disabilities that the DOE will conduct, must be done in conjunction with the Project 10: Transition Education Network.

CS by Education on March 9, 2021:
The committee substitute conforms language in the bill to denote that the deadlines for

implementation of the individual education plan by the first day of high school or by age 16 are subject to whichever occurs first.

B. Amendments:

None.

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

By the Committee on Education; and Senator Taddeo

581-02634-21 2021726c1

A bill to be entitled

An act relating to individual education plan requirements for students with disabilities; amending s. 1003.5716, F.S.; revising the timeline for the development and implementation of an individual education plan (IEP) for a student with disabilities to transition to postsecondary education and career opportunities; revising the requirements for an IEP for the transitions to a postsecondary education or career opportunities; requiring the parents of students with disabilities to provide a written notice relating to the deferment of a standard high school diploma by a specified date; conforming provisions to changes made by the act; requiring the Department of Education to conduct a review of specified services and programs; requiring the department to establish and publish on its website uniform best practices for such services and programs by a specified date; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 1003.5716, Florida Statutes, are amended to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means individual education plan.

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

581-02634-21 2021726c1

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's seventh grade year, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school ~~attains the age of 14 years~~ in order for his or her postsecondary goals and career goals to be identified. The plan must be operational and in place to begin implementation on the first day of the student's first year in high school or when he or she attains the age of 16 years, whichever occurs first. This process must include, but is not limited to:

(a) Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting; ~~and~~

(b) Preparation for the student to graduate from high school with a standard high school diploma pursuant to s. 1003.4282 with a Scholar designation unless the parent chooses a Merit designation; ~~.~~

(c) The provision of information to parents and students about the school district's high school-level transition courses and vocational, career, and collegiate programs available to students with disabilities and how to access such programs, including, but not limited to, school-based transition programs; the Center for Students with Unique Abilities collegiate, career, and technical courses; and programs and services provided to youth and adults by the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and

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

the Division of Blind Services. Applications for Division of Vocational Rehabilitation services and Agency for Persons with Disabilities services shall be provided to parents and students at IEP meetings. An IEP team must also discuss with parents restrictions on information sharing which come into effect without the appointment of guardianship upon a student with a disability turning 18 years of age; and

(d) Discussion of the process for a student with a disability who meets the requirements for a standard high school diploma to defer the receipt of such diploma pursuant to s. 1003.4282(10)(c). The parent of such student must provide a notice in writing no later than May 15 of the year his or her student will graduate that he or she understands the process for deferment and whether his or her student will defer the receipt of such diploma.

(2) Beginning not later than the first IEP to be in effect when the student enters the first day of his or her first year in high school or attains the age of 16, whichever occurs first, or younger if determined appropriate by the parent and the IEP team, the IEP must include the following statements that must be updated annually:

(a) A statement of intent to pursue a standard high school diploma and a Scholar or Merit designation, pursuant to s. 1003.4285, as determined by the parent.

(b) A statement of intent to receive a standard high school diploma before the student attains the age of 22 and a description of how the student will fully meet the requirements in s. 1003.4282, including, but not limited to, a portfolio pursuant to s. 1003.4282(10)(b) which meets the criteria

specified in State Board of Education rule. The IEP must also specify the outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

(c) A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching those goals.

Section 2. The Department of Education shall conduct a review of existing transition services and programs for students with disabilities to establish uniform best practices for such programs to deliver appropriate employment, pre-employment, and independent living skills education to students enrolled in such transition programs. The department must establish and publish on its website such uniform best practices no later than July 1, 2022.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

726
Bill Number (if applicable)

Topic IEP Requirements for Students w/ Disabilities
Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title VP of Education

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 754
INTRODUCER:	Transportation Committee and Senator Diaz
SUBJECT:	Motor Vehicle and Vessel Registration Data
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Wells	Hrdlicka	ATD	**Recommend: Favorable**
3.	Wells	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 754 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to provide integration of other tax collection systems of tax collectors and their vendors with the Florida Real Time Vehicle Information System (FRVIS) with respect to motor vehicle, mobile home, trailer, and vessel registration renewals. Specifically the bill:

- Authorizes the DHSMV, upon a tax collector's request, to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online through a tax collector's website;
- Requires the DHSMV to provide a tax collectors' vendor with the ability to record registration renewals in FRVIS in real time and with the ability to do bulk data reporting; and
- Requires the DHSMV to ensure that the ancillary technology and other tax collection systems protect consumer data and privacy.

The bill may have a significant negative but indeterminate, impact on the DHSMV associated with the expansion of the FRVIS data access and interface functionality. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Tax Collectors as Agents of the DHSMV

Chapters 320, 322, and 328, F.S., provide that tax collectors are agents of the DHSMV for the limited purposes of providing motor vehicle and driver license services. Specifically, with regards to the issuance of registration certificates, license plates, and validation stickers (motor vehicle services), the tax collectors in the several counties of the state are "authorized agents of the department … subject to the requirements of the law."[1] This principal/agent relationship is established by written agreement in the form of a memorandum of understanding (MOU) between the DHSMV and tax collectors throughout the state, providing that tax collectors are acting as agents of the DHSMV carrying out state law duties at a local level in a uniform and accountable manner.

While the tax collector itself is not a state agency, in its role as an authorized agent of the DHSMV it is considered a "state agency" when acting pursuant to s. 320.03, F.S., in providing motor vehicle services.[2] The Florida Attorney General has also concluded that tax collectors are under the direction and control of the DHSMV when providing services under chs. 320 (motor vehicle licenses) and 322 (driver licenses), F.S.[3]

Sixty-five counties currently have elected tax collectors who are constitutional officers.[4] Broward and Miami-Dade counties currently have appointed tax collectors under each county's charter government.[5]

In 2018, a constitutional amendment passed that requires Volusia, Broward, and Miami-Dade County tax collector offices to be elected positions.[6] The tax collector in Volusia County took office in 2021 and the Broward and Miami-Dade County tax collectors will take office in 2025. Currently, the motor vehicle services in these charter counties are predominately provided by third party vendors that have an agreement with the county to charge an additional county service fee set by the county commission.[7] Collectively referred to as LPA, these vendors are

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[1] Section 320.03(1), F.S.

[2] *Dealer Tag Agency, Inc.* v. *First Hillsborough County Auto Tag Agency, Inc.*, 14 So. 3d 1238, 1240 (Fla. 2d DCA 2009). But note that the court held that the "fact that the Tax Collector is described as an "authorized agent" of the DHSMV for the provisions of section 320.03 does not make it a state agency for the provisions of chapters 287 and 120." *Id*. at 1240.

[3] "The tax collector, who acts as the agent of and under the direction and control of the department in the sale of motor vehicle license plates, is not acting as a county officer …" FL AGO 74-101 (Apr. 1, 1974).

[4] Volusia County formerly had an appointed tax collector. However, pursuant to ss. 1(d) and 6(g), Art. VIII of the State Constitution and effective January 5, 2021, Volusia County has an elected tax collector.

[5] Pursuant to ss. 1(d) and 6(g), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.

[6] *See* Department of State, Division of Elections, *State and Local Government Structure and Operation – Amendment 10*, available at https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=24 (last visited Apr. 3, 2021). *See also* s. 322.02(1), F.S., related to administration of driver license services, requiring tax collectors who are constitutional officers to implement driver license services, while charter county tax collectors can transition on a limited basis as determined by the DHSMV.

[7] In determining the appropriateness of public funding for equipment used by LPAs, the Attorney General noted for purposes of s. 320.03, F.S., that "license tag agencies are the agents of the respective county tax collectors…[and that no] pecuniary benefit inures to such agents or subagents." FL AGO 82-81 (Oct. 11, 1982). The opinion also states that the "license tag agencies in question are the agents of the county tax collector and as such subagents of the department…"

often referred to as private tag agencies, license plate agents, license tag agencies, and private license plate agencies.[8]

Sixteen counties have, or have until recently had, contracts with LPAs to operate 57 offices to perform title and registration services for motor vehicles, mobile homes, and vessels, as follows:[9]

- Alachua – 1
- Bay – 1
- Broward – 7
- Highlands – 1
- Hillsborough – 1
- Jefferson – 2
- Lee – 1 (opens in 2021)
- Leon – 1
- Manatee – 1
- Miami-Dade – 25
- Orange – 4
- Palm Beach – 2
- Pasco – 1
- Pinellas – 3
- Polk – 3
- Volusia – 3[10]

Many tax collectors in Florida hire information technology vendors to assist with mailing, cashiering, deploying kiosks, providing online services, and performing other duties. "When requested by a tax collector, the [DHSMV] routinely provides access to data, both in real-time and through batch processes, to the tax collector's vendors for the purpose of providing support to the requesting tax collector." Data that contains personal information[11] which is confidential pursuant to the federal Driver's Privacy Protection Act of 1994 may only be released as authorized by law.[12]

To ensure compliance with Driver's Privacy Protection Act, the DHSMV practices data minimization – the DHSMV only provides personal information from driver license records to agents and vendors when it is directly relevant to accomplish a specified task deemed necessary by the DHSMV or law. "Once the specified purpose has been completed, this practice requires that shared data is securely destroyed or otherwise rendered unreadable. Data minimization also decreases risks of data loss and breaches."[13]

Registration Duties of Tax Collectors

Motor Vehicles

Tax collectors are authorized agents of the DHSMV that issue registration certificates, registration license plates, validation stickers, and mobile home stickers to applicants.[14] The DHSMV may require each tax collector to give a bond, payable to the DHSMV, conditioned that the tax collector faithfully and truly perform the duties imposed upon him or her according to the requirements of law and the rules and regulations of the DHSMV.[15] Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, or other

[8] Various combinations of these words are used interchangeably.
[9] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 3 (on file with the Senate Committee on Transportation).
[10] These LPA offices operated prior to the elected Volusia County tax collector taking office on January 5, 2021. Currently, these offices are winding down operations and were to close by February 4, 2021.
[11] Under the DPPA, "personal information" is "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. 2725 (2000). *See also* s. 322.143, F.S.
[12] *See* 18 U.S.C. s. 2721 et seq.
[13] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 3.
[14] Section 320.03(1), F.S.
[15] Section 320.03(2), F.S.

properties received by him or her from the DHSMV.[16] The Florida Real Time Vehicle Information System must be installed in every tax collector's and license tag agent's office in accordance with a schedule established by the DHSMV in consultation with the tax collectors and contingent upon funds being made available for the system by the state.[17]

Vessels

Tax collectors must issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with the rules of the DHSMV.[18] Each tax collector must keep a full and complete record and account of all vessel decals or other properties received by him or her from the DHSMV and must make prompt remittance of moneys collected by them at the times and in the manner prescribed by law.[19]

Florida Real Time Vehicle Information System (FRVIS)

The FRVIS is the DHSMV's database system used to title and register all motor vehicles, mobile homes, trailers, and vessels in Florida. The system is composed of two processing environments. The first is a distributed environment that consists of the servers at local tax collector and LPAs that process tag, title, and registration transactions throughout the state. The second environment is the host portion that consists of the back-end processing that is conducted centrally at the DHSMV's primary data center.[20]

The FRVIS facilitates the collection of taxes and fees for tags, titles, and registrations. There is a $0.50 fee on each motor vehicle, mobile home, and vessel registration to cover the operation of the FRVIS, and that fee is deposited into the Highway Safety Operating Trust Fund.[21] According to the DHSMV, the FRVIS processed approximately 407.3 million transactions for the collection of approximately $2.99 billion in revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels during Fiscal Year 2019-2020, including amounts retained by local tax collector and tag agent offices.[22] These funds are distributed through the FRVIS to various state agencies, including the DHSMV, and non-state entities in accordance with law.[23]

Any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration services in that office. Periodically after the initial purchase, when equipment become outdated, the DHSMV refreshes the equipment and pays the cost of the new equipment, contingent upon appropriated funds, for both tax collector and LPA offices. "LPAs reimburse the [DHSMV] for reoccurring circuit costs (i.e., Internet access) for

[16] Section 320.03(3), F.S.
[17] Section 320.03(4)(b), F.S.
[18] Section 328.73(1), F.S.
[19] Section 328.73(2), F.S.
[20] Auditor General, *Department of Highway Safety and Motor Vehicles, Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, p. 2 (Apr. 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited Apr. 3, 2021).
[21] Sections 320.03(5) and 328.73(3), F.S.
[22] Email from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles to Senate Committee on Transportation staff, *FW: FRVIS* (Mar. 16, 2021) (on file with the Senate Committee on Transportation).
[23] *See* Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, pp. 47, 139, and 198, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited Apr. 3, 2021).

each location, unless the LPA office is colocated with a tax collector's office and the circuit is shared."[24]

The DHSMV administers the FRVIS in consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is equipped with the necessary information technology to support the operation of the FRVIS.[25] Only the DHSMV, tax collectors, and LPAs have access to the FRVIS. Access to the DHSMV systems and data is governed by various MOUs between the DHSMV, tax collectors, and third party vendors or agents of the tax collectors. The MOUs document how the data will be used and protected, ensuring compliance with various state and federal laws, including the federal Driver's Privacy Protection Act.[26]

FRVIS Interfaces

Over the years, the DHSMV has created a number of custom interfaces to the FRVIS. These interfaces include:[27]

- The Electronic Filing System[28] and Electronic Temporary Registration system[29] which allow motor vehicle and vessel dealers the ability to conduct tag and title transactions at their dealerships;
- The motor vehicle kiosk interface to allow tax collector vendors the ability to place motor vehicle registration kiosks in their offices and in off-site locations such as Publix; and
- The Motor Vehicle Eligibility Web Service to provide tax collectors with a real time application interface to assist with processing both mailed motor vehicle renewals and motor vehicle renewals processed through their proprietary standalone websites.

Other Significant DHSMV Systems and Data Exchanges

The DHSMV also operates various other driving and traffic records systems including:[30]

- Online Registration and Identity Operating Network for issuing driver licenses and identification cards;
- An electronic crash reporting system for law enforcement to submit crash reports; and
- A uniform traffic citation processing system utilized by the clerks of court to submit traffic citations.

The DHSMV also maintains dozens of data exchanges with governmental and private entities to provide access to real time data to improve customer service and efficiency of operations. In addition to tax collectors, the DHSMV works with other external stakeholders, including state and local law enforcement, clerks of court, supervisors of elections, other states through the American Association of Motor Vehicle Administrators systems, the Department of State, the Department of Transportation, insurance companies, expressway tolling authorities, automobile

[24] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 3.
[25] Section 320.03(5), F.S.
[26] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 3-4.
[27] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 4.
[28] The Electronic Filing System has been created using the new Online Registration and Identity Operating Network architecture which is being used for the Motorist Modernization Project.
[29] Section 320.131(8) and (9), F.S.
[30] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 4.

dealers, and various other technology companies. These stakeholders rely on the DHSMV data or systems to efficiently conduct their business.[31]

External stakeholders and their vendors routinely submit requests to the DHSMV to modify its motor vehicle, driver license, and traffic records systems and interfaces to meet the stakeholder's needs. When a stakeholder requests a modification to an existing system or creation of a new system or interface, the DHSMV must evaluate the:

- Benefits of the modification, new system, or new interface to customers of the DHSMV and tax collectors, to third party system users, and to the tax collectors' vendors;
- The cost to implement the change;
- Previously existing legislative, tax collector, or DHSMV priorities; and
- Requested implementation schedule.[32]

Collection of Electronic Mail Addresses

In addition to residential street addresses, the DHSMV is authorized to collect and store (in the FRVIS) e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.[33] E-mail addresses collected by the DHSMV pursuant to s. 319.40(3), F.S., (relating to motor vehicle, mobile home, and trailer titling) and s. 320.95(2), F.S., (relating to motor vehicle, mobile home and trailer registrations) are exempt from disclosure pursuant to s. 119.07(1), F.S., and s. 24(1), Article I of the State Constitution.[34]

III. Effect of Proposed Changes:

The bill amends s. 320.03, F.S., to require each third party contracted with a tax collector who has online computer access to the DHSMV's systems or data to enter into a memorandum of understanding with the DHSMV.

In implementing FRVIS, the DHSMV, in consultation with the Florida Tax Collectors, Inc., is required to ensure that all ancillary technology and other tax collection systems, such as systems used by approved vendors of tax collectors, protect customer privacy and data.

The bill amends ss. 320.03 and 328.73, F.S., to authorize the DHSMV to modify existing systems to integrate other tax collection systems used by tax collectors when requested by a tax collector. This integration must provide the tax collector with data access and uniform interface functionalities for registration renewal transactions[35] performed at the tax collector's office or online through the tax collector's website. Other tax collection systems would include technology systems provided by a tax collector's approved vendors.

[31] *Id*.
[32] *Id*.
[33] Sections 319.40, 320.95, 322.08(10), 328.30, and 328.80, F.S.
[34] Section 119.0712(2)(c), F.S.
[35] The bill defines this to mean issuance of motor vehicle, mobile home, and trailer registration certificates, registration license plates, validation stickers, vessel registration certificates, and vessel numbers and decals

The DHSMV is authorized to determine the best manner to deliver the data access and uniform interface functionalities. The DHSMV must also provide the ability to record and process registration renewal transactions in the FRVIS in real time and bulk data reporting for registrations, including each applicant's e-mail address. Access to the bulk data would also include personal information from license records. The provided data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties and may not be resold or used for any other purpose.

The bill requires that the data access and uniform interface functionalities must be developed no later than July 1, 2023.

The bill has an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tax collector-approved agents and vendors, may experience a positive indeterminate fiscal impact as a result of improved operational efficiencies and service due to having the ability to record motor vehicle, mobile home, and vessel registration renewals in the FRVIS.

C. Government Sector Impact:

Tax collectors may experience a positive indeterminate fiscal impact as a result of improved operational efficiencies and service due to having the ability to record motor vehicle, mobile home, and vessel registration renewals in the FRVIS.

The DHSMV has been updating its systems over the past several years through its Motorist Modernization project. Phase II of the project began recently and is intended to redevelop all systems and processes supporting titling and registration. The expected timeframe for Phase II is completion by Fiscal Year 2023-2024 and the total budget is $53 million.

Upon the request of any tax collector, the bill requires the DHSMV to create and maintain interfaces to support the integration of the tax collector's vendors' technology systems and provide the vendors with the ability to record motor vehicle, mobile home, trailer, and vessel registration renewals in the FRVIS in real-time. The bill requires the new functionality to be complete by July 1, 2023. This may conflict with the current plan for Phase II of the Motorist Modernization project and cause project delays.

The bill will result in a significant negative impact to the Highway Safety Operating Trust Fund and may impair the DHSMV's ability to fund all current activities, including current FRVIS and interface costs, Motorist Modernization project costs, and tax collector and LPA equipment refreshers and internet connections, and the new activities required under the bill, to create additional interfaces to the FRVIS for tax collectors' vendor-provided systems.[36]

Complying with the requirement to integrate a vendors technology systems may impact the DHSMV's ability to maintain the FRVIS within current resources. Presently, the DHSMV manages its resources for the FRVIS to maintain the system's functionality and capabilities to benefit the widest array of users. The potential new interfaces may limit the DHSMV's ability to prioritize use of resources for the FRVIS, including to make enhancements required by federal law and to make enhancements that would benefit law enforcement, automobile dealers, and other stakeholders.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DHSMV to provide the tax collector and his or her approved vendor with the ability to record registration renewals in the state system in real time. Neither the DHSMV's websites nor the tax collectors' websites currently update a cashiered renewal transaction in real time. This functionality is included in Motorist Modernization Phase II, which is expected to be

[36] DHSMV, *2021 Agency Legislative Bill Analysis SB 754*, (Mar. 5, 2021), p. 10.
[37] *Id*.

completed by Fiscal Year 2023-2024. The timing required by the bill may conflict with this programming.[38]

The bill authorizes the DHSMV to provide tax collectors and their approved third-party vendors' data access and interface functionality that includes bulk data transfers. This potentially could undermine the DHSMV's data minimization policies. Those policies are designed to protect customers against data loss, including personally identifying information, and to ensure compliance with the federal Drivers Privacy Protection Act.[39]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.03 and 328.73.

IX. Additional Information:

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

CS by Committee on Transportation on March 24, 2021:

- Authorizes tax collectors to contract with vendors for technology services in order to provide electronic and telephonic motor vehicle and vessel titling transactions to customers;
- Defines a vendor-built technology system for motor vehicle, mobile home, and vessel renewal transactions as a "tax collection system;"
- Provides that if requested by a tax collector, the DHSMV is authorized to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online through a tax collector's website;
- Requires the DHSMV to provide a tax collectors' vendor with the ability to record registration renewals in the FRVIS in real time and with the ability to do bulk data reporting;
- Removed language in the underlying bill which provided for data access and interface functionalities to the tax collectors and third parties contracting with a tax collector, that other third parties receive from the DHSMV; and
- Removed language in the underlying bill which provided that a tax collector and third parties contracting with a tax collector may collect electronic mail addresses.

B. Amendments:

None.

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

[38] *Id*. at pp. 6 and 11.
[39] *Id*.

By the Committee on Transportation; and Senator Diaz

596-03302-21 2021754c1

A bill to be entitled

An act relating to motor vehicle and vessel registration data; amending s. 320.03, F.S.; requiring tax collectors, third parties contracted with tax collectors, and license tag agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles and make certain determinations regarding registration applicants; requiring the department to ensure that certain technology used by tax collectors protects customer privacy and data; authorizing the department to provide certain technology to tax collectors, upon request, in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements for the department; authorizing use of such data and functionalities for certain purposes; requiring development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; amending s. 328.73, F.S.; authorizing the department to provide certain technology to tax collectors, upon request, in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements for the department; authorizing use of such data and functionalities for certain purposes; requiring development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; providing an effective date.

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

Florida Senate - 2021 **CS for SB 754**

596-03302-21 2021754c1

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

Section 1. Paragraph (a) of subsection (4) and subsection (5) of section 320.03, Florida Statutes, are amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(4)(a) Each tax collector, third party contracted with a tax collector, or license tag agent who has online computer access to the department's systems or ~~department~~ data ~~center or other reasonable access thereto~~ shall enter into a memorandum of understanding with the department and shall, except when the department has issued a registration renewal notice, upon receipt of an application for the registration of any motor vehicle, determine from the driver file of the applicant whether the applicant's driver license has been canceled, suspended, or revoked and, if so, whether the applicant has surrendered his or her license to the department as required by s. 322.251. If the applicant has not surrendered his or her license in accordance with ~~the provisions of~~ that section, the tax collector must ~~shall~~ refuse to register the vehicle until such time as the applicant surrenders his or her driver license to the department.

(5)(a) In addition to the fees required under s. 320.08, a fee of 50 cents must ~~shall~~ be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected must ~~shall~~ be deposited into the Highway Safety Operating Trust Fund to be

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

used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and to ensure that all ancillary technology and other tax collection systems used by tax collectors protect customer privacy and data. Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

(b) Upon a tax collector's request, the department is authorized to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online through a tax collector's website. The department shall prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in real time and bulk data reporting for vehicle registrations, including each applicant's electronic mail address collected

pursuant to s. 320.95. Such data and functionalities may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 322, or chapter 328 and may not be resold or used for any other purpose. Such data access and uniform interface functionalities must be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means issuance of motor vehicle, mobile home, and trailer registration certificates, registration license plates, and validation stickers.

Section 2. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1)(a) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department.

(b) Upon a tax collector's request, the department is authorized to provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online through a tax collector's website. The department shall prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in

real time and bulk data reporting for vessel registrations, including each applicant's electronic mail address collected pursuant to s. 320.95. Such data and functionalities may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 320, or chapter 322 and may not be resold or used for any other purpose. Such data access and uniform interface functionalities must be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means issuance of vessel registration certificates, vessel numbers, and decals.

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

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

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

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

754
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kaitlyn Bailey

Job Title _____

Address 113 E College Avenue
Street

Phone 8505850523

Tallahassee FL 32301
City *State* *Zip*

Email kaitlyn@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Brevard County Tax Collector

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 764
INTRODUCER:	Criminal Justice Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Burgess
SUBJECT:	Veterans Treatment Courts
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Fav/CS**
2.	Cellon	Jones	CJ	**Fav/CS**
3.	Forbes	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 764 redesignates the existing Military Veterans and Servicemembers Program as the Veterans Treatment Court Program. The bill authorizes courts to develop and operate a veterans treatment court. Like existing law, the program is open to a servicemember, veteran, and a current or former defense contractor or military member of a foreign allied country. However, the bill expands participation to include not just a member of the Florida National Guard, but also a National Guard of another state. In addition, unlike the current program which is open to all veterans regardless of discharge status, the bill provides that the court will decide whether to admit a dishonorably discharged veteran to the program, on a case-by-case basis, after a hearing.

The bill encourages the court, with input from the state attorney, defense counsel and other interested parties, to develop policies and procedures, including, but not limited to, integrating substance abuse and mental health treatment with justice case processing, employing a nonadversarial approach; identifying participants early in the process; and engaging in partnerships among other veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations.

A Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court, but must comply with changes made under this bill.

The bill is estimated to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Problem-Solving Courts

Miami-Dade County established an adult drug court in 1989, the first problem-solving court in the United States.[1] Today, more than 184 problem-solving courts operate statewide.[2] These are drug court (dependency, juvenile, adult, adult misdemeanor, and adult post-adjudicatory prison diversion, and a Marchman Act Drug Court in Hillsborough County), mental health court, DUI court, and veterans court.[3]

Veterans Courts

Programming

The first veterans court opened in Buffalo, N.Y. in 2008.[4] Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.[5] Like other specialty courts, veterans court involves therapeutic intervention under a nonadversarial framework. Successful completion of pretrial court conditions may result in a dismissal of criminal charges.[6] More than 460 courts operate veterans court programs across the country.[7]

In Florida, 31 counties operate a veterans court program.[8] Moreover, veterans court programs operate in 17 of the 20 judicial circuits.[9] Even in those circuits without a designated program,

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[1] Office of the State Courts Administrator, *Florida Problem-Solving Courts Report*, pg. 2 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[2] *Id*.
[3] *Id*.
[4] Judge Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, pg. 364, American University, School of Public Affairs, Justice Programs Office Publications, *available at* https://www.american.edu/spa/jpo/initiatives/drug-court/upload/veterans-treatment-court-a-proactive-approach.pdf (last visited March 18, 2021).
[5] Jack Tsai and Emma Ogden, *A New Court System to Rehabilitate Veterans,* Public Health Post (April 25, 2018), *available at* https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/ (last visited March 18, 2021).
[6] Law for Veterans, *Veterans Courts*, *available at* https://www.lawforveterans.org/veterans-courts (last visited March 18, 2021).
[7] Jack Tsai, et. al., *A National Study of Veterans Court Treatment Participants: Who Benefits and Who Recidivates*, Adm. Pol. Ment. Health, (July 21, 2017), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060/ (last visited March 18, 2021).
[8] Veterans court programs operate in Alachua, Bay, Brevard, Broward, Clay, Citrus, Collier, Duval, Escambia, Hernando, Hillsborough, Indian River, Lake, Lee, Leon, Manatee, Marion, Miami-Dade, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia counties. Office of the State Courts Administrator, *supra* note 1 at 10-14 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[9] Office of the State Courts Administrator, *2021 Judicial Impact Statement* (Jan. 27, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.[10]

Funding

Veterans courts, like other problem-solving courts in the state, receive funding from a variety of sources both state and federal. For Fiscal Year 2020-2021, approximately 68 of the state's 184 problem-solving courts received funding through state appropriation. Other sources are federal grant funding and state agency monies through agencies targeting substance abuse and mental health treatment, such as the Department of Children and Families. An individual problem-solving court may be funded through a single or multiple sources of funding.[11]

The federal Veteran Treatment Court Coordination Act of 2019 directed the Department of Justice to formally create a program to provide funding and technical assistance to state, local, and tribal governments with veterans treatment courts.[12] As mandated, the Adult Drug Court and Veterans Treatment Court Discretionary Grant Program within the Department of Justice provides financial and technical assistance to states, state courts, local courts, units of local government, and federally recognized Indian tribal governments to enhance the operations of drug courts or assist or establish veterans treatment courts.[13] The program accepts grant applications on behalf of:

- A state or territory;
- State or local court;
- County;
- A unit of local government; or
- A federally recognized Indian tribal government (as determined by the secretary of the interior).[14]

For statewide support of veterans treatment courts through the federal program, a state agency or the administrative office of the courts is eligible to apply for a grant.[15]

Military Veterans and Servicemembers Court Program

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.[16] The Act authorizes the chief judge of each judicial circuit to create a Military Veterans and Servicemember Court Program (veterans court). The program is available to eligible veterans,

[10] *Id*. The Tenth Judicial Circuit operates a holistic veterans court docket with dedicated staff, an outreach counselor from the Veterans Administration/Department of Veterans Affairs, trained volunteer veteran mentors, and relationships with providers and justice system partners. The Third Judicial Circuit issued an administrative order which details the authority for a qualifying defendant to move to transfer his or her case to a veterans court. The Sixteenth Judicial Circuit reports that it has, case-by-case, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.
[11] Office of the State Courts Administrator, *supra* note 1, at 3.
[12] Pub. L. No. 116-153, 134 STAT. 688 (2020).
[13] Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, *Adult Drug Court and Veterans Treatment Court Discretionary Grant Program*, *available at* https://bja.ojp.gov/program/adult-drug-court-and-veterans-treatment-court-discretionary-grant-program/overview (last visited March 18, 2021).
[14] *Id*.
[15] *Id*.
[16] Chapter 2012-159, ss. 16-20, L.O.F.; Section 394.47891, F.S.

servicemembers, current or former United States Department of Defense contractors, and current or former military members of a foreign allied country. The purpose of the program is for a court to tailor sentencing to treatment of an individual's underlying disorder. Participation is voluntary.[17]

Eligibility to Participate in the Program

When first implemented, the bill provided that to be eligible, a veteran or servicemember must:

- Be convicted of a criminal offense;
- Suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem; and
- If a veteran, has received an honorable discharge from military service.[18]

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.[19] Subsequently, in 2019, the Legislature again expanded the program to provide eligibility for a veteran discharged or released under any condition, including a release under a dishonorable discharge.[20]

Pretrial Intervention Program

Pretrial intervention programs are also available for veterans. Both misdemeanor and felony cases may be processed in a pretrial intervention program. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.[21] While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment intervention team.[22] The protocol may require successful completion of outpatient or inpatient treatment, including at a jail-based treatment program. Upon successful completion of the program, the court may dismiss the charges. If the participant is otherwise eligible to do so, he or she may petition the court to have the arrest record expunged.[23] If the court finds that the defendant has not successfully completed the program, the court may return the case to the criminal docket for prosecution.[24]

Certain pending felony charges disqualify a defendant from participation in a pretrial intervention program. Considered more serious felony charges, they include:

- Kidnapping or attempted kidnapping; false imprisonment of a child under the age of 13; or luring or enticing a child;
- Murder or attempted murder; attempted felony murder; or manslaughter;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;

[17] Section 394.47891, F.S.
[18] Chapter 2012-159, s. 9, L.O.F.
[19] Chapter 2016-127, s. 9, L.O.F.
[20] Chapter 2019-61, s. 1, L.O.F.
[21] Sections 948.08(7)(a) and 948.16(2)(a), F.S.
[22] Sections 948.08(7)(b) and 948.16(2)(b), F.S.
[23] Sections 948.08(6)(d) and 948.16(2)(b), F.S.
[24] Sections 948.08(4) and 948.16(4), F.S.

- Lewd or lascivious battery, molestation, conduct, or exhibition, or attempted lewd or lascivious battery, or lewd or lascivious offense or attempted offense against an elderly or disabled person;
- Robbery or attempted robbery;
- Sexual performance by a child or attempted sexual performance by a child;
- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.[25]

Transfer of Case for Participation in a Problem-Solving Court

A veteran who is eligible for participation in a veterans court may, upon request and approval, transfer his or her case to a county other than that in which the charge arose.[26] Both a representative of the original trial court and the receiving court must agree to the transfer. At the time of transfer, a court case may either be in its pretrial or postadjudicatory phase.[27] The receiving jurisdiction disposes of the case.[28]

Participation in a Treatment Program as a Condition of Probation or Community Control

The court may order as a condition of probation or community control that a veteran or servicemember participate in a treatment program designed to address the individual's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.[29] The court must give preference to those treatment programs for which the veteran or servicemember is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans Affairs.[30]

The court may also order a person who commits a violation of probation or community control to successfully complete a military veterans and servicemembers court program if the underlying offense is a nonviolent felony and the person otherwise qualifies.[31]

Problem-Solving Court Reports

The Office of the State Courts Administrator is required to provide an annual report on problem-solving courts to the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must include:

- The number of participants in each problem-solving court for each fiscal year the court has been operating;
- The types of services provided;
- Each source of funding for each court by fiscal year; and

[25] Section 948.06(8)(c), F.S.
[26] Section 910.035(5)(a) and (b), F.S.
[27] Section 910.035(5)(d), F.S.
[28] Section 910.035(5)(f), F.S.
[29] Section 948.21(1), F.S.; A treatment program as a condition of probation or community control for a veteran released from service under a dishonorable discharge is only available if the crime was committed on or after October 1, 2019. *See* s. 948.21(3), F.S.
[30] Section 948.21(4), F.S.
[31] Section 948.06(2)(k)1., F.S.

- The performance of each court based on outcome measures established by the courts.[32]

III. Effect of Proposed Changes:

This bill redesignates the existing Military Veterans and Servicemembers Court Program as the Veterans Treatment Court Program. The program authorizes a court with jurisdiction over criminal cases to create and administer a veterans treatment court and a chief judge to issue administrative orders regarding such court.

Like existing law, a veterans treatment court can accept both pre- and post-adjudication misdemeanor and felony cases. A defendant who wishes to participate must submit an application to the state attorney. The state attorney and the court will then decide if the defendant meets eligibility requirements for the court.

Policies and Procedures of a Veterans Treatment Court

Each veterans treatment court must seek input from the state attorney, defense counsel, and other interested persons in developing and adopting policies and procedures governing such court. A veterans treatment court must create a record of policies and procedures based on nationally recognized best practices that specifically include all of the following:

- Integrating substance abuse, mental health treatment services, and other treatment and rehabilitation services into case processing.
- Employing a nonadversarial approach in which the state attorney and defense counsel promote public safety, while protecting the due process rights of the defendant.
- Identifying eligible defendants early in the process.
- Requiring frequent monitoring and testing for alcohol and drug use.
- Providing ongoing judicial interaction with each defendant.
- Monitoring and evaluating the achievement of program goals.
- Forging partnerships among veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance treatment court effectiveness.

To encourage participation, the court may also establish policies and procedures for referring a defendant to a health care provider, or assisting with housing, employment, nutrition, mentoring, education, and driver license reinstatement.

Eligibility for Participation in a Veterans Treatment Court

Each application for veterans treatment court must be reviewed by the state attorney and the court. To qualify, a defendant must either be a veteran, defined as a person who has served in the military, or a servicemember, defined as an active or reserve member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; a member of the National Guard, either in Florida or of another state; a current or former contractor for the United States Department of Defense; or a current or former military member of a foreign allied country. Whether to include

[32] Section 43.51(1), F.S.

veterans who are dishonorably discharged from military service is a decision the court makes, on a case-by-case basis, after a hearing.

To further qualify:
- The defendant must have a military- or service-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- The defendant's participation in the court is in the interest of justice and of benefit to the defendant and the community.

In determining whether participation furthers justice and is of sufficient benefit, the state attorney and court, for pretrial diversion, and the court, for all other matters, must consider:
- The nature and circumstances of the offense;
- The recommendation of the state attorney;
- Special characteristics or circumstances of both the defendant and the victim;
- Prior criminal history and whether the defendant previously participated in a veterans treatment or other similar program;
- Whether needs exceed resources available through the court;
- The impact on the community;
- Recommendations of law enforcement;
- Recommendation of the victim;
- The provision for and the likelihood of obtaining restitution during participation in the court;
- Mitigating circumstances; and
- Other reasonably related circumstances.

The program is available to a defendant whose case is at any stage of a criminal proceeding. However, a veteran or a servicemember does not have a right to participate in a veterans treatment court.

Condition of Probation or Community Control

The bill authorizes a veterans treatment court to impose a condition requiring a probationer or community controllee to participate in a treatment program to treat mental illness, traumatic brain injury, a substance abuse disorder, or a psychological problem. This provision applies to a veteran or servicemember who otherwise qualifies and who committed the underlying crime on or after July 1, 2021.

Existing Military Veterans and Servicemembers Program and Participants

By amending s. 394.47891, F.S., the bill substitutes the term "Veterans Treatment Court" for a "Military Veterans and Servicemembers Court." As such, a Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court, but must comply with changes made under this bill. Similarly, the bill does not affect or alter the rights or responsibilities of any person admitted to and participating in the program.

Cross-references and conforming changes are provided to enable a defendant currently authorized to participate in a military veterans and servicemembers court to participate in a veterans treatment court, and from the current pretrial veterans' treatment intervention program to a veterans treatment court program. Therefore, cross-references and conforming changes to ss. 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21, F.S., are included in the bill.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill authorizes, rather than requires courts to establish veterans treatment courts, the bill does not impose a mandate on local municipalities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By reducing the number of veterans who are incarcerated and linking conditions with treatment, the bill may reduce costs for veterans and their families.

C. Government Sector Impact:

Costs to the Judiciary

The Office of the State Courts Administrator provides that the bill's definition of veteran may be interpreted as expanding the pool of individuals eligible to participate in a veterans court. The impact on admissions is unknown because a variety of factors affect

admission among eligible defendants (e.g., type of offense, nature of the individual's condition, etc.). Admission remains discretionary on a case-by-case basis under the bill.[33]

Prison Beds Cost

The Criminal Justice Impact Conference considered this bill on March 8, 2021, and determined the bill to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds).[34] As of June 2020, there were 31 veterans courts operating in Florida. According to the Department of Corrections, in Fiscal Year 2018-2019, there were 142 offenders admitted for veterans treatment intervention, and in Fiscal Year 2019-2020, 108 offenders were admitted. It is currently unknown how many additional offenders will be admitted to programs as a result of the bill's provisions revising eligibility.[35]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21.

IX. Additional Information:

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

CS/CS by Criminal Justice on March 23, 2021:
The committee substitute:

- Deletes two references to a "participation agreement" which no longer exists in the bill.
- Clarifies that the court, after a hearing, will decide whether to admit a dishonorably discharged veteran to the veterans treatment court program, not the chief judge and the state attorney.
- Includes defense counsel in the group from whom the court will seek input in developing and adopting policies and procedures for the program.

[33] Office of the State Courts Administrator, *2021 Judicial Impact Statement, p. 4,* (March 21, 2021).
[34] Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Agenda* (March 8, 2021), *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm (last visited March 21, 2021).
[35] Office of Economic and Demographic Research, *SB 764 -- Veterans Treatment Courts* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

CS by Military and Veterans Affairs, Space, and Domestic Security on March 16, 2021:

The committee substitute:

- Expands participation in a veterans treatment court to include a member of a National Guard of another state;
- Requires the underlying condition that qualifies a person to participate in a veterans treatment court to be military- or service- related;
- Removes language providing the process of a participant agreement;
- Makes conforming changes to replace participation in a pretrial veterans' treatment intervention program with a veterans treatment court program; and
- Clarifies as an underlying condition a substance use disorder, rather than a substance abuse disorder.

B. Amendments:

None.

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

By the Committees on Criminal Justice; and Military and Veterans Affairs, Space, and Domestic Security; and Senator Burgess

591-03241-21 2021764c2

A bill to be entitled

An act relating to veterans treatment courts; amending s. 394.47891, F.S.; providing legislative intent; defining terms; authorizing certain courts to create and administer veterans treatment courts for specified purposes; providing standards for admission to a veterans treatment court program; specifying program implementation procedures, components, and policies; specifying eligibility requirements for participation in the program; providing construction; specifying that the act does not create a right to participate in the program; deleting provisions relating to the Military Veterans and Servicemembers Court Program, to conform to changes made by the act; amending ss. 43.51, 910.035, and 948.06, F.S.; conforming provisions to changes made by the act; amending ss. 948.08 and 948.16, F.S.; revising eligibility for certain pretrial programs to include certain individuals eligible to participate in a veterans treatment court program; amending s. 948.21, F.S.; authorizing a court to impose a condition requiring a probationer or community controllee eligible to participate in a veterans treatment court program to participate in certain treatment programs under certain circumstances; specifying applicability of the act to participants in certain court programs in existence as of a specified date; providing an effective date.

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591-03241-21 2021764c2

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

Section 1. Section 394.47891, Florida Statutes, is amended to read:

394.47891 ~~Military~~ Veterans treatment ~~and servicemembers~~ court programs.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to encourage and support the judicial circuits of the state and other such agencies, local governments, interested public or private entities, and individuals to create and maintain a veterans treatment court in each circuit. The purpose of a veterans treatment court program is to address the underlying causes of a veteran's involvement with the judicial system through the use of specialized dockets, multidisciplinary teams, and evidence-based treatment. A veterans treatment court program shall use nonadversarial approaches to resolve such issues. Veterans treatment courts depend on the leadership of judges or magistrates educated in the issues and science of veterans' behaviors leading to court involvement, and these courts require a rigorous team effort to detect, discern, and assist veterans in correcting the behaviors and choices that led to the veterans' court involvement. This section creates a detailed statewide standard for the creation and operation of, and procedures for, veterans treatment courts.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Defendant" means a veteran or servicemember who has been charged with or convicted of a criminal offense.

(b) "Servicemember" means:

1. A member of the active or reserve components of the

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

United States Army, Navy, Air Force, Marine Corps, or Coast Guard;

2. A member of the Florida National Guard or a National Guard of another state;

3. A current or former contractor for the United States Department of Defense; or

4. A current or former military member of a foreign allied country.

(c) "Veteran" means a person who has served in the military.

(d) "Veterans treatment court" means a specialized docket administered by a court for veterans and servicemembers as set forth in this section.

(3) AUTHORIZATION.—

(a) A court with jurisdiction over criminal cases may create and administer a veterans treatment court.

(b) A veterans treatment court may adjudicate misdemeanors and felonies.

(c) The chief judge may issue administrative orders concerning the veterans treatment court.

(d) The court, after a hearing, shall determine on a case-by-case basis whether veterans who have been dishonorably discharged may participate in a veterans treatment court.

(4) ADMISSION.—A defendant who meets the eligibility requirements under subsection (8) may be admitted to a veterans treatment court at any stage of a criminal proceeding. A defendant seeking to participate in a veterans treatment court must submit an application to the state attorney. The state attorney and court must review each application and determine

whether the defendant meets the eligibility requirements in subsection (8).

(5) RECORD OF POLICIES AND PROCEDURES.—

(a) Each veterans treatment court shall seek input from the state attorney, defense counsel, and other interested persons in developing and adopting policies and procedures to implement subsections (6) and (7).

(b) A veterans treatment court shall create a record of the policies and procedures adopted to implement subsections (6) and (7).

(6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

(a) A veterans treatment court shall adopt policies and procedures to implement the following key components:

1. Integrating substance abuse and mental health treatment services and any other related treatment and rehabilitation services with justice system case processing;

2. Using a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting the due process rights of the defendant;

3. Providing for early identification of eligible defendants;

4. Monitoring defendants for abstinence from alcohol and drugs by frequent testing;

5. Providing ongoing judicial interaction with each defendant;

6. Monitoring and evaluating the achievement of each defendant's program goals; and

7. Forging partnerships among the veterans treatment courts, the United States Department of Veterans Affairs, the

Florida Department of Veterans' Affairs, public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(b) In adopting policies and procedures under this section, the court shall consult nationally recognized best practices related to the key components of veterans treatment courts.

(7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS TREATMENT COURTS.—A veterans treatment court may adopt supplemental policies and procedures to:

(a) Refer a defendant with a medical need to an appropriate health care provider or refer a defendant for appropriate assistance, including assistance with housing, employment, nutrition, mentoring, education, and driver license reinstatement.

(b) Otherwise encourage participation in the veterans treatment court.

(8) ELIGIBILITY.—

(a) A defendant may participate in a veterans treatment court if:

1. The defendant has a military- or service-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem; and

2. The defendant's participation in the veterans treatment court is in the interest of justice and of benefit to the defendant and the community, as determined by:

a. The state attorney, with regard to pretrial diversion; and

b. The court, with regard to all other matters.

(b) In making the determination under subparagraph (a)2.,

the state attorney and court must consider:

1. The nature and circumstances of the offense charged;

2. The special characteristics or circumstances of the defendant and any victim or alleged victim, including any recommendation of the victim or alleged victim;

3. The defendant's criminal history and whether the defendant previously participated in a veterans treatment court or similar program;

4. Whether the defendant's needs exceed the treatment resources available to the veterans treatment court;

5. The effect on the community of the defendant's participation and treatment in the veterans treatment court;

6. Recommendations of any law enforcement agency involved in investigating or arresting the defendant;

7. If the defendant owes restitution, the likelihood of payment during the defendant's participation in the veterans treatment court;

8. Any mitigating circumstances; and

9. Any other circumstances reasonably related to the defendant's case.

(9) LIBERAL CONSTRUCTION.—The provisions of this section shall be liberally construed.

(10) NO RIGHT TO PARTICIPATE.—This section does not create a right of a veteran or servicemember to participate in a veterans treatment court ~~The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program under which veterans, as defined in s. 1.01; veterans who were discharged or released under any condition; servicemembers, as defined in s. 250.01; individuals who are~~

~~current or former United States Department of Defense contractors; and individuals who are current or former military members of a foreign allied country, who are charged or convicted of a criminal offense, and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Entry into any Military Veterans and Servicemembers Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program~~.

Section 2. Subsection (2) of section 43.51, Florida Statutes, is amended to read:

43.51 Problem-solving court reports.—

(2) For purposes of this section, the term "problem-solving court" includes, but is not limited to, a drug court pursuant to s. 397.334, s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment ~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; a community court pursuant to s. 948.081; or a delinquency pretrial intervention court program pursuant to s. 985.345.

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Section 3. Paragraph (a) of subsection (5) of section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment ~~military veterans' and servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 4. Paragraph (k) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(k)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the court may order the offender to successfully complete a postadjudicatory mental health court program under s. 394.47892 or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891 if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third

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degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Offenders charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;

c. The court determines that the offender is amenable to the services of a postadjudicatory mental health court program, including taking prescribed medications, or a veterans treatment ~~military veterans and servicemembers~~ court program;

d. The court explains the purpose of the program to the offender and the offender agrees to participate; and

e. The offender is otherwise qualified to participate in a postadjudicatory mental health court program under s. 394.47892(4) or a veterans treatment ~~military veterans and servicemembers~~ court program under s. 394.47891.

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory mental health court program or the veterans treatment court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Paragraph (a) of subsection (7) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(7)(a) ~~Notwithstanding any provision of this section,~~ A person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and who is identified as a veteran or a servicemember, as defined in s. 394.47891, and is otherwise qualified to participate in a veterans treatment court program under s. 394.47891 ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem~~ is eligible for ~~voluntary~~ admission into a veterans treatment court program pursuant to the requirements of s. 394.47891(4) and (8). ~~pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:~~

~~1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.~~

~~2. If a defendant previously entered a court-ordered veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.~~

Section 6. Paragraph (a) of subsection (2) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and

treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2)(a) A veteran or a servicemember, as defined in s. 394.47891, who is otherwise qualified to participate in a veterans treatment court program under s. 394.47891 ~~s. 1.01; a veteran who is discharged or released under any condition; a servicemember, as defined in s. 250.01; an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem,~~ and ~~who~~ is charged with a misdemeanor is eligible for ~~voluntary~~ admission into a misdemeanor veterans treatment court ~~pretrial veterans' treatment intervention~~ program ~~approved by the chief judge of the circuit~~, for a period based on the program's requirements and the treatment plan for the offender, pursuant to the requirements of s. 394.47891(4) and (8) ~~upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program~~.

Section 7. Present subsection (4) of section 948.21, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

(4) Effective for a probationer or community controllee

whose crime is committed on or after July 1, 2021, who is a veteran or a servicemember as defined in s. 394.47891, and who is otherwise qualified to participate in a veterans treatment court program under s. 394.47891, the court may, in addition to any other conditions imposed, require the probationer or community controllee to participate in a treatment program capable of treating the probationer or community controllee's military- or service-related mental illness, traumatic brain injury, substance use disorder, or psychological problem.

Section 8. A Military Veterans and Servicemembers Court Program in operation under s. 394.47891, Florida Statutes, on or before June 30, 2021, may continue to operate following the effective date of this act, but must comply with the amendments made by this act to that section. This act does not affect or alter the rights or responsibilities of any person who, on or before June 30, 2021, was admitted to and participating in a Military Veterans and Servicemembers Court Program established under s. 394.47891, Florida Statutes.

Section 9. This act shall take effect July 1, 2021.

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

19 April 2021
Meeting Date

SB 764
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Veterans Treatment Court

Name James "Hammer" Hartsell,Major General, USMC (Ret),

Job Title Deputy Executive Director

Address 400 S. Monroe Street Ste 2105
Street

Tallahassee FL 32399
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Phone 850-487-1533

Email HartsellJ@FDVA.State.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

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19 April 2021
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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 900
INTRODUCER:	Senator Rodriguez
SUBJECT:	Child Welfare
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	**Favorable**
2.	Sneed	Kidd	AHS	**Recommend: Favorable**
3.	Sneed	Sadberry	AP	**Favorable**

I. Summary:

SB 900 makes a number of changes in the laws relating to child welfare that are necessary for the Department of Children and Families (DCF) to be in compliance with new federal requirements that are the result of the expiration of the state's Title IV-E waiver and the upcoming implementation date of the federal Family First Prevention Services Act (FFPSA).

The bill provides a definition for the term "voluntary services" and expands the entities that have access to confidential reports and records in cases of child abuse or neglect to include employees, authorized agents, and contract providers of the Agency for Health Care Administration and the Agency for Persons with Disabilities.

The bill clarifies the Extended Foster Care (EFC) program requirements aligning eligibility with the federal law regarding supervised independent living settings by:

- Specifying that licensed foster homes are the preferred supervised living arrangements for young adults;
- Prohibiting specified living arrangements from being used; and
- Prohibiting involuntary placements for young adults participating in EFC.

The bill also provides that safe houses must care for children who are victims of commercial sexual exploitation in a manner that separates those children who have other needs, but specifies that this provision does not apply to safe foster homes.

The bill increases the capacity of children that can be placed in a licensed foster home without an additional assessment and provides the DCF with the ability to adopt rules to establish requirements for requesting a waiver for over-capacity.

The bill will require the DCF to update the Florida Safe Families Network (FSFN); however, the one-time cost is anticipated to be minimal and may be absorbed by the department within existing resources.

See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Chapter 39, F.S., Dependency Process - Overview

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of known or suspected child abuse,[1] abandonment,[2] or neglect, [3] 24 hours a day, seven days a week.[4] Any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the hotline.[5] A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect.[6] A child protective investigator investigates the situation either immediately or within 24 hours after the report is received, depending on the nature of the allegation.[7]

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[1] Section 39.01(2), F.S., defines "abuse" to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child also includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

[2] *See* s. 39.01(1), F.S., which defines "abandonment", in part, to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. It further defines, "establish or maintain a substantial and positive relationship" to include, but not be limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. The definition specifically provides that marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

[3] Section 39.01(50), F.S., defines "neglect" to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. Circumstances are not to be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected. Further, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian, unless a court orders the following services to be provided, when the health of the child so requires: medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization. The definition further provides that neglect of a child includes acts or omissions.

[4] Section 39.201(5), F.S.

[5] Section 39.201(a), F.S.

[6] Section 39.201(2)(a), F.S.

[7] Section 39.201(5), F.S.

If, after conducting an investigation in response to receiving a call to the hotline, the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. The proceeding, known as a shelter hearing, results in a court determining if probable cause exists to keep a child in shelter[8] status pending further investigation of the circumstances leading to the detention of a child.[9]

When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.[10] Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency.[11] If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days.[12]

Subsequent to a child being found dependent, a court must hold a disposition hearing to determine a course of treatment and services and placement of the child under protective supervision.[13] The court must first consider placing the child with relatives.[14] If a child cannot safely remain in the original home and no adult relative is available for temporary legal custody, the child may be placed with an adult willing to care for the child under the protective supervision of the DCF.[15] Placing the child in the temporary legal custody of the DCF invests the DCF with the rights and responsibilities of a legal custodian.[16]

Title IV-E and Title IV-E Waivers

Title IV-E of the Social Security Act[17] is the largest federal funding stream for child welfare activities. The funding stream supports foster care, adoption assistance, and guardianship assistance programs. States receive a level of reimbursement from the federal government for eligible claims. Title IV-E also includes the Chafee Foster Care Independence Program, a capped entitlement for which states are entitled to reimbursement for claims it submits to the federal government, up to a certain level, related to preparing children in out-of-home care for self-sufficiency when they transition out.[18]

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[8] Section 39.01(78), F.S., defines "shelter" to mean a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.
[9] Section 39.01(79), F.S.
[10] *See* s. 39.01(15), F.S., for the definition of "child who is found to be dependent".
[11] The purpose of an arraignment hearing is for a parent to admit, deny, or consent to findings of dependency that are alleged in the petition for dependency. If any party has requested a demand for early filing, the court must hold the arraignment hearing within 7 days after the date of filing of the petition. Section 39.506(1), F.S.
[12] Section 39.506(1), F.S.
[13] Section 39.521(1), F.S.
[14] Section 39.507(7)(c), F.S.
[15] Section 39.521(3)(c), F.S.
[16] Section 39.521(3)(d), F.S.
[17] 42 U.S.C. ss. 671-679b.
[18] Child Trends, *A Primer on Title IV-E Funding for Child Welfare, a*vailable at https://www.childtrends.org/wp-content/uploads/2016/01/2016-04TitleIV-EPrimer.pdf (last visited March 8, 2021).

To be eligible for the Title IV-E Foster Care Program, the vehicle through which states receive Title IV-E funds for children in foster care, children must:

- Be in out-of-home placements;
- Have been removed from families that are considered "needy";
- Have entered care through a judicial determination or voluntary placement; and
- Be in licensed or approved foster care placements.[19]

Title IV-E waivers were first available as an option to states in 1994, when Section 1130 of the Social Security Act gave the U.S. Department of Health and Human Services the authority to approve demonstration projects for which states can waive certain requirements of Title IV-E. These were designed to provide states with opportunities and the flexibility to use federal funds to test innovative approaches to child welfare service delivery and financing.[20]

The DCF participated in the Title IV-E Waiver Demonstration for approximately 13 years. The Florida Title IV-E Waiver Demonstration Project was implemented statewide on October 1, 2006. The purpose of the waiver project was to determine whether increased spending flexibility of Title IV-E funding would support changes in the state's service delivery system, maintain cost neutrality to the federal government, and most importantly, maintain child safety as well as improving permanency and well-being outcomes for children and their families being served within Florida's child welfare system. In exchange, Florida agreed to a capped allocation with annual automatic increases plus triggers to adjust the allocation if actual levels significantly exceeded estimates.[21]

The need for DCF to claim Title IV-E funding returned to traditional program requirements due to the expiration of the state's waiver demonstration on September 30, 2019. In order to minimize the potential gap in needed funding, the DCF began to implement a plan it referred to as Path Forward in the 2018-19 fiscal year. The Path Forward plan encompassed four initiatives including: Title IV-E Extended Foster Care, Title IV-E Guardianship Assistance Program (GAP), Foster Care Candidacy, and Title IV-E Eligibility Rate Improvements. Currently, the DCF has implemented all of these initiatives and is monitoring performance closely to ensure the projected goals are met. In addition, the DCF is attempting to ensure that Florida statutes align with federal requirements to enable the DCF to maximize federal IV-E claiming.[22]

Family First Prevention Services Act

The federal Family First Prevention Services Act (FFPSA), included in the 2018 Bipartisan Budget Act,[23] focuses on evidence-based services to prevent children from entering foster care;

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[19] *Id*.
[20] Child Welfare Information Gateway, *Child Welfare Demonstration Waivers*, available at https://www.childwelfare.gov/topics/management/reform/waivers/ (last visited March 8, 2021).
[21] Armstrong, M.I., Vargo, A.C., Jordan, N., Sharrock, P., Sowell, C, Yampolskaya, S., Kip. S. (2009). *Evaluation brief on the status, activities and findings related to Florida's IV-E waiver demonstration project: Two years post-implementation.* University of South Florida, Louis de la Parte Florida Mental Health Institute, available at https://www.myflfamilies.com/general-information/publications-forms/docs/APSR/S10-008463_Title%20IV-E%20Brief%202%20January2010.pdf (last visited March 8, 2021).
[22] The DCF, *2021 Agency Legislative Bill Analysis, SB 900*, January 24, 2021, p. 2 (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The DCF SB 900 Agency Analysis").
[23] H.R. 1862 of 2018. Pub.L. 115-123

limits reimbursement for congregate (group home) care; and makes changes affecting adoption subsidies, reunification, and extended foster care supports. The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. In providing for children and their families meeting eligibility requirements, the FFPSA provides for the reimbursement of specific federally approved, evidence-based services that address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also limits federal funding for group homes placements.[24]

The Title IV- E Prevention Services Clearinghouse was established by the U.S. Department of Health and Human Services Administration for Children and Families (ACF) to conduct an objective and transparent review of research on programs and services intended to provide enhanced support to children and families and prevent foster care placements. The Prevention Services Clearinghouse, developed in accordance with the FFPSA and codified in Title IV-E of the Social Security Act, rates programs and services as well-supported, supported, promising, or does not currently meet criteria.[25]

Congress made the FFPSA effective October 1, 2018, but gave states the opportunity to delay implementation of select provisions of the law.[26] Florida received approval to delay the implementation of the FFPSA until October 1, 2021.[27]

Voluntary Services

Currently, there is no definition for the term "voluntary services" in Florida law, even though it's used either specifically or conceptually in a number of places in ch. 39, F.S., including:

- **Section 39.501(3)(d)1., F.S.**, relating to a petition for dependency, provides whether a parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the DCF.
- **Section 39.823, F.S.**, relating to guardian advocates for drug dependent newborns, provides because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(14), F.S.

[24] The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtmll; *see also* the National Conference of State Legislatures (NCSL), *Family First Prevention Services Act*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx (all sites last visited March 14, 2021).
[25] *See* the U.S. Department of Health and Human Services, Office of Planning, Research, and Evaluation, *Title IV-E Prevention Services Clearinghouse, 2018 – 2023*, available at https://www.acf.hhs.gov/opre/project/title-iv-e-prevention-services-clearinghouse-2018-2023 (last visited March 15, 2021).
[26] The NCSL, *Family First Prevention Services Act*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx (last visited March 15, 2021).
[27] The DCF SB 900 Agency Analysis, p. 4.

Out-of-Home Placement Settings

When it becomes necessary for the DCF to remove a child from the home, efforts must be made to place the child in the least restrictive placement.[28] The community-based care lead agency (lead agency) is required to complete a comprehensive placement assessment to determine the appropriate level of care.[29] Relatives and non-relatives are considered the least restrictive level of care but should a suitable relative or non-relative not be available, a foster home would be the next appropriate level of care and then a group home setting.[30]

A safe house is one of the FFPSA placement settings currently licensed and certified by the DCF.[31] The DCF currently allows for the placement of victims of, or at risk of, human trafficking to be placed in the same safe house setting with any other population, as long as the children who have not experienced commercial sexual exploitation do not interact with victims of trafficking.[32] There are ten group homes that wish to transition to a safe house. FFPSA will require that safe houses strictly serve victims of, or at risk of, human trafficking. Current laws create a barrier to the DCF's ability to claim Title IV-E as a safe house is permitted to serve a victim of, or at risk of, human trafficking in the same setting with children of any population.[33]

Parenting Partnerships for Children in Out-of-Home Care

Current law requires all direct caregivers employed by residential group homes to meet the same education, training, and background and other screening requirements as foster parents. The current law creates a barrier to group home providers that are gathering criminal records in a timely manner, thus affecting Title IV-E payments.

Foster Home Capacity

Section 409.175(3), F.S., requires an over-capacity waiver assessment when the number of children in a foster home exceeds five, including the foster parents own children, while the federal language allows up to six children to be placed in a foster home, excluding the foster parents own children, before being considered over-capacity.[34] In addition, current language allows for the ability to assess and grant an over-capacity waiver for any reason, while federal language only allows for over-capacity when:

- A parenting youth in foster care needs to remain with their child;
- Siblings need to remain together;
- A child with an established meaningful relationship with the family needs to remain with the family; or
- A family with special training or skills needs to provide care to a child who has a severe disability.[35]

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[28] Section 39.523(1)(a), F.S.
[29] The DCF, *Community-Based Care*, available at https://www.myflfamilies.com/service-programs/community-basedcare/overview.shtml (last visited March 15, 2021).
[30] Section 39.523(2), F.S.
[31] Section 409.1678(1)(b), F.S., defines the term "safe house" as a group residential placement certified by the DCF to care for sexually exploited.
[32] Section 409.1678(2)(b), F.S.
[33] The DCF SB 900 Agency Analysis, p. 6.
[34] 42 U.S.C. s. 672(c)(B).
[35] *Id.*

Continuing Care for Young Adults – Extended Foster Care (EFC)

Section 39.6251, F.S., provides conditions pertaining to supervised living environments requiring an independent living setting, giving some flexibility based on lead agency assessment and approval. The statute does not define independent living for the purposes of supervised living environments, but requires that the young adult reside in a supervised living environment that is approved by the DCF or lead agency. The young adult must live independently, but in an environment in which he or she is provided supervision, case management, and supportive services by the DCF or lead agency. Such an environment must offer developmentally appropriate freedom and responsibility to prepare the youth for adulthood.[36]

Such a supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement if the arrangement is approved by the lead agency and is acceptable to the young adult. A young adult may also continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time the youth reached the age of 18.[37]

In addition, current law does not prohibit involuntary placements nor does it exclude settings in which delinquent youth or young adults are detained or incarcerated.[38]

Confidentiality of Reports and Records

Currently, in order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, s. 39.202, F.S., provides that all records held by the DCF concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, are confidential and exempt from the provisions of s. 119.07(1), F.S., and must not be disclosed except as specifically authorized by chapter 39, F.S. The exemption also applies to information in the possession of those entities granted access under this section.[39]

Information made confidential and exempt under s. 39.202, F.S., may only be released in a specified manner and to specified individuals.[40] Exceptions to this are provided for cases involving a child who is missing.[41] Current law does not provide the Agency for Health Care Administration (AHCA) and the Agency for Person with Disability (APD) the capability to complete child abuse and neglect record checks for their employees who work in direct contact with children placed by the DCF in facilities licensed by the AHCA.[42]

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[36] Section 39.6251(4)(a), F.S.
[37] *Id*.
[38] Section 39.6251, F.S.
[39] Section 39.202(1). F.S. When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.
[40] Section 39.202(2), F.S.
[41] *See* s. 39.202(4), F.S.
[42] Section 39.202(2), F.S.

Protective Investigations of Institutional Child Abuse, Abandonment, or Neglect

Current law allows that when a person who is employed as a caregiver in a licensed residential group home and is named in any capacity in three or more reports of institutional child abuse, abandonment, or neglect within a five-year period, the DCF may review all reports for the purposes of the employment screening requirements in s. 409.145(2)(e), F.S.[43]

Section 409.175(2)(m), F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies, provides that the term "screening" means the act of assessing the background of personnel of level II through level V family foster homes and includes, but is not limited to, employment history checks as provided in chapter 435, using level 2 screening standards.

III. Effect of Proposed Changes:

Title IV-E Waiver

Confidentiality of Reports and Records

The bill amends s. 39.202, F.S., related to the confidentiality of reports and records pertaining to child abuse, neglect, and abandonment, allowing the Agency for Health Care Administration (AHCA) and the Agency for Persons with Disabilities (APD) to review child abuse and neglect reports for employees who work in facilities licensed under chs. 393, 394, and 409, F.S., to meet federal requirements for children under the care and supervision of the DCF who are placed in these facilities.[44] The changes will allow the agencies to ensure children remain safe during their placement through receiving reports related to an employee that indicate safety concerns for the children in such facilities.

When an employee is deemed unsafe and remains in a caregiver role, payments for children placed in these facilities will not be federally reimbursable through Title IV-E. The inability to claim federal funding will result in expending more state general revenue funds on these group home placements.

Screenings for Employees of Group Homes Parenting for Children in Out-of-Home Care

The bill amends s. 409.1415(2)(c), F.S., relating to group home employee requirements, removing specific references to background screening and other screening requirements and maintaining the requirement to have the same education and training as licensed foster care placements. The background screening required by the group home employee is maintained as level 2 screening as required in s. 39.0138, F.S., and ch. 435, F.S. This will allow the DCF flexibility to work closely with law enforcement and other background screening units to ensure all checks are completed accurately to avoid costly penalties.

[43] Section 39.302(7)(b), F.S.

[44] Facilities licensed under ch. 393, F.S., care for individuals who have a developmental disability; facilities licensed under ch. 394, F.S., provide care for individuals with mental health issues; and facilities licensed under ch. 409, F.S., provide care for children who are in out-of-home care through the child welfare system.

Protective Investigations for Institutional Abuse

The bill amends s. 39.302(7)(b), F.S., to codify current practice and align the changes in s. 409.1415(2)(c), F.S., to the federal requirements in the FFPSA, allowing the DCF the opportunity to claim federal Title IV-E funds for children placed in facilities licensed by either AHCA or APD.[45]

Continuing Care for Young Adults – Extended Foster Care

The bill amends s. 39.6251, F.S., clarifying that young adults participating in EFC are to reside in *voluntary*, supervised independent living environments. The bill specifies that a supervised living arrangement cannot be a detention facility, forestry camp, training school, or other facility operated primarily for the detention of delinquent children.[46] The bill also provides that an involuntary placement is only authorized if a court-appointed guardian has placed the young adult in such placement.

Family First Prevention Services Act

Voluntary Services

The bill amends s. 39.01, F.S., creating a new definition for the term "voluntary services" to mean social services and other preventive and rehabilitative services provided to the parent or legal custodian of the child or directly to the child, or services provided on behalf of the child, when a parent or legal custodian requests or voluntarily agrees to receive assistance. This new definition will align with federal language that says services can be provided to the parent or legal custodian of the child, and to the child or on behalf of the child.[47]

The new definition will give the DCF the opportunity to claim Title IV-E federal funds for evidence-based prevention services that have been approved through the Federal Clearing House as promising, supported, and well-supported. The amount of increased claiming is currently indeterminate as there is no way to determine how many prevention services statewide will meet the requirements of the Clearinghouse.[48]

Out-of-Home Placement Settings

The bill amends s. 409.1678(2), F.S., to exempt safe foster homes and restrict safe houses from serving victims of commercial sexual exploitation. The new language will restrict placement of populations who are not victims of commercial sexual exploitation from being placed in a safe house setting. This will align with the FFPSA requirements and the DCF's ability to claim Title IV-E federal funds for safe house settings.[49]

Foster Home Capacity

The bill amends s. 409.175, F.S., increasing the capacity of children that can be placed in a licensed foster home without the need for an additional assessment from five children, including

[45] 42 U.S.C. s. 671(a)(20).
[46] Section 39.6251(4), F.S.
[47] 42 U.S.C. ss. 475(13), 471(e), and 474(a)(6).
[48] The DCF SB 900 Agency Analysis, p. 9.
[49] 42 U.S.C. s. 472(k)(2).

the family's own children, to six children, not including the family's own children. In addition, the increase in capacity enables the DCF to adopt rules for approving over-capacity assessments that align with Title IV-E requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF estimates it will cost $115,600 for one-time technology updates to implement provisions in the bill.[50] However, it is anticipated that these expenditures can be absorbed by the DCF using existing department resources.

VI. Technical Deficiencies:

None.

[50] The DCF SB 900 Agency Analysis, p. 12-13.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially the following sections of the Florida Statutes: 39.01, 39.202, 39.302, 39.6251, 409.1415, 409.1678, and 409.175.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Rodriguez

39-01078-21 2021900__

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining the term "voluntary services"; amending s. 39.202, F.S.; expanding the list of entities that have access to child abuse records; amending s. 39.302, F.S.; revising the authority of the Department of Children and Families to review reports for the purpose of employment screening; amending s. 39.6251, F.S.; providing that licensed foster homes are the preferred supervised living arrangements for young adults; prohibiting supervised living arrangements from including specified facilities; prohibiting young adults from being involuntarily placed in any setting unless such placement is through a court-appointed guardian; amending s. 409.1415, F.S.; revising requirements for certain employees of residential group homes; amending s. 409.1678, F.S.; revising certification requirements for safe foster homes; amending s. 409.175, F.S.; requiring assessments to be completed if the total number of children in a family foster home will exceed six, excluding the family's own children, before placement of a child in a family foster home; requiring the department to adopt rules to establish eligibility criteria for requesting a waiver for such assessments and criteria to approve such waivers; providing an effective date.

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

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

39-01078-21 2021900__

Section 1. Subsection (88) is added to section 39.01, Florida Statutes, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(88) "Voluntary services" means social services and other preventive and rehabilitative services provided to the parent or legal custodian of the child or directly to the child, or services provided on behalf of the child, when a parent or legal custodian requests or voluntarily agrees to assistance.

Section 2. Paragraphs (a) and (h) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapters 393

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and 394 ~~chapter 393~~, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children;

6. Employment screening for caregivers in residential group homes and facilities licensed under chapters 393, 394, and 409; or

7. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(h) Any appropriate official of the department, the Agency for Health Care Administration, or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

Section 3. Paragraph (b) of subsection (7) of section

39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(7) When an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers.

(b) Likewise, if a person is employed as a caregiver in a residential group home licensed under s. 409.175 and is named in any capacity in three or more reports within a 5-year period, the department may review all reports for the purposes of the employment screening required under s. 409.175(2)(m) ~~s. 409.1415(2)(c)~~.

Section 4. Subsection (4) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

(4)(a) The young adult must reside in a supervised living environment that is approved by the department or a community-based care lead agency. The young adult shall live independently, but in an environment in which he or she is provided supervision, case management, and supportive services by the department or lead agency. Such an environment must offer developmentally appropriate freedom and responsibility to prepare the young adult for adulthood.

1. For the purposes of this subsection:~~,~~

a. A supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement if the arrangement is approved by the community-based care lead agency and is acceptable to the young adult; however, a licensed foster home is the preferred arrangement.

b. A supervised living arrangement may not include a detention facility, a forestry camp, a training school, or any other facility operated primarily for the detention of children who are determined to be delinquent.

2. A young adult may continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time he or she reached the age of 18 years. A young adult may not reside in any setting in which the young adult is involuntarily placed, unless the placement is through a court-appointed guardian.

(b) Before approving the residential setting in which the young adult will voluntarily live, the department or community-based care lead agency must ensure that:

1. The young adult will be provided with a level of supervision consistent with his or her individual education, health care needs, permanency plan, and independent living goals as assessed by the department or lead agency with input from the young adult. Twenty-four hour onsite supervision is not required; however, 24-hour crisis intervention and support must be available.

2. The young adult will live in an independent living environment that offers, at a minimum, life skills instruction,

counseling, educational support, employment preparation and placement, and development of support networks. The determination of the type and duration of services shall be based on the young adult's assessed needs, interests, and input and must be consistent with the goals set in the young adult's case plan.

Section 5. Paragraph (c) of subsection (2) of section 409.1415, Florida Statutes, is amended to read:

409.1415 Parenting partnerships for children in out-of-home care.—

(2) PARENTING PARTNERSHIPS.—

(c) An employee of a residential group home must meet the background screening requirements under s. 39.0138 and the level 2 screening standards for screening under chapter 435. An employee of a residential group home who works directly with a child as a caregiver must meet, at a minimum, the same education~~,~~ and training~~, background, and other screening~~ requirements as caregivers in family foster homes licensed as level II under s. 409.175(5).

Section 6. Paragraph (c) of subsection (2) of section 409.1678 is amended to read:

409.1678 Specialized residential options for children who are victims of commercial sexual exploitation.—

(2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

(c) To be certified, a safe house must hold a license as a residential child-caring agency, as defined in s. 409.175, and a safe foster home must hold a license as a family foster home, as defined in s. 409.175. A safe house or safe foster home must also:

1. Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.

2. Serve exclusively one sex.

3. Group child victims of commercial sexual exploitation by age or maturity level.

4. Care for child victims of commercial sexual exploitation in a manner that separates those children from children with other needs; however, this subparagraph does not apply to safe foster homes. ~~Safe houses and safe foster homes may care for other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.~~

5. Have awake staff members on duty 24 hours a day, if a safe house.

6. Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.

7. Meet other criteria established by department rule, which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.

Section 7. Subsection (3) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(3)(a) The total number of children placed in each family

foster home shall be based on the recommendation of the department, or the community-based care lead agency where one is providing foster care and related services, based on the needs of each child in care, the ability of the foster family to meet the individual needs of each child, including any adoptive or biological children or young adults remaining in foster care living in the home, the amount of safe physical plant space, the ratio of active and appropriate adult supervision, and the background, experience, and skill of the family foster parents.

(b) If the total number of children in a family foster home will exceed six, excluding ~~five, including~~ the family's own children, an assessment of each child to be placed in the home must be completed by a family services counselor and approved in writing by the counselor's supervisor prior to placement of any additional children in the home, except that, if the placement involves a child whose sibling is already in the home or a child who has been in placement in the home previously, the assessment must be completed within 72 hours after placement. The assessment must assess and document the mental, physical, and psychosocial needs of the child and recommend the maximum number of children in a family foster home that will allow the child's needs to be met.

(c) For any licensed family foster home, the appropriateness of the number of children in the home must be reassessed annually as part of the relicensure process. For a home with more than six ~~five~~ children, if it is determined by the licensure study at the time of relicensure that the total number of children in the home is appropriate and that there have been no substantive licensure violations and no indications

of child maltreatment or child-on-child sexual abuse within the past 12 months, the relicensure of the home may ~~shall~~ not be denied based on the total number of children in the home.

(d) The department shall adopt rules to establish eligibility criteria for requesting a waiver for assessments required under this subsection and criteria to approve such waivers.

Section 8. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 900
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 900 - Child Welfare

Name Michael Wickersheim

Job Title DCF Director of Legislative Affairs

Address 1317 Winewood Blvd.
Street
Tallahassee FL 32399
City *State* *Zip*

Phone (850) 488-9410

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Children and Families

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 918
INTRODUCER:	Senators Bradley and Jones
SUBJECT:	Education
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 918 provides additional requirements for how the Advanced International Certificate of Education (AICE) FEFP bonus funds can be expended by school districts, and expands the expenditure of bonus funding to include school programs administered by the University of Cambridge Local Examinations Syndicate which prepare prospective students to enroll in AICE courses.

The bill also updates which teachers are eligible for a bonus to include classroom teachers who teach International General Certificate of Secondary Education (pre-AICE) courses.

The bill does not require a state appropriation. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

Advanced International Certificate of Education (AICE)

Successful completion of an Advanced International Certificate of Education (AICE) curriculum[1] is one option for a student to graduate from high school in Florida with a standard high school diploma.[2] The Cambridge AICE Diploma is a certificate that requires learners to study a compulsory core subject with specified Cambridge subjects drawn from the three curriculum areas: mathematics and science (Group 1); languages (Group 2); and arts and

[1] Cambridge International AS and A Level qualifications offer a choice of 55 subjects, which schools can offer in almost any combination. An AS Level course typically lasts one academic year; an A Level course typically takes two years. Cambridge Assessment International Assessment, *Curriculum*, https://www.cambridgeinternational.org/programmes-and-qualifications/cambridge-advanced/cambridge-international-as-and-a-levels/curriculum/ (last visited Feb. 23, 2021).

[2] Section 1003.4282(1)(a), F.S.

humanities (Group 3). There is also the option to study interdisciplinary subjects (Group 4). In order to achieve the Cambridge AICE Diploma, learners must achieve a minimum of seven credits, with at least one credit from Groups 1, 2, and 3.[3] Prior to enrolling in Cambridge AICE courses, a student can enroll in Cambridge IGCSE, the International General Certificate of Secondary Education (pre-AICE).[4] Cambridge IGCSE examination sessions occur twice a year in June and in November.[5]

Over 700 universities in the United States formally accept Cambridge AS and A Levels and the Cambridge AICE Diploma.[6]

AICE in Florida

The AICE program is one of a number of articulated acceleration programs, which are intended to shorten the time necessary for a student to earn a high school diploma and a postsecondary degree, broaden the scope of curricular options available, or increase the depth of study available for a particular subject.[7] The law provides the following benefits to schools and students engaged in the AICE program:

- Successful completion of a course examination qualifies for college credit.[8]
- The percentage of a school's students eligible to earn college credit favorably affects the school's grade.[9]
- A grade earned in AICE or pre-AICE is assigned additional weight for determining student eligibility for a Bright Futures Scholarship.[10]
- Classroom teachers and school districts receive funding incentives based on the performance of each student in AICE examinations.[11]

At least 177 high schools in 31 Florida school districts currently offer the AICE program.[12] Almost 40 percent of AICE program participants in Florida are considered eligible for free or

[3] Cambridge Assessment International Education, *Cambridge AICE Diploma qualification*, https://www.cambridgeinternational.org/programmes-and-qualifications/cambridge-advanced/cambridge-aice-diploma/qualification/ (last visited Feb. 23, 2021).
[4] Cambridge Assessment International Education, *Cambridge IGCSE*, https://www.cambridgeinternational.org/programmes-and-qualifications/cambridge-upper-secondary/cambridge-igcse/ (last visited Feb. 23, 2021).
[5] Cambridge Assessment International Education, *Cambridge IGCSE qualification*, https://www.cambridgeinternational.org/programmes-and-qualifications/cambridge-upper-secondary/cambridge-igcse/qualification/ (last visited Feb. 23, 2021).
[6] Cambridge Assessment International Education, *Guidance for schools and students*, https://www.cambridgeinternational.org/programmes-and-qualifications/recognition-and-acceptance/schools-and-students/ (last visited Feb. 23, 2021).
[7] Section 1007.27(1), F.S. Accelerated mechanisms include, but are not limited to, dual enrollment and early admission, advanced placement (AP), credit by examination, the International Baccalaureate (IB) Program, and the Advanced International Certificate of Education (AICE) Program. *Id*.
[8] Section 1003.4295, F.S.
[9] Section 1008.34(3)(b)2.b., F.S.
[10] Section 1009.531(3)(a), F.S.
[11] Section 1011.62(1)(m), F.S.
[12] Email, Angela Dempsey, PooleMcKinley (Feb. 12, 2021) (on file with the Senate Committee on Education).

reduced-price meals.[13] During the 2019-2020 fiscal year, 63,212 students in Florida participated in the AICE program.[14]

In spring 2020, 47,577 students enrolled in pre-AICE courses in Florida.[15] In fall 2020, 54,046 students enrolled in pre-AICE courses in Florida.[16] In the 2019-2020 school year, 668 end-of-course pre-AICE exams were taken in Florida, of which 440 scored grade E or above.[17]

Funds for the Operation of Schools - AICE Incentive Funding

The Florida Education Finance Program (FEFP) provides a funding incentive for school districts with students in AICE courses who successfully complete AICE examinations or earn an AICE diploma.[18] A value of 0.16 FTE student membership is calculated for each student enrolled in a full-credit AICE course who receives a score of E, and 0.08 FTE student membership for each student enrolled in a half-credit AICE course who receives a score of E or higher on a subject examination. A value of 0.3 FTE student membership is calculated for each student who receives an AICE diploma.[19]

Current law requires each school district to allocate at least 80 percent of the funds received from the AICE bonus FTE funding to the school program that generated the funds.[20]

Additionally, classroom teachers receive bonus funds for the performance of their students on AICE examinations, in the amount of $50 for each student taught by the AICE teacher in each full-credit AICE course, and $25 for each student taught by the AICE teacher in each half-credit AICE course, who receives a score of E or higher on the AICE examination. An additional bonus of $500 is allotted to each AICE teacher in a school designated with a grade of "D" or "F" who has at least one student scoring E or higher on the full-credit AICE examination, regardless of the number of classes taught or number of such students, or an additional $250 to each AICE teacher in such a school who has at least one student scoring E or higher on the half-credit AICE examination in that class.[21]

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[13] Office of Program Policy Analysis and Government Accountability, *School Choice Landscape* (Feb. 15, 2021), at 39.
[14] *Id.*, at 38. Palm Beach County School District accounts for one-third of all AICE students in the state with 20,993 program participants. *Id.*, at 39.
[15] Email, Angela Dempsey, PooleMcKinley (Feb 19, 2021) (on file with the Senate Committee on Education).
[16] *Id.* Some IGCSE syllabuses, such as Cambridge pre-AICE Spanish Level 1, 2, or 3 and Cambridge pre-AICE Mathematics Levels 1, 2, or 3, extends beyond one year, meaning the exam may not be administered until the end of the course sequence. However, the enrollment data would reflect each of these courses. Additionally, many schools offer the IGCSE curriculum to develop the skills and content mastery required for future AICE courses without administering the IGCSE exams. In 2019, 668 end-of-course IGCSE exams were taken in Florida, of which 440 obtained a score grade E or higher. *Id.*
[17] *Id.* Cambridge International A Level and AS Level subjects are graded from A* to E or A to E, respectively, and the Cambridge AICE Diploma is awarded on a points system, such that each grade is converted to points to award a Cambridge AICE Diploma at one of three levels based on the overall score. Cambridge Assessment International Education, *Cambridge AICE Diploma qualification*, https://www.cambridgeinternational.org/programmes-and-qualifications/cambridge-advanced/cambridge-aice-diploma/qualification/ (last visited Feb. 23, 2021).
[18] *See* 1011.62, F.S. Florida also provides incentive funds for dual enrollment, exploratory career education, the International Baccalaureate Program, advanced placement courses, and career-themed courses, among others. Section 1011.62(1), F.S.
[19] Section 1011.62(1)(m), F.S.
[20] *Id.*
[21] *Id.*

III. Effect of Proposed Changes:

The bill modifies the requirement in law that each school district allocate at least 80 percent of the funds received from the Advanced International Certificate of Education (AICE) bonus FTE funding to the school program that generated the funds to also include school programs administered by the University of Cambridge Local Examinations Syndicate that prepare prospective students to enroll in AICE courses.

The bill adds a restriction that such funds must be expended solely for the payment of costs associated with the:

- Application and registration process;
- Program fees and site licenses;
- Training, professional development, salaries, benefits, and bonuses for instructional personnel and program coordinators;
- Examination and diploma fees;
- Membership fees;
- Supplemental books;
- Instructional supplies, materials, and equipment; and
- Other activities that identify prospective AICE students or prepare prospective students to enroll in AICE courses.

The bill specifies that the school district is required to distribute bonus funds to each classroom teacher who provided International General Certificate of Secondary Education (pre-AICE) instruction. The bill removes references to full-credit and half-credit courses and exams, to reflect that Cambridge no longer offers half-credit exams. Accordingly, the bill changes the designation from half-credit AICE courses to pre-AICE courses for the $25 and $250 bonus awards a teacher would earn for students who successfully complete examinations.[22]

Expanding the use of existing FTE bonus funding to school programs administered by the University of Cambridge Local Examinations Syndicate may require school districts to increase the support of pre-AICE instruction, which prepares prospective students to enroll in AICE courses. The financial supports for pre-AICE instruction and related activities may increase opportunities for Florida secondary students to take Cambridge courses and prepare for AICE courses.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[22] Florida law does not provide similar funding incentives for pre-IB courses. Section 1011.62(1)(l), F.S. However, a value of 0.16 FTE is calculated for each student enrolled in an IB course who receives a score of 4 or higher on a subject examination, and a value of 0.3 FTE is calculated for each student who receives an IB diploma, which value is added to the FTE in basic programs from grades 9 through 12. *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not require a state appropriation. Expanding the distribution of financial incentives to apply to International General Certificate of Secondary Education (pre-AICE) programs may affect how school districts allocate bonus funds related to Advanced International Certificate of Education (AICE) and pre-AICE activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1011.62 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Bradley

5-00782A-21 2021918__

A bill to be entitled

An act relating to education; amending s. 1011.62, F.S.; requiring school districts to allocate a certain amount of specified funds to certain programs that prepare prospective students to enroll in Advanced International Certificate of Education courses; requiring such funds to be spent on specified costs; requiring school districts to distribute specified bonuses to certain classroom teachers providing International General Certificate of Secondary Education instruction; requiring bonuses based on a student's specified score on the Advanced International Certificate of Education examination to be paid to all Advanced International Certificate of Education teachers instead of only full-credit Advanced International Certificate of Education teachers; providing an effective date.

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

Section 1. Paragraph (m) of subsection (1) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR

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OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(m) *Calculation of additional full-time equivalent membership based on Advanced International Certificate of Education examination scores of students.*—A value of 0.16 full-time equivalent student membership shall be calculated for each student enrolled in a full-credit Advanced International Certificate of Education course who receives a score of E or higher on a subject examination. A value of 0.08 full-time equivalent student membership shall be calculated for each student enrolled in a half-credit Advanced International Certificate of Education course who receives a score of E or higher on a subject examination. A value of 0.3 full-time equivalent student membership shall be calculated for each student who receives an Advanced International Certificate of Education diploma. Such value shall be added to the total full-time equivalent student membership in basic programs for grades 9 through 12 in the subsequent fiscal year. Each school district shall allocate at least 80 percent of the funds received from the Advanced International Certificate of Education bonus FTE funding, in accordance with this paragraph, to the school program that generated the funds and to school programs administered by the University of Cambridge Local Examinations Syndicate that prepare prospective students to enroll in Advanced International Certificate of Education courses. These funds shall be expended solely for the payment of costs associated with the application and registration process; program fees and site licenses; training, professional

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development, salaries, benefits, and bonuses for instructional personnel and program coordinators; examination and diploma fees; membership fees; supplemental books; instructional supplies, materials, and equipment; and other activities that identify prospective Advanced International Certificate of Education students or prepare prospective students to enroll in Advanced International Certificate of Education courses. The school district shall distribute to each classroom teacher who provided Advanced International Certificate of Education or International General Certificate of Secondary Education (pre-AICE) instruction:

1. A bonus in the amount of $50 for each student taught by the Advanced International Certificate of Education teacher in each ~~full-credit~~ Advanced International Certificate of Education course who receives a score of E or higher on the Advanced International Certificate of Education examination. A bonus in the amount of $25 for each student taught by the pre-AICE ~~Advanced International Certificate of Education~~ teacher in each pre-AICE ~~half-credit Advanced International Certificate of Education~~ course who receives a score of E or higher on the pre-AICE ~~Advanced International Certificate of Education~~ examination.

2. An additional bonus of $500 to each Advanced International Certificate of Education teacher in a school designated with a grade of "D" or "F" who has at least one student scoring E or higher on the ~~full-credit~~ Advanced International Certificate of Education examination, regardless of the number of classes taught or of the number of students scoring an E or higher on the ~~full-credit~~ Advanced International

Certificate of Education examination.

3. Additional bonuses of $250 each to teachers of pre-AICE ~~half-credit Advanced International Certificate of Education~~ classes in a school designated with a grade of "D" or "F" which has at least one student scoring an E or higher on the pre-AICE ~~half-credit Advanced International Certificate of Education~~ examination in that class. Teachers receiving an award under subparagraph 2. are not eligible for a bonus under this subparagraph.

Bonuses awarded to a teacher according to this paragraph shall be in addition to any regular wage or other bonus the teacher received or is scheduled to receive.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

April 8, 2021

Senator Kelli Stargel, Chair
Senate Committee on Appropriations
420 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Madam Chairman:

I respectfully request that Senate Bill 918 be placed on the committee's agenda at your earliest convenience. The bill will provide school districts an opportunity to use their Advanced International Certificate of Education (AICE) bonus FTE funding to support or add programs that expand access to rigorous courses and prepare students for Cambridge AICE courses.

Please let me know if you need additional information on this issue.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Tim Sadberry, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

918
Bill Number (if applicable)

Topic Advanced International Certificate of Education (AICE)

Amendment Barcode (if applicable)

Name Sherry Reach

Job Title Cambridge Assessment Deputy Regional Director, North America

Address 131 Bid A Wee Lane
Street

Phone 850 624-4410

Panama City Beach | FL | 32413
City | *State* | *Zip*

Email sherry.reach@cambridgeinternational.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Cambridge Assessment International Education

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

Room 412 Knott Bldg

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

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Lobbyist registered with Legislature: ☐ Yes ☑ No

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Room 412 Knott Bldg

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 936
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Wright and others
SUBJECT:	Recovery of Spaceflight Assets
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	**Fav/CS**
2.	Cellon	Jones	CJ	**Favorable**
3.	Hrdlicka	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 936 creates s. 331.502, F.S., which provides that a spaceflight entity retains ownership over a spaceflight asset until the entity expressly abandons ownership of the asset. Spaceflight assets include any item or part of an item that is used in spaceflight activities, including launch and reentry.

The bill prohibits a person from appropriating a spaceflight asset that he or she finds to his or her use. Instead, the person must report the asset's location to law enforcement. Then, the law enforcement agency must make a reasonable effort to identify the asset's owner and promptly notify the owner of any information relevant to recovering the asset.

If a law enforcement officer determines that exigent circumstances require that a spaceflight asset's owner enter private property to recover the asset, the officer may authorize the entry. Exigent circumstances include a situation in which failure to enter the property could result in immediate danger to public safety or destruction of the asset.

The bill provides that a person who finds a spaceflight asset and knowingly uses it or refuses to surrender it commits a first degree misdemeanor, punishable by imprisonment for up to 1 year and a fine not exceeding $1,000. Moreover, the person must pay restitution to the owner.

The bill also amends s. 331.501, F.S., to update cross-references to federal law.

The bill may result in a positive fiscal impact on the private sector and a negative fiscal impact for the government sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Spaceflight Assets in Florida

Florida has the second-highest number of aviation and aerospace establishments of any state. It is home to over 17,144 aerospace-related companies and more than 130,000 aerospace-related employees.[1] According to the Space Coast Office of Tourism, 31 launches took off from Cape Canaveral in 2020, and one U.S. Space Force official estimates there could be as many as 53 launches in 2021.[2]

Asset Recovery

In the past, officials have faced setbacks when attempting to recover spaceflight assets. Debris fell across eastern Texas and western Louisiana when the Space Shuttle Columbia tragically broke apart while re-entering the Earth's atmosphere in 2003.[3] Within hours of the Columbia disaster, debris from the shuttle was listed for sale on eBay. Similarly, members of the public attempted to sell debris from the Challenger after it exploded off the coast of Cape Canaveral.[4]

As a result of the high number of space operations launching from and returning to the state, spaceflight assets often return to the land within or water surrounding the state. Private spaceflight entities place an emphasis on reusability, turning to technological advances to aid in rocket and spacecraft recovery.[5] One company, for example, has tested mid-air recovery of a first-stage rocket, part of the company's plan to reuse the rocket.[6]

Lost or Abandoned Property

On Public Property

Chapter 705, F.S., relating to lost or abandoned property, provides specific procedures for reporting, disposing of, and ascertaining ownership of lost or abandoned property. The

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[1] Space Florida, *Why Florida + Facts and Figures*, available at https://www.spaceflorida.gov/ (last visited March 11, 2021).
[2] Steven Walker, *The sky's the limit: Space Coast expects another strong year of launches in 2021*, Orlando Sentinel (January 20, 2021), available at http://www.orlandosentinel.com/space/os-bz-space-coast-launches-future-20210120-dhet5rilz5fnvoajklcwftbm2m-story.html (last visited March 11, 2021).
[3] Federal Bureau of Investigation, *Recovering the Space Shuttle Columbia*, (February 1, 2018) available at https://www.fbi.gov/news/stories/15th-anniversary-of-space-shuttle-columbia-disaster (last visited March 11, 2021).
[4] Lee Dembart, *Columbia memorabilia up for bids on auction site*, International Herald Tribune (February 3, 2003), available at https://www.nytimes.com/2003/02/03/news/columbia-memorabilia-up-for-bids-on-auction-site.html (last visited March 11, 2021).
[5] Irene Klotz, *Extra portion of SpaceX rocket recovered from launch, Musk says*, Reuters, Aerospace and Defense (March 31, 2017), available at https://www.reuters.com/article/us-space-spacex-recovery/extra-portion-of-spacex-rocket-recovered-from-launch-musk-says-idUSKBN1722LD (last visited March 11, 2021).
[6] Jeff Foust, *Rocket Lab tests Electron stage recovery*, SPACENEWS (April 8, 2020), available at https://spacenews.com/rocket-lab-tests-electron-stage-recovery/ (last visited March 11, 2021).

procedures outlined in s. 705.103, F.S., apply only to lost and abandoned property found on public property and, in some cases, places open to the public.[7] Finders of lost or abandoned property and law enforcement are subject to procedures outlined in ch. 705, F.S., when attempting to ascertain the property's rightful owner. If the rightful owner does not come forward, the finder of the lost or abandoned property may claim the property so long as they follow the procedures outlined in ch. 705, F.S.

Any person who finds lost or abandoned property on public property has a duty to report the description and location of the property to a law enforcement officer.[8] If the law enforcement officer taking a report cannot identify or locate the rightful owner of reported lost or abandoned property, the law enforcement officer must ascertain whether the person reporting the property wishes to make a claim to the property. If so, that person must pay the law enforcement agency a reasonable sum of money to cover the agency's costs for transportation, storage, and publication of notice. If the rightful owner of the property comes forward, this sum is reimbursed to the finder of the property by the rightful owner reclaiming the property.[9]

A law enforcement officer who ascertains that lost or abandoned property is present on public property has a duty to make a reasonable attempt to ascertain the rightful owner and take such property into custody if the property is of such a nature that it can easily be removed.[10] If lost or abandoned property is of such a nature that it cannot be easily removed, the law enforcement officer places a notice on the item, which must comply with the requirements set forth in s. 705.103, F.S.[11] If the owner or any person interested in the lost or abandoned property has not removed the property within five days of the notice being posted, or shown reasonable cause as to why they have not done so, law enforcement:

- May retain any or all of the abandoned property for its own use or for use by the state or a local government, trade such property to another unit of local government or a state agency, donate the property to a charitable organization, sell the property, or notify the appropriate removal service.[12]
- Has a duty to take custody of the lost property, retain custody of such property for 90 days, and publish notice of the intended disposition of the property during the first 45 days of the 90-day timeline.[13]

The rightful owner of lost or abandoned property recovered from public property is liable to the law enforcement agency for costs of transportation and storage of such property and the law enforcement agency's cost for publication of notice. If the rightful owner does not pay such costs within 30 days of making a claim to the property, title to the property vests in the law enforcement agency.[14]

[7] 93-30 Fla. Op. Att'y Gen. (1993).
[8] Section 705.102(1), F.S.
[9] Section 705.102(2), F.S.
[10] Section 705.103(1), F.S.
[11] This notice shall be in substantially the same form as the template provided in s. 705.103, F.S., requiring that the property be removed within 5 days. Section 705.103(2), F.S.
[12] Section 705.103(2)(a), F.S.
[13] Section 705.103(2)(b), F.S.
[14] Section 705.103(7), F.S.

On Private Property

Lost or abandoned property found on private property is not covered by s. 705.103, F.S., and is subject to the principles of the common law of property.[15] Under common law, both the rightful owner and the finder of lost property have a protectable and enforceable interest in the property. The finder of personal property may protect his or her interest in the property and may defend the property against all others, other than the true owner of the property.[16]

Section 78.01, F.S., provides for the right of replevin, whereby "[a]ny person whose personal property is wrongfully detained by any other person or officer may have a writ of replevin to recover said personal property and any damages sustained by reason of the wrongful taking or detention as herein provided."

Absent any statutory obligation to follow specific procedures to ascertain the rightful owner, a person who finds personal property on private property has few obligations under the common law. Further, Florida provides no statutory obligation for local law enforcement to participate in the removal, transportation, or storage of personal property found on private property, leaving the decision to engage in such matters up to municipalities and local law enforcement agencies.[17]

Theft

A person who unlawfully appropriates lost or abandoned property for his or her own use or refuses to deliver such property when required to do so commits theft.[18] A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[19]

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. In terms of severity, the two main categories of theft are grand theft and petit theft.[20]

Grand Theft

Grand theft is a felony of the first, second, or third degree, depending on the value of the item stolen.[21] The value range for each felony degree and the corresponding penalties are set forth in this chart:

[15] 93-30 Fla. Op. Att'y Gen. (1993).
[16] 76-101 Fla. Op. Att'y Gen. (1976).
[17] 93-30 Fla. Op. Att'y Gen. (1993).
[18] Section 705.102(4), F.S.
[19] Section 812.014(1), F.S.
[20] Section 812.014(2) and (3), F.S.
[21] Section 812.014(2), F.S. The felony degree of grand theft can also be determined by other circumstances, such as the nature of the item or the circumstances of the theft.

Degrees of Grand Theft		
First Degree	$100,000 or more[22]	Imprisonment for up to 30 years and a fine of up to $10,000[23]
Second Degree	$20,000 or more, but less than $100,000[24]	Imprisonment for up to15 years and a fine of up to $10,000[25]
Third Degree	$750 or more, but less than $20,000[26]	Imprisonment for up to 5 years and a fine of up to $5,000[27]

In some cases, the penalties may be more severe than those set forth in the above chart, such as in the case of a "habitual offender."[28]

Petit Theft

Petit theft is a misdemeanor of the first[29] or second degree,[30] depending on the value of the item stolen or the number of prior offenses.[31] A theft of an item valued at $100 or more, but less than $750, is first degree misdemeanor petit theft.[32] A person commits a second degree misdemeanor petit theft when he or she commits a theft that does not meet the criteria of any of the other degrees of theft set forth in statute.[33]

Section 331.501, F.S., Federal Law References

Section 331.501, F.S., provides an exemption from liability for a spaceflight entity[34] conducting launch or reentry services from the death or injury of a spaceflight participant[35] resulting from the risks inherent with space travel. Subsequent to the creation of s. 331.501, F.S., in 2008, the federal law which the statute references was amended to exclude a "government astronaut" from the definition of "space flight participant," and moved from 49 U.S.C. s. 70102 to 51 U.S.C. s. 50902.[36]

[22] Section 812.014(2)(a), F.S.
[23] Sections 775.082(3)(b) and 775.083(1)(b), F.S.
[24] Section 812.014(2)(b), F.S.
[25] Sections 775.082(3)(d) and 775.083(1)(b), F.S.
[26] Section 812.014(2)(c), F.S.
[27] Section 775.082(3)(e) and 775.083(1)(c), F.S.
[28] *See* s. 775.084, F.S.
[29] A first degree misdemeanor is punishable by imprisonment for up to 1 year and a fine of up to $1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.
[30] A second degree misdemeanor is punishable by imprisonment for up to 60 days and a fine of up to $500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.
[31] *See* s. 812.014(2)(e) and (3)(a), F.S.
[32] Section 812.014(2)(e), F.S.
[33] Section 812.014(3)(a), F.S.
[34] "Spaceflight entity" means any public or private entity holding a U.S. Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing such a license, permit, or authorization. Section 331.501(1)(c), F.S.
[35] "Spaceflight participant" means an individual who is not crew or a government astronaut carried within a launch vehicle or reentry vehicle. 51 U.S.C. 50902(20).
[36] FAA Reauthorization Act of 2018, Pub. L. No. 115-254 (October 5, 2018); 51 U.S.C. 50902(20).

III. Effect of Proposed Changes:

The bill creates s. 331.502, F.S., which contains definitions, policies, and procedures related to spaceflight assets. The bill defines a spaceflight asset as "any item, or any part of an item, owned by a spaceflight entity which is used in spaceflight activities, including crewed and uncrewed spacecraft, satellites, launch vehicles, parachutes and other landing aids, and any ancillary equipment that was attached to the launch vehicle during launch, orbit, reentry, or recovery."

The bill provides that a spaceflight entity retains ownership over a spaceflight asset until the entity expressly abandons ownership of the asset.

Under the bill, any person who finds an item reasonably identifiable as a spaceflight asset is required to report the description and location of the asset to a law enforcement agency with jurisdiction over that location, regardless of whether the asset is found on public or private property. The bill requires any law enforcement agency that receives a report of a spaceflight asset to make a reasonable effort to identify the owner of the asset and promptly notify the owner of any information relevant to the recovery of the asset.

The bill provides that a law enforcement officer may authorize the owner of a spaceflight asset to enter private property to recover the asset when exigent circumstances[37] exist to justify the entry, including when failure to timely recover the asset may result in:

- An immediate danger to public safety; or
- Damage to or destruction of the spaceflight asset.

The bill creates the crime of misappropriation of a spaceflight asset, a misdemeanor of the first degree. Under this provision, a person commits misappropriation of a spaceflight asset if he or she knowingly appropriates an item reasonably identifiable as a spaceflight asset to his or her own use or to the use of any other person not entitled to the asset, or refuses to surrender a spaceflight asset to a law enforcement officer or the owner of the asset upon demand.

The bill requires a court to order any person convicted of misappropriation of a spaceflight asset to pay full restitution to the owner of the asset if, as a result of the misappropriation, the asset is damaged or cannot be recovered.

The bill updates cross-references in s. 331.501, F.S., to the United States Code defining the terms "participant" and "spaceflight activities," which moved from 49 U.S.C. s. 70102 to 51 U.S.C. s. 50902. Although the bill does not make substantive changes to s. 331.501, F.S., by updating the definition of "participant" the bill excludes the potential death or injury suffered by a government astronaut from the immunity protections enjoyed by a spaceflight entity.

The bill is effective July 1, 2021.

[37] The exigent circumstances doctrine is primarily used to overcome a warrant requirement and allow law enforcement onto or into private property in emergency or dangerous situation. *See Riggs v. State*, 918 So. 2d 274, 278 (Fla. 2005).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact as the bill helps safeguard expensive spaceflight assets from theft, including theft of proprietary technology and intellectual property that could be discovered by examining a spaceflight asset.

C. Government Sector Impact:

The bill may have a positive indeterminate (i.e. unquantifiable increase) jail bed impact on municipalities and county law enforcement agencies because it creates a new misdemeanor offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 331.501 of the Florida Statutes.

This bill creates section 331.502 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on March 1, 2021:

The committee substitute:

- Protects all "spaceflight assets," instead of protecting only a space vehicle and its parts;
- Defines spaceflight asset to include anything involved in the launch, orbit, or reentry of a spacecraft;
- Provides that the owner of a spaceflight asset retains ownership over the asset until the entity expressly abandons it;
- Removes the bill's authorization for law enforcement to require a person who finds a spaceflight asset to bring it to the owner or to the law enforcement agency;
- Creates the crime of "misappropriation of a spaceflight asset," a first degree misdemeanor;
- Describes misappropriation of a spaceflight asset as appropriating a spaceflight asset to that person's use or the use of another, or as the refusal to surrender the asset to a law enforcement officer or the asset's owner upon command; and
- Requires a court to order a person guilty of misappropriation of a spaceflight asset to pay restitution to the asset's owner for any damage the person caused.

B. Amendments:

None.

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

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senators Wright and Farmer

583-02311-21 2021936c1

A bill to be entitled

An act relating to recovery of spaceflight assets; creating s. 331.502, F.S.; defining terms; providing that a spaceflight entity retains ownership of a spaceflight asset after launch or upon reentry; requiring a person who finds an item reasonably identifiable as a spaceflight asset to report the description and location of the asset to law enforcement; requiring a law enforcement agency to make reasonable efforts to identify and notify the owner of a spaceflight asset; authorizing the owner of a spaceflight asset to enter private property under specified circumstances; prohibiting a person from appropriating a spaceflight asset to his or her own use or refusing to surrender a spaceflight asset to law enforcement or the owner; providing criminal penalties; amending s. 331.501, F.S.; updating references to federal provisions; providing an effective date.

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

Section 1. Section 331.502, Florida Statutes, is created to read:

331.502 Recovery of spaceflight assets.—

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

(a) "Launch" has the same meaning as provided in 51 U.S.C. 50902.

(b) "Law enforcement agency" has the same meaning as

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

583-02311-21 2021936c1

provided in s. 908.102.

(c) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(d) "Reentry" has the same meaning as provided in 51 U.S.C. 50902.

(e) "Spaceflight activities" and "spaceflight entity" have the same meanings as provided in s. 331.501(1).

(f) "Spaceflight asset" means any item, or any part of an item, owned by a spaceflight entity which is used in spaceflight activities, including crewed and uncrewed capsules, launch vehicles, parachutes and other landing aids, and any ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.

(2) A spaceflight entity retains ownership over a spaceflight asset following a launch or reentry, regardless of the physical condition or location of a spaceflight asset, unless or until such time the spaceflight entity expressly indicates its intent to abandon the asset.

(3)(a) A person who locates any item reasonably identifiable as a spaceflight asset must report the description and location of the spaceflight asset to a law enforcement agency having jurisdiction over the location.

(b) A law enforcement agency that receives a report under this subsection must make a reasonable effort to identify the owner of the spaceflight asset and promptly notify the owner of any information relevant to the recovery of the spaceflight asset.

(4) The owner of a spaceflight asset may enter private property to recover a spaceflight asset if a law enforcement

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

officer authorizes such entry after determining that exigent circumstances exist. Exigent circumstances may include, but are not limited to, a determination that a failure to timely recover the spaceflight asset may result in an immediate danger to public safety or damage to, or destruction of, the spaceflight asset.

(5) A person may not knowingly appropriate an item reasonably identifiable as a spaceflight asset to his or her own use, or to the use of any other person not entitled to the spaceflight asset, or refuse to surrender a spaceflight asset to a law enforcement officer or the owner upon demand. A person who violates this subsection commits misappropriation of a spaceflight asset, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A court shall order any person convicted of violating this subsection to pay restitution to the owner of the spaceflight asset if, as a result of the misappropriation of a spaceflight asset, the asset is damaged or cannot be recovered.

Section 2. Paragraphs (a) and (b) of subsection (1) of section 331.501, Florida Statutes, are amended to read:

331.501 Spaceflight; informed consent.—

(1) For purposes of this section, the term:

(a) "Participant" means any spaceflight participant as that term is defined in 51 U.S.C. s. 50902 ~~49 U.S.C. s. 70102~~.

(b) "Spaceflight activities" means launch services or reentry services as those terms are defined in 51 U.S.C. s. 50902 ~~49 U.S.C. s. 70102~~.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

March 25, 2021

The Honorable Kelli Stargel
420, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: CS/SB 936 – Recovery of Spaceflight Assets

Dear Chair Stargel:

CS/Senate Bill 936, relating to Recovery of Spaceflight Assets has been referred to the Committee on Appropriations. I am requesting your consideration on placing CS/SB 936 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright, District 14

cc: Tim Sadberry, Staff Director of the Committee on Appropriations
Jamie DeLoach. Deputy Staff Director of the Committee on Appropriations
John Shettle, Deputy Staff Director of the Committee on Appropriations
Alicia Weiss, Administrative Assistant of the Committee on Appropriations

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

936
Bill Number (if applicable)

Topic RECOVERY OF SPACE FLIGHT ASSETS

Amendment Barcode (if applicable)

Name JEFFREY SHARKEY

Job Title President Capitol Alliance Group

Address 106 E College Ave #1110
Street

Phone 850 224 1060

TLH FL 32301
City *State* *Zip*

Email JeffreySharkey@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPACE X

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 976
INTRODUCER:	Appropriations Committee; Environment and Natural Resources Committee; and Senator Brodeur
SUBJECT:	Protection of Ecological Systems
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Favorable**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 976 creates "The Florida Wildlife Corridor Act" and provides legislative findings and purposes, and defines terms, for the act. The bill requires the Department of Environmental Protection (DEP) to encourage and promote various measures of investing in and protecting the Florida Wildlife Corridor.

The bill requires the St. Johns River Water Management District (SJRWMD), in consultation with the DEP, Seminole County, the Fish and Wildlife Conservation Commission (FWCC), and the Department of Transportation (DOT), to conduct a study and issue a report by December 31, 2021, that includes information and updates regarding the implementation of recommendations from the Little Wekiva Watershed Management Plan Final Report. The bill identifies what information is to be included in the report.
The bill requires the DEP and the SJRWMD to review any permits north of State Road 436 to assess whether a permittee is in violation of permit conditions and take appropriate action to resolve compliance issues.

The DEP and the SJRWMD shall review known permit violations that have occurred since 2018 and attempt to determine what effects such violations may have had on sediment accumulation in the Little Wekiva River.

The DEP has estimated the cost of the study to be approximately $500,000.

The bill is effective July 1, 2021.

II. Present Situation:

Wildlife Corridors

Wildlife corridors enable animals to safely travel in order to find mates, food, and shelter. This mobility results in increased genetic diversity within the species population and ensures a species' resistance to issues such as disease, genetic mutations due to inbreeding, and potential extinction.[1] Human development has resulted in many habitats becoming fragmented, creating blockades such as residential areas, industrial parks, and roads.[2] Wildlife corridors are sections of land that connect two or more wildlife habitats together and allow animals to avoid roads and other developments.[3] Florida's wildlife corridor encompasses about 17 million acres, including almost 10 million acres of conservation lands.[4]

Wekiva River System

The Wekiva River begins at the junction of Wekiwa Spring Run and Rock Springs Run and runs north for 15 miles.[5] It is a Florida and National Scenic and Wild River,[6] an Outstanding Florida Water,[7] and a state designated paddling trail.[8] The Little Wekiva River, Blackwater Creek, and more than 30 springs contribute their waters to the Wekiva River as it winds its way north.[9] The Wekiva River Basin is a complex ecological system of rivers, springs, seepage areas, lakes, streams, sinkholes, wetland prairies, hardwood hammocks, pine flatwoods, and sand pine scrub communities.[10] The superb ecological condition of the Wekiva River Basin supports many species of plant and animal life, some of which are endangered, threatened, or of special concern.[11]

The Little Wekiva River is a tributary to the Wekiva River. It is approximately 15 miles long, and its main stem flows northward from Lake Lawne in Orlando.[12] Its stream course consists of a combination of channelized ditches, lakes, incised channel reaches and meandering wetland flow

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[1] Ersi, *Importance of Wildlife Corridors*, https://www.arcgis.com/apps/Cascade/index.html?appid=6b87112414f84c8392c842dabab9f9al (last visited Apr. 18, 2021).
[2] *Id.*
[3] University of Florida, *Connecting Nature to Nature: Wildlife Corridors*, http://blogs.ifas.ufl.edu/pinellasco/2015/04/03/connecting-nature-to-nature-wildlife-corridors/ (last visited Apr. 18, 2021).
[4] Florida Wildlife Corridor, *What's at Stake?*, https://florida wildlife cooridor.org/ (last visited Apr. 18, 2021).
[5] Department of Environmental Protection (DEP), *Wekiva River Aquatic Preserve*, https://floridadep.gov/rcp/aquatic-preserve/locations/wekiva-river-aquatic-preserve (last visited Feb. 18, 2021).
[6] National Wild and Scenic Rivers System, *Florida*, https://www.rivers.gov/florida.php (last visited Feb. 18, 2021).
[7] Section 258.39(30), F.S; Fla. Admin. Code. R. 62-302.700.
[8] DEP, *Florida's Designated Paddling Trails*, https://floridadep.gov/PaddlingTrails (last visited Feb. 18, 2021).
[9] DEP, *Wekiva River Aquatic Preserve*, https://floridadep.gov/rcp/aquatic-preserve/locations/wekiva-river-aquatic-preserve (last visited Feb. 18, 2021).
[10] National Wild and Scenic Rivers System, *Wekiva River, Florida*, https://www.rivers.gov/wekiva.php (last visited Feb. 18, 2021).
[11] *Id*.
[12] Seminole County, *Seminole County Water Atlas*, http://www.seminole.wateratlas.usf.edu/macro/waterbody.aspx?wbodyid=1013 (last visited Feb. 18, 2021).

until its confluence with the Wekiva River.[13] According to the 2005 Little Wekiva River Watershed Management Plan, the Little Wekiva River has experienced chronic occurrences of sedimentation from the urbanization of the river's watershed which has overtaxed the conveyance and sediment transport capacity of the river.[14]

Wekiva River Protection Act

In 1988, the Florida Legislature passed the Wekiva River Protection Act and declared the Wekiva River Protection Area as a natural resource of state and regional importance.[15] The act requires the river's surrounding counties to amend their comprehensive plans and land development rules to deter wetlands losses, promote protection of wildlife and their habitats, and provide long-term protection for the area.[16] A small portion of the Little Wekiva River Basin is within this protection area, namely the area of the basin that is to the north of State Road 434 and to the west of Markham Woods Road.[17] The map below shows the Wekiva River Protection Area.[18]

[13] St. Johns River Water Management District (SJRWMD), *Little Wekiva River Watershed Management Plan* (Nov. 2005), *available at* http://www.orange.wateratlas.usf.edu/upload/documents/Basinreport_LittleWekiva_ExecSumm.pdf.
[14] *Id*. at ES-3.
[15] Sections 369.301-369.309, F.S. *See* 369.307(3), F.S.
[16] Sections 369.301-369.309, F.S. *See* SJRWMD, *Little Wekiva River Watershed Management Plan* (Nov. 2005), *available at* http://www.orange.wateratlas.usf.edu/upload/documents/Basinreport_LittleWekiva_ExecSumm.pdf.
[17] *Id*.
[18] SJRWMD, *Wekiva River Protection Area*, https://data-floridaswater.opendata.arcgis.com/maps/edit?content=floridaswater%3A%3Awekiva-river-protection-area-sjrwmd (last visited Feb. 18, 2021).

Seminole County Little Wekiva River Restoration Project

Seminole County has proposed a project to maintain and restore the Little Wekiva River in a proposed area that is approximately 7,000 linear feet in length and 20 acres.[19] The proposed area is shown in the map below. The project is intended to address excess accumulated sediments and vegetation that are causing the river to expand into the flood plain. Proposed project activities include harvesting invasive plant islands, removing deposited sediments within the river, re-contouring historic meanders, and replanting with beneficial native plant species.[20]

Seminole County is leading the project and coordinating with local residents, the St. Johns River Water Management District, the DEP, the FWCC, the DOT, Orange County, the City of Altamonte Springs, United States Representative Stephanie Murphy, Florida Audubon, and the Friends of the Wekiva River.[21]

Seminole County estimates that the project will cost $1,650,000 and is seeking matching funds for the restoration project with local and state partners, the DEP and water management district grants, and local sales tax funding.[22]

Environmental Resource Permits

Florida's environmental resource permit (ERP) program regulates activities involving the alteration of surface water flows.[23] An ERP authorizes new development or construction

[19] *Seminole County*, Little Wekiva River Restoration Project (undated memo) (on file with the Senate Committee on Environment and Natural Resources).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] DEP, *Environmental Resource Permitting Online Help*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/environmental-resource-0 (last visited Mar. 2, 2021).

activities to occur in a manner that will prevent flooding, manage surface water, and protect water quality, wetlands, and other surface waters from stormwater pollution.[24] Unless specifically exempt or below permitting thresholds, anyone proposing construction of new facilities, such as residential, commercial, governmental or institutional, or anyone proposing work in, on, or over wetlands or other surface waters, must obtain an ERP prior to beginning construction.[25] Construction requiring an ERP includes dredging or filling; dams, impoundments, docks or other structures; and stormwater management systems.[26]

The ERP program is implemented by the DEP, the water management districts, and certain delegated local government programs. The ERP rule criteria are designed to protect water quantity, water quality, and wetland functions. An applicant must:

- Provide reasonable assurance that state water quality standards will not be violated and the activity is not contrary to public interest;
- Demonstrate that the development is not harmful to the water resources or inconsistent with the overall objectives of the appropriate water management district or the DEP; and
- Have a plan for implementing performance-based erosion and sediment control BMPs, which must be installed and maintained in accordance with specified manuals.[27]

If wetland or other surface water impacts will occur, mitigation is usually required to offset adverse impacts to wetland or other surface water functions.[28] The DEP is authorized to issue administrative penalties under s. 403.121, F.S., for violations of the ERP permitting process.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 259.1055, F.S., and titles it the "Florida Wildlife Corridor Act." It provides legislative findings that Florida's population is growing rapidly and that vital wildlife habitat needs to be preserved. The bill provides further legislative findings that the Florida wildlife corridor is an existing physical, geographically defined area that encompasses more than 18 million acres of land, 10 million of which are conservation lands.

The bill provides that the purpose of this act is to create incentives for conservation and sustainable development while sustaining and conserving green infrastructure by doing all of the following:

- Maintaining wildlife access to the habitats needed to allow for migration of and genetic exchange amongst regional wildlife populations.
- Preventing fragmentation of wildlife habitats.

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[24] St. Johns River Water Management District, *Permitting*, https://www.sjrwmd.com/permitting/#about-erps (last visited Mar. 2, 2021).
[25] *Id*.
[26] MyFlorida.com, *Florida's Water Permitting Portal*, http://flwaterpermits.com/typesofpermits.html (last visited Mar. 2, 2021).
[27] Fla. Admin. Code R. 62-330.301 and 62-330.302; *see also* DEP, *Environmental Resource Permit Applicant's Handbook Volume 1 (General and Environmental)* (eff. June 1, 2018), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf.
[28] St. Johns River Water Management District, *Permitting*, https://www.sjrwmd.com/permitting/#about-erps (last visited Mar. 2, 2021).

- Protecting the headwater of major watershed, including the Everglades and the St. Johns River.
- Providing ecological connectivity of the lands needed for flood and sea-level rise resiliency and large-scale ecosystem function, such as water management and prescribed burns essential for land management and restoration.
- Preserving and protecting land and waters that are critical to wildlife and the state's groundwater recharge that provide drinking water to most Floridians and maintain the health of downstream estuaries.
- Provide wildlife crossings for the protection and safety of wildlife and the traveling public.
- Help to sustain the state's working ranches, farms, and forests that provide compatible wildlife habitats while sustaining rural prosperity and agricultural production.

The bill provides definitions for:

- "Conserved lands" means federal, state, or local lands owned or managed for conservation purposes, including, but not limited to, federal, state, and local parks; federal and state forests; wildlife management areas' wildlife refuges' military bases and airports with conservation lands; properties owned by land trusts and managed for conservation; and privately owned land with a conservation easement, including, but not limited to, ranches, forestry operations, and groves.
- "Department" means the Department of Environmental Protection.
- "Florida Ecological Greenways Network" (FEGN) is a periodically updated model developed to delineate large connected areas of statewide ecological significance.
- "Florida wildlife corridor" means the conserved lands and opportunity areas defined by the Department of Environmental Protection (DEP) as priority one, two, and three categories of the FEGN.
- "Opportunity area" means those lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network.
- "Wildlife" has the same meaning as in the Wildlife Violator Compact, s. 379.2255, F.S.
- "Wildlife corridor" means a network of connected wildlife habitats required for the long-term survival of and genetic exchange amongst regional wildlife populations which serves to prevent fragmentation by providing ecological connectivity of the land needed to furnish adequate habitats and allow safe movement and dispersal.
- "Wildlife crossing" means a landscape design element that connects two or more patches of wildlife habitat and functions as a safe conduit for wildlife travel.

The bill requires the DEP to:

- Encourage all state, regional, and local agencies that acquire lands, including, but not limited to, the Fish and Wildlife Conservation Commission (FWCC) and the Department of Transportation (DOT), to include in their land buying efforts the acquisition of sufficient legal interest in opportunity areas to ensure the continued viability of the Florida wildlife corridor.
- Encourage investment in conservation easements voluntarily entered into by private landowners to conserve opportunity areas.

- Encourage state land-buying agencies and state land management agencies to consider the conservation of opportunity areas as a multi-phased project for the purpose of listing, acquisition, and management.
- Consider the inclusion of private funds to supplement the state's contribution in its efforts to acquire a fee or less-than-fee interest in lands that contain recognized opportunity areas and conserved lands in the Florida wildlife corridor.
- Seek opportunities to attract new sources of federal funding and to strengthen existing programs to protect and conserve the Florida wildlife corridor.
- Encourage private landowners, through existing and future incentives and liability protections, to continue to allow their private property to be used for the preservation and enhancement of the Florida wildlife corridor.
- Encourage new approaches and novel financing mechanisms for long-term protection of the Florida wildlife corridor, including, but not limited to, public-private partnerships; payments for ecosystem services; blended financing for growth, resilience, and green infrastructure; and support for the sustainable growth of agriculture.
- Encourage state and local agencies with economic and ecotourism development responsibilities to recognize the importance of the Florida wildlife corridor in encouraging public access to wildlife areas and bringing nature-based tourism to local communities and to support acquisition and development activities for preservation and enhancement of the Florida wildlife corridor.
- Encourage private investment in ecotourism focused on the Florida wildlife corridor.
- Encourage the protection, preservation, and enhancement of the natural value of the Florida wildlife corridor for current and future residents of Florida.

The bill provides that this act may not be construed to authorize or affect the use of private property.

Section 2 requires the St. Johns River Water Management District (SJRWMD), in consultation with the DEP, Seminole County, the FWCC, and the DOT, to conduct a study and issue a report by December 31, 2021, that includes information and updates regarding the implementation of recommendations from the Little Wekiva Watershed Management Plan Final Report dated November 2005. The report must include a description of all projects or recommendations included in the report that have been implemented and their completion dates, an analysis of how the projects or recommendations achieved the results included in the report, an analysis of costs for ongoing operation and maintenance of the constructed projects completed, a list of permit violations which may have contributed to sediment buildup north of State Road 436, an analysis of any new projects that may benefit the watershed, and recommendations and cost estimates for future studies or projects that may be necessary to identify new or potentially significant contributors of sediment accumulation in the Little Wekiva River.

The bill requires the DEP and the SJRWMD to immediately review, with the goal of identifying significant contributors of sediment accumulation, any permits which the water management district has determined may have contributed to sediment buildup north of State Road 436 to assess whether the permittee is in violation of any permit conditions.

The bill requires, as part of the review, the DEP and the water management district shall review known violations of such permits since 2018 and attempt to determine, using existing information, what effects such violations may have had on sediment accumulation in the Little Wekiva River.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection estimates the cost of the study to be approximately $500,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of law.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Revises the title of the bill to be "an act relating to the protection of ecological systems."
- Creates a new section of the bill, entitled "The Florida Wildlife Corridor Act."
- Provides legislative findings and purposes, and defines terms, for the act.
- Requires the Department of Environmental Protection (DEP) to take certain actions to encourage support of the Florida wildlife corridor.
- Prohibits a local or state governmental entity from restricting proposed future activities on private property designated within the Florida wildlife corridor boundaries based upon the property's inclusion in the Florida wildlife corridor area.
- Provides that the Florida Wildlife Corridor Act may not be construed to authorize or affect the use of private property.
- Revises the report required under the bill and requires the St. Johns River Water Management District (SJRWMD) to issue the report.
- Provides that the permit review by the DEP and the SJRWMD be conducted with the goal of identifying significant contributors of sediment accumulation.
- Requires a review of known permit violations as part of the permit review.

CS by Environment and Natural Resources on March 2, 2021:

- Revises the purpose of the study required under the bill to detail improvements to the water quality and ecology of the Little Wekiva River area which might be achieved by certain efforts.
- Authorizes local or state agencies or their contractors to conduct restoration efforts during the time the study is being completed.
- Requires the DEP and the water management districts to review permits north of State Road 436 where the Little Wekiva River is identified as the receiving waters to assess whether the permittee is in violation of any permit conditions, take appropriate action to resolve compliance issues, and remediate any impacts from sedimentation.
- Authorizes permitting agencies to levy all fines authorized by law commensurate with restoration costs on a permittee or contractors found to be in violation of a permit condition for a project that has had an accumulation of sediments or caused ecological harm to the Little Wekiva River.

B. Amendments:

None.

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

380062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 259.1055, Florida Statutes, is created to read:

259.1055 Florida wildlife corridor.—

(1) SHORT TITLE.—This section may be cited as the "The Florida Wildlife Corridor Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that this

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state's population is growing rapidly and that lands and waters that provide this state's green infrastructure and vital habitat for wide-ranging wildlife, such as the Florida panther, need to be preserved and protected. The Legislature further finds that the Florida wildlife corridor is an existing physical, geographically defined area consisting of more than 18 million acres of land, 10 million of which are conservation lands.

(3) PURPOSE.—The purpose of this act, and of the Florida wildlife corridor itself, is to create incentives for conservation and sustainable development while sustaining and conserving the green infrastructure that is the foundation of this state's economy and quality of life by doing all of the following:

(a) Maintaining wildlife access to the habitats needed to allow for migration of and genetic exchange amongst regional wildlife populations.

(b) Preventing fragmentation of wildlife habitats.

(c) Protecting the headwaters of major watersheds, including the Everglades and the St. Johns River.

(d) Providing ecological connectivity of the lands needed for flood and sea-level rise resiliency and large-scale ecosystem functions, such as water management and prescribed burns essential for land management and restoration.

(e) Preserving and protecting land and waters that are not only vital to wildlife but are critical to this state's groundwater recharge and that serve as watersheds that provide drinking water to most Floridians and help maintain the health of downstream coastal estuaries.

(f) Providing for wildlife crossings for the protection and

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safety of wildlife and the traveling public.

(g) Helping to sustain this state's working ranches, farms, and forests that provide compatible wildlife habitats while sustaining rural prosperity and agricultural production.

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

(a) "Conserved lands" means federal, state, or local lands owned or managed for conservation purposes, including, but not limited to, federal, state, and local parks; federal and state forests; wildlife management areas; wildlife refuges; military bases and airports with conservation lands; properties owned by land trusts and managed for conservation; and privately owned land with a conservation easement, including, but not limited to, ranches, forestry operations, and groves.

(b) "Department" means the Department of Environmental Protection.

(c) "Florida Ecological Greenways Network" is a periodically updated model developed to delineate large connected areas of statewide ecological significance.

(d) "Florida wildlife corridor" means the conserved lands and opportunity areas defined by the department as priority one, two, and three categories of the Florida Ecological Greenways Network.

(e) "Opportunity area" means those lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network.

(f) "Wildlife" has the same meaning as in Article II of the

380062

Wildlife Violator Compact Act, s. 379.2255.

(g) "Wildlife corridor" means a network of connected wildlife habitats required for the long-term survival of and genetic exchange amongst regional wildlife populations which serves to prevent fragmentation by providing ecological connectivity of the lands needed to furnish adequate habitats and allow safe movement and dispersal.

(h) "Wildlife crossing" means a landscape design element that connects two or more patches of wildlife habitat and that is meant to function as a safe conduit for wildlife over or beneath roads, waters, and other barriers to wildlife movement and that is designed to protect Florida panther and other critical wildlife habitat corridor connections and to reduce motor vehicle collisions with wildlife, reduce the likelihood of injuries and mortalities to humans and wildlife from such collisions, and to reduce the potential for damage to motor vehicles from such collisions.

(5) DUTIES OF THE DEPARTMENT.—The department shall:

(a) Encourage all state, regional, and local agencies that acquire lands, including, but not limited to, the Fish and Wildlife Conservation Commission and the Department of Transportation, to include in their land-buying efforts the acquisition of sufficient legal interest in opportunity areas to ensure the continued viability of the Florida wildlife corridor.

(b) Encourage investment in conservation easements voluntarily entered into by private landowners to conserve opportunity areas.

(c) Encourage state land-buying agencies and state land management agencies to consider the conservation of opportunity

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areas as a multi-phased project for the purpose of listing, acquisition, and management.

(d) Consider the inclusion of private funds to supplement the state's contribution in its efforts to acquire a fee or less-than-fee interest in lands that contain recognized opportunity areas and conserved lands in the Florida wildlife corridor.

(e) Seek opportunities to attract new sources of federal funding and to strengthen existing programs to protect and conserve the Florida wildlife corridor.

(f) Encourage private landowners, through existing and future incentives and liability protections, to continue to allow their private property to be used for the preservation and enhancement of the Florida wildlife corridor.

(g) Encourage new approaches and novel financing mechanisms for long-term protection of the Florida wildlife corridor, including, but not limited to, public-private partnerships; payments for ecosystem services; blended financing for growth, resilience, and green infrastructure; and support for the sustainable growth of agriculture.

(h) Encourage state and local agencies with economic and ecotourism development responsibilities to recognize the importance of the Florida wildlife corridor in encouraging public access to wildlife areas and bringing nature-based tourism to local communities and to support acquisition and development activities for preservation and enhancement of the Florida wildlife corridor.

(i) Encourage private investment in ecotourism focused on the Florida wildlife corridor.

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(j) Encourage the protection, preservation, and enhancement of the natural value of the Florida wildlife corridor for current and future residents of this state.

(6) RESTRICTIONS.—A local or state governmental entity may not restrict proposed future activities on private properties designated within the Florida wildlife corridor boundaries based upon the property's inclusion in the Florida wildlife corridor area.

Section 2. (1) The St. Johns River Water Management District, in consultation with the Department of Environmental Protection, Seminole County, the Fish and Wildlife Conservation Commission, and the Department of Transportation, shall issue a report by December 31, 2021, that includes information and updates regarding the implementation of recommendations from the Little Wekiva Watershed Management Plan Final Report dated November 2005. The report must include, but not be limited to, the following information: a description of all projects or recommendations included in the report that have been implemented and their completion dates, an analysis of how the projects or recommendations achieved the results included in the report, an analysis of costs for ongoing operation and maintenance of the constructed projects completed, a list of permit violations which may have contributed to sediment buildup north of S.R. 436, an analysis of any new projects that may benefit the watershed, and recommendations and cost estimates for future studies or projects that may be necessary to identify new or potentially significant contributors of sediment accumulation in the Little Wekiva River.

(2)(a) The Department of Environmental Protection and the

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water management district shall immediately review, with the goal of identifying significant contributors of sediment accumulation, any permits which the water management district has determined may have contributed to sediment buildup north of S.R. 436 to assess whether the permittee is in violation of any permit conditions. Appropriate action to resolve compliance issues shall be undertaken pursuant to chapter 373 if the department or the water management district discovers a violation of any permit condition.

(b) As part of the review, the Department of Environmental Protection and the water management district shall review known violations of such permits since 2018, and attempt to determine, using existing information, what effects such violations may have had on sediment accumulation in the Little Wekiva River.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the protection of ecological systems; creating s. 259.1055, F.S.; providing a short title; providing legislative findings and a purpose for the Florida Wildlife Corridor Act; defining terms; requiring the Department of Environmental Protection to take certain actions to support the Florida wildlife corridor; prohibiting proposed future activities on private properties within the Florida wildlife corridor from being restricted by local or state governmental

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entities; requiring the St. Johns River Water Management District, in consultation with the Department of Environmental Protection, Seminole County, the Fish and Wildlife Conservation Commission, and the Department of Transportation, to issue a report that includes information and updates regarding the implementation of recommendations from the Little Wekiva Watershed Management Plan Final Report dated November 2005 by a specified date; requiring the Department of Environmental Protection and the water management district to review certain permits along the Little Wekiva River; requiring certain enforcement actions to be taken against noncompliant permittees; providing an effective date.

785526

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment to Amendment (380062) (with title amendment)

Delete lines 130 - 134
and insert:
(6) CONSTRUCTION.-This section may not be construed to authorize or affect the use of private property.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

785526

Delete lines 182 - 185

and insert:

Florida wildlife corridor; providing construction; requiring the St. Johns River Water Management

By the Committee on Environment and Natural Resources; and
Senator Brodeur

592-02336-21 2021976c1

A bill to be entitled

An act relating to a study of the Little Wekiva River; requiring the Department of Environmental Protection, in consultation with the St. Johns River Water Management District, Seminole County, the Fish and Wildlife Conservation Commission, and the Department of Transportation, to conduct a study and issue a report on sediment accumulation and water quality in the Little Wekiva River by a specified date; providing requirements for the report; authorizing local and state entities or their contractors to conduct restoration efforts during the study period; requiring the department and the water management district to review certain permits along the Little Wekiva River; requiring certain enforcement actions to be taken against noncompliant permittees; providing an effective date.

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

Section 1. The Department of Environmental Protection, in consultation with the St. Johns River Water Management District, Seminole County, the Fish and Wildlife Conservation Commission, and the Department of Transportation, shall conduct a study and issue a report by December 31, 2021, to identify the source of sediment accumulation in the Little Wekiva River and detail improvements to the water quality and ecology of the area which might be achieved by efforts to remove accumulated sediments by appropriate means, restore the natural river channel, remove

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

592-02336-21 2021976c1

invasive plants, and implement protective measures. The report must include an estimated cost for each improvement and potential funding sources. Local or state agencies or their contractors may conduct restoration efforts during the study period. The department and the water management district shall immediately review any permits north of S.R. 436 where the Little Wekiva River is identified as the "receiving waters" to assess whether any permittee is in violation of any permit conditions, take appropriate action to resolve any compliance issues, and remediate any impacts related to sedimentation in the Little Wekiva River and its adjacent wetland habitat. If a permittee or their contractors are found to be in violation of any permit condition associated with a project that has had an accumulation of sediments or has been found to have caused ecological harm to the Little Wekiva River, the permitting agencies shall levy all fines authorized by law commensurate with restoration costs.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill 976**, relating to **A Study of the Little Wekiva River**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1002 (622452)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Stewart
SUBJECT:	DNA Evidence Collected in Sexual Offense Investigations
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Favorable**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1002 amends section 943.326, Florida Statutes, to require that the Florida Department of Law Enforcement (FDLE) create and begin to maintain a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs). Beginning with SAKs collected after the database is implemented, they will be tracked from evidence collection throughout the criminal justice process. The database must be created no later than July 1, 2023, and is subject to appropriation by the Legislature.

The alleged victim, who has reported the crime to law enforcement, will have the ability to access the database and follow his or her SAK from the collection site, to law enforcement agency storage, then to the crime laboratory for forensic testing and back to law enforcement agency storage.

If there is a DNA match between the SAK evidence and a person whose DNA is stored in a local, state, or federal database and who may be a suspect or person of interest in the case, the alleged victim will be notified of the match, but not the person's identity, via the newly-created statewide database

Law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve the SAKs must participate in the database, as

required by the FDLE. The FDLE must adopt rules establishing requirements for each of the entities participating in the database.

If the alleged victim is a minor, his or her parent, guardian, or legal representative will have access to the database. If the alleged victim is deceased, his or her personal representative will have access.

The FDLE is required to ensure that each alleged victim, or his or her representative is notified of the existence of the database and provided with instruction on how to access the database.

The FDLE may phase in participation and access to the new statewide SAK tracking database at its discretion and in the manner it chooses. All entities in the chain of custody of SAKs must fully participate in the statewide database no later than one year after its creation. The FDLE must apply for any available grant funds to assist in implementing the database.

The bill states that the act may be cited as "Gail's Law."

The bill will have a negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill becomes effective July 1, 2021.

II. Present Situation:

Forensic Evidence Collection in Sexual Assault Cases

A sexual assault kit (SAK), is a medical kit used by a healthcare provider to collect evidence from the body and clothing of a victim of sexual battery or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve bodily fluids, hair, and fibers that can help identify DNA (deoxyribonucleic acid) and other forensic evidence left by a perpetrator.[1] SAK contents are typically very standardized and, because they are collected directly from the victim's person, generally represent the most probative evidence.[2]

According to protocols developed by the Department of Legal Affairs (DLA), healthcare providers conducting the forensic physical examination should complete the document entitled "Sexual Assault Kit Form for Healthcare Providers."[3] This document includes an exam consent

[1] The White House, Office of the Press Secretary, *Fact Sheet: Investments To Reduce The National Rape Kit Backlog And Combat Violence Against Women*, March 16, 2015, available at https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole (last visited February 17, 2021).
[2] Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, Executive Summary, p. 5, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf (last visited February 17, 2021).
[3] Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, pp. 12-13, available at https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf; *See also* Florida Council Against Sexual Violence, *Sexual Assault Nurse Examiner Program Guidance Document, Forensic Exam: Evidence Collection*; May 29, 2018, available at https://www.fcasv.org/sites/default/files/Evidence%20Collection%20Guidance%20Document%205.29.18%20%20FINAL.do

form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.[4] The victim or his or her legal guardian will also be asked whether he or she wants to report the sexual offense to law enforcement. Non-reporting victims' SAKs will be retained as evidence should he or she decide to report the offense at a later date, but unless there is an active criminal case, the SAK will not be tested for DNA.[5]

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to the proper law enforcement agency.[6]

Evidence Submission, DNA Testing, DNA Database

A law enforcement agency must submit a SAK, or other DNA evidence if a kit is not collected, to a member of the statewide criminal analysis laboratory system for forensic testing within 30 days after:

- Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or
- A request to have the evidence tested is made to the medical provider or the law enforcement agency by:
  - The alleged victim;
  - The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor; or
  - The alleged victim's personal representative, if the alleged victim is deceased.[7]

The victim or the victim's representative must be informed of the purpose of submitting the SAK or other evidence by the law enforcement agency or the medical provider collecting the SAK.[8]

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the Florida Department of Law Enforcement (FDLE) in Ft. Myers, Jacksonville, Pensacola, Orlando,

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cx.pdf; and Florida Department of Law Enforcement, *Sexual Assault/Forensic/Medical Exam*, available at http://www.fdle.state.fl.us/Documents/SAEKrev5.aspx (all sites last visited February 24, 2021).

[4] *Id*.

[5] *Id*. According to FDLE protocols, to test a non-reporting victim's SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act (HIPAA). Florida Department of Law Enforcement, *Sexual Assault Kit Submissions Frequently Asked Questions*, p. 1, available at https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited February 18, 2021). The DLA, which administers a program that pays for an alleged sexual assault victim's forensic physical exam, does not discriminate based upon whether the victim reports the crime to a law enforcement agency. Additionally, the DLA keeps the victim's identity confidential and exempt from the public records law. Section 960.28, F.S.

[6] *Id*. pp. 20-21. *See also* Florida Department of Law Enforcement, *Crime Laboratory Evidence Submission Manual*, March 2020, p. 15, available at https://www.fdle.state.fl.us/Forensics/Documents/2020-ESM (last visited February 18, 2021). A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction. Section 943.326(3), F.S.

[7] Section 943.326(1), F.S.

[8] Section 943.326(2), F.S.

Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas counties.[9]

Testing of SAKs must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.[10] Testing satisfies the statutory timeline when a member of the statewide criminal analysis laboratory system tests the contents of the SAK in an attempt to identify the foreign DNA attributable to a suspect.[11]

Evidence that may carry a suspect's DNA can be found on physical evidence such as the victim's clothing or bedding. This type of physical evidence is typically accepted for laboratory analysis if no probative results are obtained from the SAK which may include a pair of underwear worn by the victim at the time of the crime or closely thereafter, and a condom, if applicable.[12]

The state crime laboratories perform short tandem repeats (STR)[13] DNA testing on evidence received from a law enforcement agency, comparing the SAK or crime scene DNA evidence to known DNA samples. The DNA samples from the SAK or other crime scene evidence that do not match the victim's DNA may be attributed to the suspect.[14] The suspect's DNA from the SAK or the crime scene may be submitted to the local, state or Federal Bureau of Investigation's Combined DNA Index System (CODIS) to be searched against local, state, and national casework index files and convicted offender profiles, which could reveal the identity of the perpetrator.[15]

Sexual Assault Kit Tracking

Law Enforcement Tracking

Investigative reporting in the 2000's discovered that large cities like New York and Los Angeles, among others had large numbers of SAKs that had not been submitted to laboratories for DNA testing.[16] Florida was among the states that had a SAK backlog. For this reason, the 2015

[9] Section 943.32, F.S.
[10] Section 943.326(4), F.S.
[11] Section 943.326(4)(b), F.S.
[12] Florida Department of Law Enforcement, *Crime Laboratory Evidence Submission Manual*, March 2020, pp. 14-15, available at https://www.fdle.state.fl.us/Forensics/Documents/2020-ESM (last visited February 18, 2021).
[13] STR (short tandem repeats) DNA testing examines thirteen different areas (markers) of DNA that have been found to be highly variable. These thirteen markers have been standardized in the United States to allow the comparison of testing results from one state to another. Florida Department of Law Enforcement, *Biology/DNA Laboratory and the DNA Investigative Database*, Rev. January 2015, available at https://www.fdle.state.fl.us/Publications/Documents/Brochures/DNABrochureJan2015_1.aspx#:~:text=Biology/DNA%20Laboratory%20and%20the%20DNA%20Investigative%20Support%20Database,LAW%20ENFORCEMENT%202331%20Phillips%20Road%20Tallahassee,%20Florida%2032308 (last visited February 18, 2021).
[14] *Id*.
[15] *Id*.
[16] There were a reported 17,000 unsubmitted SAKs in New York City, and at least 12,669 in Los Angeles. Madeleine Carlisle, *A New System to Ensure Sexual-Assault Cases Aren't Forgotten*, The Atlantic, April 7, 2019, available at https://www.theatlantic.com/politics/archive/2019/04/many-states-are-adopting-rape-kit-tracking-systems/586531/ (last visited February 23, 2021). *See also* Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, p. 1, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf (last visited February 17, 2021).

Legislature required the FDLE to complete a statewide assessment of unsubmitted SAKs and report on the findings by January 1, 2016.[17]

Local law enforcement agencies were surveyed by the FDLE with 279 agencies responding. The survey responses showed that in 2015, there were approximately 13,435 unsubmitted SAKs of which agencies approximated 9,484 of them should be submitted (under agency guidelines) to the state crime laboratories for DNA testing. The decision to submit a SAK rested with the local law enforcement agencies.[18] Until s. 943.326, F.S., became effective on July 1, 2016, there were no statewide standards or expectations regarding the submission of SAKs.

The FDLE completed laboratory analysis of the previously unsubmitted SAKs with an offense date of prior to October 1, 2014, by the end of June, 2019.[19] DNA testing of the 8,023 SAKs resulted in 1,814 CODIS "hits" which linked the DNA from the SAKs to a possible suspect in the sexual assault and possibly other unsolved crimes throughout the country.[20]

Other States Statewide SAK Tracking Provides Victims' Access

In 2016, Idaho was the first state to create its own statewide SAK tracking system. Idaho has shared this system with other states free of charge. The states that have not taken Idaho up on its offer have largely contracted with one of several companies that provide services like round-the-clock technical support.[21]

As adopted or considered in other states, SAK tracking typically consists of a software program that provides for the upload of SAK location information by medical, law enforcement, and laboratory personnel. A secure database that contains no personal information allows victims of sexual assault to monitor the progress of the SAK for his or her case through the criminal justice system. The tracking is typically accomplished by checking a randomly assigned bar code matching the bar code used to track the evidence by law enforcement and laboratories.[22]

Florida does not currently possess a statewide electronic tracking system for SAKs.

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[17] Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, Executive Summary, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf, (last visited February 17, 2021).
[18] *Id*. at pp. 2-3.
[19] *See* Press Release containing the Florida Department of Law Enforcement, *Sexual Assault Kit Final Progress Report*, September 2019, Hernando Sun, *FDLE completes 3-year sexual assault kit project*, September 20, 2019, available at https://www.hernandosun.com/article/fdle-completes-3-year-sexual-assault-kit-project (last visited February 24, 2021).
[20] *Id*.
[21] Madeleine Carlisle, *A New System to Ensure Sexual-Assault Cases Aren't Forgotten*, The Atlantic, April 7, 2019, available at https://www.theatlantic.com/politics/archive/2019/04/many-states-are-adopting-rape-kit-tracking-systems/586531/. *See also* Barbara Sprunt, *Virginia Launches Rape Kit Tracking System To Give Control Back To Survivors*, National Public Radio, WAMU 88.5, October 4, 2019, available at https://www.npr.org/local/305/2019/10/04/767403524/virginia-launches-rape-kit-tracking-system-to-give-control-back-to-survivors; Nicole Nixon, *Sexual Assault Survivors in California Could Track Their Rape Kit Online Under New Bill*, CapRadio, February 2, 2021, available at https://www.capradio.org/articles/2021/02/02/sexual-assault-survivors-in-california-could-track-their-rape-kit-online-under-new-bill/; and Doug Richards, *New bill introduced in Georgia would create online registry to track rape kits*, 11alive.com, February 4, 2021, available at https://www.11alive.com/article/news/politics/rape-kits-tracking-bill/85-ba8092be-0a65-4241-8d26-2182f38c420f (all sites last visited February 19, 2021).
[22] *Id*.

III. Effect of Proposed Changes:

The bill requires that, subject to appropriation by the Legislature, and no later than July 1, 2023, the FDLE create and begin to maintain a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs). Beginning with SAKs collected after the database is implemented, they will be tracked from evidence collection throughout the criminal justice process. The database must be accessible to:

- The alleged victim of the sexual assault;
- The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor;
- The alleged victim's personal representative, if the alleged victim is deceased; and
- Law enforcement agencies.

The bill specifies that law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve the SAKs must participate in the database, as required by the FDLE. The FDLE must adopt rules establishing requirements for each of the entities participating in the database.

The FDLE is required to ensure that each alleged victim, the alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor, and the alleged victim's personal representative, if the alleged victim is deceased is:

- Notified of the existence of the database;
- Provided with instruction on how to access the database; and
- Informed that he or she is entitled to access information regarding the alleged victim's SAK, including:
  - Tracking information;
  - Testing status; and
  - Any DNA matches to a person deemed by investigators to be a suspect or a person of interest in the investigation.

The bill provides that notification about a DNA match should be limited to the occurrence of a match, and without any genetic or other identifying information. Such notification may be delayed for up to 180 days if the investigators are of the opinion that immediate notification would negatively affect the investigation.

The FDLE may phase-in participation and access to the new statewide SAK tracking database at its discretion and in the manner it chooses.

The bill requires that all entities in the chain of custody of SAKs fully participate in the statewide database no later than 1 year after its creation. The database must track the status of SAKs from entities in the chain of custody which include medical providers who collect the SAK evidence, the law enforcement personnel who receive, store, and send the SAK for testing, and laboratory personnel who process the SAK and return it to the law enforcement agency for storage until the prosecuting agency has approved its destruction according to s. 943.326(3), F.S.

The FDLE is required to apply for any available grant funds to assist in the implementation of the database.

The bill states that the act may be cited as "Gail's Law."

The bill becomes effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill makes the creation of program subject to appropriation. However, the FDLE estimates the bill's fiscal impact in FY 2021-22 will be $600,000 in nonrecurring funds for software purchase and customization. Beginning in FY 2022-23, the department estimates that it will need $500,000 in recurring funds for IT maintenance and support costs, software licenses, and help desk support. The department is also requesting two FTE positions for management, training, and support of the new system, which will total $182,266, of which $174,476 will be recurring funds. The FDLE will also need $75,000 in FY 2021-22 and $150,000 each year thereafter to purchase standardized SAKs, designed to include barcodes for tracking.

The department has indicated that it can absorb $100,000 of the cost to implement the system in FY 2021-22 and possibly more depending on the outcome of proposed cuts in the Senate Proposed Bill (SPB) 2500.[23]

D. Technical Deficiencies:

None.

VI. Related Issues:

The FDLE suggests that the investigating law enforcement agency notify the alleged victim of a CODIS "hit," rather than that information being accessible through the database. This seems to be an issue of notification timing as well as the suggestion that "hit" notifications be limited to a "hit" that is a legitimate match to a potential suspect and not other types of "hits" that can occur through CODIS.[24]

From an investigatory standpoint, another concern regarding alleged victim access to CODIS "hit" confirmations arises under the following circumstances. If the alleged victim is a minor and, therefore, it is the parent or guardian who is entitled to database access, what might occur if the parent or guardian is actually the perpetrator and receives the identifying "hit" notification? This unintended occurrence may compromise the investigation by giving the perpetrator time to influence the alleged victim's cooperation with law enforcement and time to concoct his or her "story."[25]

VII. Statutes Affected:

This bill substantially amends section 943.326 of the Florida Statutes.

VIII. Additional Information:

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

PCS 622452 by Appropriations (Recommended by Appropriations Subcommittee on Criminal and Civil Justice):
The proposed committee substitute:

- Clarifies that the FDLE must track each sexual offense evidence kit collected after the implementation of the database, as tracking cannot be done without the new database.
- Provides for the FDLE to adopt rules to establish requirements for all the entities participating in the database. The entities are:
  - Law enforcement agencies;
  - Medical facilities;
  - Crime laboratories; and
  - Any other facility that collects, receives, maintains, stores, or preserves a sexual offense evidence kit.

[23] 2021 FDLE Legislative Bill Analysis, SB 1002, April 7, 2021 (on file with the Senate Criminal Justice Committee).
[24] *Id.*
[25] *Id.*

- Requires that FDLE apply for available grant funds to help implement the database.

B. Amendments:

None.

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

622452

576-03937-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to DNA evidence collected in sexual offense investigations; providing a short title; amending s. 943.326, F.S.; requiring the Department of Law Enforcement, by a specified date and subject to legislative appropriation, to create and maintain a statewide database for tracking sexual offense evidence kits; providing database requirements; requiring the department to adopt rules; providing database participation requirements for specified entities mandated to participate in the database if the entity has certain interaction with the kits; requiring the department to ensure that alleged sexual offense victims and certain other persons receive specified notice and instructions and be informed that they are entitled to access information regarding such kits and evidence; providing requirements for such notification; providing for implementation; requiring the department to apply for specified grant funds; providing an effective date.

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

Section 1. This act may be cited as "Gail's Law."

Section 2. Subsection (4) of section 943.326, Florida Statutes, is amended to read:

943.326 DNA evidence collected in sexual offense

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investigations.—

(4) ~~By January 1, 2017,~~ The department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through

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cooperation among the investigating agency, the laboratory, and the prosecutor.

(c) The department shall, subject to appropriation by the Legislature, no later than July 1, 2023, create and maintain a statewide database to track the location, processing status, and storage of each sexual offense evidence kit collected after the implementation of the database that is accessible to law enforcement agencies and alleged victims and other persons listed in paragraph (1)(b). The database shall track the status of the kits from the collection site throughout the criminal justice process, including, but not limited to, the initial collection at medical facilities, inventory and storage by law enforcement agencies or crime laboratories, analysis at crime laboratories, and storage or destruction after completion of analysis.

(d) The department shall adopt rules establishing the requirements for each entity that participates in the database. Law enforcement agencies, medical facilities, crime laboratories, and any other facility that collects, receives, maintains, stores, or preserves a sexual offense evidence kit shall participate in the database, as required by the department.

(e) The department shall ensure that each alleged victim and other person listed in paragraph (1)(b) is notified of the existence of the database and provided with instruction on how to access it and is informed that he or she is entitled to access information regarding the alleged victim's sexual offense evidence kit, including tracking information, testing status, and any DNA matches to a person deemed by investigators to be a

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suspect or person of interest. However, notification of a DNA match shall state only that a DNA match has occurred and may not contain any genetic or other identifying information. Such a notification may be delayed for up to 180 days if such notification would, in the opinion of investigators, negatively affect the investigation.

Section 3. The Department of Law Enforcement may phase in initial participation in the statewide database for tracking sexual offense evidence kits created in s. 943.326, Florida Statutes, as amended by this act, according to region, volume of kits, or other appropriate classifications; however, all entities in the chain of custody of sexual offense evidence kits shall fully participate in the statewide database no later than 1 year after its creation. The department shall apply for any available grant funds to assist it in implementing the statewide database.

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1002
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Stewart
SUBJECT:	DNA Evidence Collected in Sexual Offense Investigations
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Favorable**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1002 amends section 943.326, Florida Statutes, to require that the Florida Department of Law Enforcement (FDLE) create and begin to maintain a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs). Beginning with SAKs collected after the database is implemented, they will be tracked from evidence collection throughout the criminal justice process. The database must be created no later than July 1, 2023, and is subject to appropriation by the Legislature.

The alleged victim, who has reported the crime to law enforcement, will have the ability to access the database and follow his or her SAK from the collection site, to law enforcement agency storage, then to the crime laboratory for forensic testing and back to law enforcement agency storage.

If there is a DNA match between the SAK evidence and a person whose DNA is stored in a local, state, or federal database and who may be a suspect or person of interest in the case, the alleged victim will be notified of the match, but not the person's identity, via the newly-created statewide database

Law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve the SAKs must participate in the database, as

required by the FDLE. The FDLE must adopt rules establishing requirements for each of the entities participating in the database.

If the alleged victim is a minor, his or her parent, guardian, or legal representative will have access to the database. If the alleged victim is deceased, his or her personal representative will have access.

The FDLE is required to ensure that each alleged victim, or his or her representative is notified of the existence of the database and provided with instruction on how to access the database.

The FDLE may phase in participation and access to the new statewide SAK tracking database at its discretion and in the manner it chooses. All entities in the chain of custody of SAKs must fully participate in the statewide database no later than one year after its creation. The FDLE must apply for any available grant funds to assist in implementing the database.

The bill states that the act may be cited as "Gail's Law."

The bill will have a negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill becomes effective July 1, 2021.

II. Present Situation:

Forensic Evidence Collection in Sexual Assault Cases

A sexual assault kit (SAK), is a medical kit used by a healthcare provider to collect evidence from the body and clothing of a victim of sexual battery or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve bodily fluids, hair, and fibers that can help identify DNA (deoxyribonucleic acid) and other forensic evidence left by a perpetrator.[1] SAK contents are typically very standardized and, because they are collected directly from the victim's person, generally represent the most probative evidence.[2]

According to protocols developed by the Department of Legal Affairs (DLA), healthcare providers conducting the forensic physical examination should complete the document entitled "Sexual Assault Kit Form for Healthcare Providers."[3] This document includes an exam consent

[1] The White House, Office of the Press Secretary, *Fact Sheet: Investments To Reduce The National Rape Kit Backlog And Combat Violence Against Women*, March 16, 2015, available at https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole (last visited February 17, 2021).
[2] Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, Executive Summary, p. 5, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf (last visited February 17, 2021).
[3] Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, pp. 12-13, available at https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf; *See also* Florida Council Against Sexual Violence, *Sexual Assault Nurse Examiner Program Guidance Document, Forensic Exam: Evidence Collection*; May 29, 2018, available at https://www.fcasv.org/sites/default/files/Evidence%20Collection%20Guidance%20Document%205.29.18%20%20FINAL.do

form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.[4] The victim or his or her legal guardian will also be asked whether he or she wants to report the sexual offense to law enforcement. Non-reporting victims' SAKs will be retained as evidence should he or she decide to report the offense at a later date, but unless there is an active criminal case, the SAK will not be tested for DNA.[5]

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to the proper law enforcement agency.[6]

Evidence Submission, DNA Testing, DNA Database

A law enforcement agency must submit a SAK, or other DNA evidence if a kit is not collected, to a member of the statewide criminal analysis laboratory system for forensic testing within 30 days after:

- Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or
- A request to have the evidence tested is made to the medical provider or the law enforcement agency by:
  - The alleged victim;
  - The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor; or
  - The alleged victim's personal representative, if the alleged victim is deceased.[7]

The victim or the victim's representative must be informed of the purpose of submitting the SAK or other evidence by the law enforcement agency or the medical provider collecting the SAK.[8]

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the Florida Department of Law Enforcement (FDLE) in Ft. Myers, Jacksonville, Pensacola, Orlando,

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cx.pdf; and Florida Department of Law Enforcement, *Sexual Assault/Forensic/Medical Exam*, available at http://www.fdle.state.fl.us/Documents/SAEKrev5.aspx (all sites last visited February 24, 2021).

[4] *Id*.

[5] *Id*. According to FDLE protocols, to test a non-reporting victim's SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act (HIPAA). Florida Department of Law Enforcement, *Sexual Assault Kit Submissions Frequently Asked Questions*, p. 1, available at https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited February 18, 2021). The DLA, which administers a program that pays for an alleged sexual assault victim's forensic physical exam, does not discriminate based upon whether the victim reports the crime to a law enforcement agency. Additionally, the DLA keeps the victim's identity confidential and exempt from the public records law. Section 960.28, F.S.

[6] *Id*. pp. 20-21. *See also* Florida Department of Law Enforcement, *Crime Laboratory Evidence Submission Manual*, March 2020, p. 15, available at https://www.fdle.state.fl.us/Forensics/Documents/2020-ESM (last visited February 18, 2021). A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction. Section 943.326(3), F.S.

[7] Section 943.326(1), F.S.

[8] Section 943.326(2), F.S.

Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas counties.[9]

Testing of SAKs must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.[10] Testing satisfies the statutory timeline when a member of the statewide criminal analysis laboratory system tests the contents of the SAK in an attempt to identify the foreign DNA attributable to a suspect.[11]

Evidence that may carry a suspect's DNA can be found on physical evidence such as the victim's clothing or bedding. This type of physical evidence is typically accepted for laboratory analysis if no probative results are obtained from the SAK which may include a pair of underwear worn by the victim at the time of the crime or closely thereafter, and a condom, if applicable.[12]

The state crime laboratories perform short tandem repeats (STR)[13] DNA testing on evidence received from a law enforcement agency, comparing the SAK or crime scene DNA evidence to known DNA samples. The DNA samples from the SAK or other crime scene evidence that do not match the victim's DNA may be attributed to the suspect.[14] The suspect's DNA from the SAK or the crime scene may be submitted to the local, state or Federal Bureau of Investigation's Combined DNA Index System (CODIS) to be searched against local, state, and national casework index files and convicted offender profiles, which could reveal the identity of the perpetrator.[15]

Sexual Assault Kit Tracking

Law Enforcement Tracking

Investigative reporting in the 2000's discovered that large cities like New York and Los Angeles, among others had large numbers of SAKs that had not been submitted to laboratories for DNA testing.[16] Florida was among the states that had a SAK backlog. For this reason, the 2015

[9] Section 943.32, F.S.
[10] Section 943.326(4), F.S.
[11] Section 943.326(4)(b), F.S.
[12] Florida Department of Law Enforcement, *Crime Laboratory Evidence Submission Manual*, March 2020, pp. 14-15, available at https://www.fdle.state.fl.us/Forensics/Documents/2020-ESM (last visited February 18, 2021).
[13] STR (short tandem repeats) DNA testing examines thirteen different areas (markers) of DNA that have been found to be highly variable. These thirteen markers have been standardized in the United States to allow the comparison of testing results from one state to another. Florida Department of Law Enforcement, *Biology/DNA Laboratory and the DNA Investigative Database*, Rev. January 2015, available at https://www.fdle.state.fl.us/Publications/Documents/Brochures/DNABrochureJan2015_1.aspx#:~:text=Biology/DNA%20Laboratory%20and%20the%20DNA%20Investigative%20Support%20Database,LAW%20ENFORCEMENT%202331%20Phillips%20Road%20Tallahassee,%20Florida%2032308 (last visited February 18, 2021).
[14] *Id*.
[15] *Id*.
[16] There were a reported 17,000 unsubmitted SAKs in New York City, and at least 12,669 in Los Angeles. Madeleine Carlisle, *A New System to Ensure Sexual-Assault Cases Aren't Forgotten*, The Atlantic, April 7, 2019, available at https://www.theatlantic.com/politics/archive/2019/04/many-states-are-adopting-rape-kit-tracking-systems/586531/ (last visited February 23, 2021). *See also* Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, p. 1, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf (last visited February 17, 2021).

Legislature required the FDLE to complete a statewide assessment of unsubmitted SAKs and report on the findings by January 1, 2016.[17]

Local law enforcement agencies were surveyed by the FDLE with 279 agencies responding. The survey responses showed that in 2015, there were approximately 13,435 unsubmitted SAKs of which agencies approximated 9,484 of them should be submitted (under agency guidelines) to the state crime laboratories for DNA testing. The decision to submit a SAK rested with the local law enforcement agencies.[18] Until s. 943.326, F.S., became effective on July 1, 2016, there were no statewide standards or expectations regarding the submission of SAKs.

The FDLE completed laboratory analysis of the previously unsubmitted SAKs with an offense date of prior to October 1, 2014, by the end of June, 2019.[19] DNA testing of the 8,023 SAKs resulted in 1,814 CODIS "hits" which linked the DNA from the SAKs to a possible suspect in the sexual assault and possibly other unsolved crimes throughout the country.[20]

Other States Statewide SAK Tracking Provides Victims' Access

In 2016, Idaho was the first state to create its own statewide SAK tracking system. Idaho has shared this system with other states free of charge. The states that have not taken Idaho up on its offer have largely contracted with one of several companies that provide services like round-the-clock technical support.[21]

As adopted or considered in other states, SAK tracking typically consists of a software program that provides for the upload of SAK location information by medical, law enforcement, and laboratory personnel. A secure database that contains no personal information allows victims of sexual assault to monitor the progress of the SAK for his or her case through the criminal justice system. The tracking is typically accomplished by checking a randomly assigned bar code matching the bar code used to track the evidence by law enforcement and laboratories.[22]

Florida does not currently possess a statewide electronic tracking system for SAKs.

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[17] Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, Executive Summary, available at http://www.fdle.state.fl.us/docs/SAKResults.pdf, (last visited February 17, 2021).
[18] *Id*. at pp. 2-3.
[19] *See* Press Release containing the Florida Department of Law Enforcement, *Sexual Assault Kit Final Progress Report*, September 2019, Hernando Sun, *FDLE completes 3-year sexual assault kit project*, September 20, 2019, available at https://www.hernandosun.com/article/fdle-completes-3-year-sexual-assault-kit-project (last visited February 24, 2021).
[20] *Id*.
[21] Madeleine Carlisle, *A New System to Ensure Sexual-Assault Cases Aren't Forgotten*, The Atlantic, April 7, 2019, available at https://www.theatlantic.com/politics/archive/2019/04/many-states-are-adopting-rape-kit-tracking-systems/586531/. *See also* Barbara Sprunt, *Virginia Launches Rape Kit Tracking System To Give Control Back To Survivors*, National Public Radio, WAMU 88.5, October 4, 2019, available at https://www.npr.org/local/305/2019/10/04/767403524/virginia-launches-rape-kit-tracking-system-to-give-control-back-to-survivors; Nicole Nixon, *Sexual Assault Survivors in California Could Track Their Rape Kit Online Under New Bill*, CapRadio, February 2, 2021, available at https://www.capradio.org/articles/2021/02/02/sexual-assault-survivors-in-california-could-track-their-rape-kit-online-under-new-bill/; and Doug Richards, *New bill introduced in Georgia would create online registry to track rape kits*, 11alive.com, February 4, 2021, available at https://www.11alive.com/article/news/politics/rape-kits-tracking-bill/85-ba8092be-0a65-4241-8d26-2182f38c420f (all sites last visited February 19, 2021).
[22] *Id*.

III. Effect of Proposed Changes:

The bill requires that, subject to appropriation by the Legislature, and no later than July 1, 2023, the FDLE create and begin to maintain a statewide database, the purpose of which is to track the location, processing status, and storage of sexual assault evidence kits (SAKs). Beginning with SAKs collected after the database is implemented, they will be tracked from evidence collection throughout the criminal justice process. The database must be accessible to:

- The alleged victim of the sexual assault;
- The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor;
- The alleged victim's personal representative, if the alleged victim is deceased; and
- Law enforcement agencies.

The bill specifies that law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve the SAKs must participate in the database, as required by the FDLE. The FDLE must adopt rules establishing requirements for each of the entities participating in the database.

The FDLE is required to ensure that each alleged victim, the alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor, and the alleged victim's personal representative, if the alleged victim is deceased is:

- Notified of the existence of the database;
- Provided with instruction on how to access the database; and
- Informed that he or she is entitled to access information regarding the alleged victim's SAK, including:
  - Tracking information;
  - Testing status; and
  - Any DNA matches to a person deemed by investigators to be a suspect or a person of interest in the investigation.

The bill provides that notification about a DNA match should be limited to the occurrence of a match, and without any genetic or other identifying information. Such notification may be delayed for up to 180 days if the investigators are of the opinion that immediate notification would negatively affect the investigation.

The FDLE may phase-in participation and access to the new statewide SAK tracking database at its discretion and in the manner it chooses.

The bill requires that all entities in the chain of custody of SAKs fully participate in the statewide database no later than 1 year after its creation. The database must track the status of SAKs from entities in the chain of custody which include medical providers who collect the SAK evidence, the law enforcement personnel who receive, store, and send the SAK for testing, and laboratory personnel who process the SAK and return it to the law enforcement agency for storage until the prosecuting agency has approved its destruction according to s. 943.326(3), F.S.

The FDLE is required to apply for any available grant funds to assist in the implementation of the database.

The bill states that the act may be cited as "Gail's Law."

The bill becomes effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill makes the creation of program subject to appropriation. However, the FDLE estimates the bill's fiscal impact in FY 2021-22 will be $600,000 in nonrecurring funds for software purchase and customization. Beginning in FY 2022-23, the department estimates that it will need $500,000 in recurring funds for IT maintenance and support costs, software licenses, and help desk support. The department is also requesting two FTE positions for management, training, and support of the new system, which will total $182,266, of which $174,476 will be recurring funds. The FDLE will also need $75,000 in FY 2021-22 and $150,000 each year thereafter to purchase standardized SAKs, designed to include barcodes for tracking.

The department has indicated that it can absorb $100,000 of the cost to implement the system in FY 2021-22 and possibly more depending on the outcome of proposed cuts in the Senate Proposed Bill (SPB) 2500.[23]

D. Technical Deficiencies:

None.

VI. Related Issues:

The FDLE suggests that the investigating law enforcement agency notify the alleged victim of a CODIS "hit," rather than that information being accessible through the database. This seems to be an issue of notification timing as well as the suggestion that "hit" notifications be limited to a "hit" that is a legitimate match to a potential suspect and not other types of "hits" that can occur through CODIS.[24]

From an investigatory standpoint, another concern regarding alleged victim access to CODIS "hit" confirmations arises under the following circumstances. If the alleged victim is a minor and, therefore, it is the parent or guardian who is entitled to database access, what might occur if the parent or guardian is actually the perpetrator and receives the identifying "hit" notification? This unintended occurrence may compromise the investigation by giving the perpetrator time to influence the alleged victim's cooperation with law enforcement and time to concoct his or her "story."[25]

VII. Statutes Affected:

This bill substantially amends section 943.326 of the Florida Statutes.

VIII. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute:

- Clarifies that the FDLE must track each sexual offense evidence kit collected after the implementation of the database, as tracking cannot be done without the new database.
- Provides for the FDLE to adopt rules to establish requirements for all the entities participating in the database. The entities are:
  - Law enforcement agencies;
  - Medical facilities;
  - Crime laboratories; and
  - Any other facility that collects, receives, maintains, stores, or preserves a sexual offense evidence kit.
- Requires that FDLE apply for available grant funds to help implement the database.

[23] 2021 FDLE Legislative Bill Analysis, SB 1002, April 7, 2021 (on file with the Senate Criminal Justice Committee).
[24] *Id.*
[25] *Id.*

B. Amendments:

None.

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

By Senator Stewart

13-00904A-21 20211002__

A bill to be entitled

An act relating to DNA evidence collected in sexual offense investigations; providing a short title; amending s. 943.326, F.S.; requiring the Department of Law Enforcement, by a specified date and subject to legislative appropriation, to create and maintain a statewide database for tracking sexual offense evidence kits; providing database requirements; providing participation requirements; requiring the department to ensure that alleged sexual offense victims and certain other persons receive specified notice and instructions and be informed that they are entitled to access information regarding such kits and evidence; providing requirements for such notification; providing for implementation; providing an effective date.

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

Section 1. This act may be cited as "Gail's Law."

Section 2. Subsection (4) of section 943.326, Florida Statutes, is amended to read:

943.326 DNA evidence collected in sexual offense investigations.—

(4) ~~By January 1, 2017,~~ The department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is

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

13-00904A-21 20211002__

obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

(c) The department shall, subject to appropriation by the Legislature, no later than July 1, 2023, create and maintain a statewide database to track the location, processing status, and storage of sexual offense evidence kits which is accessible to

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

law enforcement agencies and alleged victims and other persons listed in paragraph (1)(b). The database shall track the status of the kits from the collection site throughout the criminal justice process, including, but not limited to, the initial collection at medical facilities, inventory and storage by law enforcement agencies or crime laboratories, analysis at crime laboratories, and storage or destruction after completion of analysis. Law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve the kits shall participate in the database, as required by the department.

(d) The department shall ensure that each alleged victim and other person listed in paragraph (1)(b) is notified of the existence of the database and provided with instruction on how to access it and is informed that he or she is entitled to access information regarding the alleged victim's sexual offense evidence kit, including tracking information, testing status, and any DNA matches to a person deemed by investigators to be a suspect or person of interest. However, notification of a DNA match shall state only that a DNA match has occurred and may not contain any genetic or other identifying information. Such a notification may be delayed for up to 180 days if such notification would, in the opinion of investigators, negatively affect the investigation.

Section 3. The Department of Law Enforcement may phase in initial participation in the statewide database for tracking sexual offense evidence kits created in s. 943.326, Florida Statutes, as amended by this act, according to region, volume of kits, or other appropriate classifications; however, all

entities in the chain of custody of sexual offense evidence kits shall fully participate in the statewide database no later than 1 year after its creation.

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill #1002**, relating to DNA Evidence Collected in Sexual Offense Investigations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 13

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1002
Bill Number (if applicable)

Topic DNA Evidence Collected in Sexual

Amendment Barcode (if applicable)

Name Barbara DeVane Offense Investigations

Job Title

Address 625 E. Brevard ST
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 251 4282

Email barbaradevane1@

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

SB 1002
Bill Number (if applicable)

Topic DNA Evidence Rape Kit Tracking

Amendment Barcode (if applicable)

Name Carol Organ

Job Title Retired

Address 4631 Magnet St
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Orlando Fla.
City *State* *Zip*

Phone 407-452-4230

Email Sherwin9.2@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1002

Meeting Date *Bill Number (if applicable)*

Topic DNA EVIDENCE-RAPE KIT TRACKING *Amendment Barcode (if applicable)*

Name GAIL GARDNER

Job Title ADVOCATE/SURVIVOR

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Street

DeLEON FL 32764 Email gailfgardner@gmail.com

City *State* *Zip*

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

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

Representing SURVIVORS FOR SYSTEM CHANGE

Appearing at request of Chair: ☒ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

BILL:	PCS/CS/SB 1028 (479284)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Hutson
SUBJECT:	Charter Schools
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1028 adds provisions for public postsecondary institutions to serve as a charter school sponsor, modifies provisions for hope operators, and authorizes a career and professional academy to be offered by a charter school. Specifically, the bill:

- Authorizes state universities and Florida College System (FCS) institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE).
- Provides that a state university sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands, and an FCS sponsored charter school may serve students from any county within the college's service area to meet workforce demands.
- Authorizes an FCS institution that operates an approved teacher preparation program to operate additional charter schools.
- Provides that the board of trustees of a sponsoring state university or FCS institution charter school is a local educational agency for the purpose of receiving federal funds and accepting responsibility for all requirements in that role.
- Provides that students attending a state university or FCS institution sponsored charter school are not to be included in the school district's grade calculation.
- Establishes operational funding and capital outlay funding formulas for charter schools sponsored by a state university or FCS institution.
- Requires the DOE to collaborate to develop a charter school sponsor evaluation framework.

- Authorizes charter schools to provide career and professional academies and revises charter school enrollment limitations.
- Adds hope operators to the list of entities required to perform an annual financial audit.
- Modifies provisions that a high-performing charter school may submit two applications for a charter school within the state to be opened at a time determined by the high-performing charter school.
- Clarifies that instructional and noninstructional personnel at a school of hope must file with the school of hope, rather than the district school board as for other charter schools, a complete set of fingerprints taken by an authorized law enforcement agency or other recognized entity.
- Authorizes a charter school that is an exceptional student education center that receives a rating of "maintaining" or higher may replicate its educational program.
- Specifies that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county.
- Allows a virtual charter school to offer part-time instruction and contract with any public or charter school to provide a course the school does not provide.
- Provides for a direct appeal in a charter dispute if a party wants to bypass mediation.
- Revises the procedures for immediately terminating a charter school.
- Provides for the award of attorney fees and costs in certain circumstances.

The fiscal impact of the bill is discussed in Section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Charter Schools

Present Situation

Charter schools are tuition-free public schools created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools.[1] Forty-four states and the District of Columbia have enacted charter school laws as of January 2018.[2] Between the 2000-2001 and 2017-2018 school years, the percentage of all public schools that were charter schools increased from two to seven percent, and the total number of charter schools increased

[1] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (October 2020), *available at* http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2020.pdf.
[2] Education Commission of the States, *50-State Comparison Charter School Policies* http://ecs.force.com/mbdata/mbquestNB2C?rep=CS1708 (last visited March 17, 2021).

from 2,000 to 7,200. The percentage of public school students nationwide attending public charter schools increased from one to six percent between fall 2000 and fall 2017.[3]

All charter schools in Florida are public schools and are part of the state's public education system.[4] During the 2019-2020 school year, over 329,000 students were enrolled in 673 charter schools in Florida. Sixty-nine percent of the students attending charter schools in the 2019-2020 school year were minorities. Hispanic students comprised 44 percent of Florida's charter school enrollment, and 19 percent were African-American students.[5]

Charter School Sponsors

Under current Florida law, a district school board may sponsor a charter school in the county over which the district school board has jurisdiction. In addition, a state university may sponsor a charter developmental research school (charter lab school).[6] FCS institutions may work with school districts to develop charter schools as provided for in law, but may not sponsor a K-12 charter school.[7]

A charter school sponsor has several responsibilities, including:
- Approving or denying charter school applications.
- Overseeing each sponsored school's progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the school.
- Ensuring that the school participates in the state's education accountability system.
- Intervening when a sponsored school demonstrates deficient student performance or financial instability.[8]

A sponsor must provide administrative and educational services and may withhold a fee of up to five percent of each charter school's total operating funds.[9]

Florida College System and State University Charter Schools

FCS institutions may work with school districts in the FCS institution's designated service area to develop charter schools that offer secondary education, including an option for students to receive an associate degree upon high school graduation. If an FCS institution offers a teacher preparation program, it may operate one charter school for students in kindergarten through

[3] National Center for Education Statistics, *Public Charter School Enrollment*, https://nces.ed.gov/programs/coe/indicator_cgb.asp (last visited March 17, 2021).
[4] Section 1002.33(1), F.S.
[5] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (October 2020), *available at* http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2020.pdf.
[6] Section 1002.33(5)(a)1. and 2., F.S.
[7] FCS institutions may only sponsor a charter technical career center. Section 1002.33(5)(b)4., F.S. and Section 1002.34(3)(b), F.S.
[8] Section 1002.33(5)(b), F.S.
[9] Administrative and educational services include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program; test administration services; processing of teacher certificate data services; and information services. Section 1002.33(20)(a)1. and 2., F.S.

grade 12 and must implement innovative blended learning instructional models for students in kindergarten through grade 8.[10]

The table below lists the 15 FCS institution-operated charter schools in Florida:[11]

District Sponsor	Charter School	Affiliated FCS Institution
Charlotte	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Lee	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Manatee	State College of Florida Collegiate School - Bradenton	State College of Florida Manatee-Sarasota
Sumter	The Villages High School Early College Program	Lake-Sumter State College
Duval	San Jose Prep Charter	Florida State College at Jacksonville
Duval	Duval Charter at Baymeadows	Florida State College at Jacksonville
Duval	River City Science Academy	Florida State College at Jacksonville
Martin	Clark Advanced Learning Center	Indian River State College
Okaloosa	Collegiate High School at Northwest Florida State College	Northwest Florida State College
Polk	Polk State College Collegiate High School	Polk State College
Polk	Chain of Lakes Collegiate High School	Polk State College
Polk	Polk State Lakeland Gateway to College Charter High School	Polk State College
Pinellas	St. Petersburg Collegiate High School	St. Petersburg College
Pinellas	St. Petersburg Collegiate High School North Pinellas	St. Petersburg College
Sarasota	State College of Florida Collegiate School - Venice	State College of Florida Manatee-Sarasota

There are six existing university developmental research (laboratory) schools (lab schools). Of these, three are charter lab schools. Charter lab schools are not required to be established by the nearest state university.[12] The limitation of one lab school per university does not apply to charter lab schools authorized prior to June 1, 2003.[13] In considering an application to establish a charter lab school, a state university must consult with the district school board of the county in which the school is located. If a state university denies or does not act on the application, the applicant may appeal such decision to the State Board of Education (SBE).[14]

The table below lists the three charter lab schools operating in Florida:[15]

[10] Section 1002.33(5)(b)4., F.S.
[11] Email, Department of Education (March 19, 2021) (on file with the Senate Committee on Education).
[12] Board of Governors, *2020 Agency Analysis of SB 1578* (Jan. 27, 2020), at 2. Developmental research (laboratory) schools (lab schools) are public schools. Each lab school must be affiliated with the college of education within the state university of closest geographic proximity. A lab school to which a charter has been issued is known as a charter lab school. Section 1002.32(2), F.S.
[13] Section 1002.32(2)(a), F.S.
[14] Section 1002.33(6)(g), F.S.
[15] Email, Department of Education (March 17, 2021) (on file with the Senate Committee on Education).

State University Sponsor	County	Charter Lab School
Florida Atlantic University	St. Lucie	Florida Atlantic University/St. Lucie Public Schools Palm Pointe Research School
Florida State University	Leon	Florida State University Schools
Florida State University	Broward	The Pembroke Pines Florida School

Sparsity Supplement for Developmental Research (lab) Schools

The FEFP recognizes the relatively higher operating cost of smaller districts due to sparse student populations through a statutory formula in which the variable factor is a sparsity index.[16] This index is computed by dividing the FTE student membership of the qualified district by the number of permanent senior high school centers, not to exceed three. For districts with at least 20,000 FTE, but no more than 24,000 FTE, the index is computed by dividing the total FTE by the number of permanent senior high school centers, not to exceed four.[17]

Each eligible lab school in operation as of September 1, 2013, with a permanent high school center must also receive a proportional share of the sparsity supplement.[18]

Effect of Proposed Changes

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, the bill modifies s. 1002.33, F.S., and:

- Authorizes state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the SBE. A state university or FCS institution may deny an application for a charter school. Additionally:
  - A state university-sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands.
  - An FCS-sponsored charter may exist in any county within its service area[19] to meet workforce demands; however, a charter school currently operated by an FCS institution is not eligible to be sponsored by an FCS institution until its existing charter with the school district expires. An FCS-sponsored charter may offer postsecondary programs leading to industry certifications for eligible charter school students.
- Removes the requirements that an FCS institution that operates an approved teacher preparation program:
  - May operate no more than one charter school; and
  - Implement an innovative blended learning instructional model for students in kindergarten through grade eight at a charter school it operates.
- Specifies that a charter's racial/ethnic balance must reflect that of nearby public schools rather than public schools located geographically within the district to address state university and FCS sponsored charter schools which may serve students from multiple school districts.

[16] Florida Department of Education, *2020-21 Funding for Florida School Districts* (2020), available at http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf.
[17] Section 1011.62(7), F.S.
[18] Section 1002.32(9)(a), F.S.
[19] FCS institution service areas are defined in s. 1000.21(3), F.S.

- Prohibits an FCS institution from reporting the full-time equivalent (FTE) for any students participating in FCS-sponsored charter schools who receive FTE funding through the FEFP.
- Clarifies that a student enrolled in a charter school sponsored by a state university or FCS institution may not be included in the calculation of the school district's grade.

The bill modifies s. 1002.32, F.S. to specify that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county, and authorizes all lab schools with permanent high school centers to receive a proportional share of the sparsity supplement, not just for those in operation prior to September 1, 2013.

To ensure charter school sponsor accountability, the bill requires the DOE, in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework that must address, at a minimum:

- The sponsor's strategic vision for charter school authorizing and progress towards that vision;
- Alignment of the sponsor's policies and practices to best practices for charter school authorizing;
- Academic and financial performance of all operating charter schools overseen by the sponsor; and
- The status of charter schools authorized by the sponsor, including approved, operating and closed schools.

The bill requires the DOE to compile the results of the evaluation framework, by sponsor, and add them to its annual charter school sponsor report.

The bill requires the sponsor to provide equal access to student information systems that at are used by public schools in the district or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district. Additionally, the sponsor must provide student performance data, such as standardized test scores and previous public school student report cards, for each student in the charter school.
The bill replaces the terms "public school district" with "public school system" and "school district" with "sponsor" to conform to the establishment of FCS institutions and state universities as authorized charter school sponsors.

Establishing a Charter School

Present Situation

Charter schools are created when an individual, a group of parents or teachers, a business, a municipality, or a legal entity submits an application to the school district; the school district approves the application; the applicants form a governing board that negotiates a contract with the district school board; and the applicants and district school board agree upon a charter or contract. The district school board then becomes the sponsor of the charter school. The

negotiated contract outlines expectations of both parties regarding the school's academic and financial performance.[20]

Charter School Application

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state.[21] All charter applicants must prepare and submit a standard application, which:[22]

- Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
- Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
- Contains goals and objectives for improving student learning and measuring that improvement.
- Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level.
- Contains an annual financial plan for each year requested by the charter for operation of the school for up to five years.
- Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor must consider in deciding whether to approve or deny the application.
- Contains additional information a sponsor may require.
- Documents, for the establishment of a virtual charter school, the applicant has contracted with a provider of virtual instruction services in accordance with law.[23]

A sponsor receives and reviews all charter school applications and, within 90 calendar days of receipt, must by majority vote approve or deny the application. A sponsor must receive and consider charter school applications received on or before February 1 of each year for charter schools to be opened 18 months later at the beginning of the school district's school year, or to be opened at a time determined by the applicant.[24]

If an application is denied, the sponsor must within ten calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.[25] The applicant has 30 calendar days to file an appeal with the SBE after the denial of or failure to act upon an

[20] *See* Florida Department of Education, Charter Schools, *Frequently Asked Questions*, http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited March 17, 2021).
[21] Section 1002.33(3)(a), F.S.
[22] Section 1002.33(6)(a), F.S. Charter school applications are incorporated into State Board of Education (SBE) Rule 6A-6.0786, F.A.C.
[23] Section 1002.45(1)(d), F.S.
[24] A sponsor may receive and consider applications after February 1, if it chooses. Section 1002.33(6)(b), F.S.
[25] Section 1002.33(6)(b)3.a.,F.S.

application. The state board's decision is a final action subject to judicial review in the District Court of Appeal.[26]

Charter School Sponsor Reporting

A charter school sponsor must submit an annual report to the DOE summarizing the following:
- The number of draft applications received on or before May 1 and each applicant's contact information;
- The number of final applications received on or before August 1 and each applicant's contact information;
- The date each application was approved, denied, or withdrawn; and
- The date each final contract was executed.[27]

The DOE must compile the reported sponsor information into an annual report, by district, and post the information on its website by November 1 each year.[28]

Causes for Nonrenewal or Termination

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but may terminate or not renew a charter for any of the following reasons:
- Failure to participate in the state's education accountability system or failure to meet the charter's requirements for student performance.
- Failure to meet generally accepted standards of fiscal management.
- Material violation of law.
- Other good cause shown.[29]

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal, except that a charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety or welfare of the students.[30] The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of an immediate termination. The governing board is entitled to a formal hearing with an administrative law judge (ALJ), who must issue a final order to the sponsor. The governing board may appeal the final order in the District Court of Appeal. Under these circumstances, the sponsor must assume operation of the charter school throughout the pendency of the hearing.[31]

[26] Section 1002.33(6)(c)-(d), F.S.; *see also* s. 120.68, F.S.
[27] Section 1002.33(5)(b)1.k.(I)-(II), F.S.
[28] Section 1002.33(5)(b)1.k.(III)., F.S. *See* Florida Department of Education, *Annual Authorizer Report 2019* (2020), *available at* http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf.
[29] Section 1002.33(8)(a)1.-4., F.S.
[30] Section 1002.33(8)(b) and (c), F.S.
[31] Section 1002.33(8)(c), F.S. The administrative law judge must award the prevailing party reasonable attorney fees and costs incurred during the administrative proceedings and any appeals.

Award of Attorney Fees and Costs

Current law provides the award of a reasonable attorney fees and costs to the prevailing party in a dispute between a sponsor and a charter school, including:

- A dispute under the charter;[32]
- The termination of nonrenewal of a charter school;[33] and
- Disputes relating to contracts for goods and services separate from the charter.[34]

For a charter school that is terminated immediately due to an immediate and serious danger to the health, safety or welfare of the school's students, the sponsor must assume operation of the charter school during any hearing to dispute the termination. Failure by the sponsor to assume and continue operation of the charter school must result in the awarding of reasonable costs and attorney's fees if the charter school prevails on appeal.[35]

Charter School Student Enrollment

Prospective students must apply for enrollment in a charter school, and if the number of applications exceeds the school's capacity, a random lottery must be used to determine which students are enrolled.[36] A charter school may give enrollment preference to the following specific student populations:[37]

- Students who are siblings of a student enrolled in the charter school.
- Students who are the children of a member of the governing board of the charter school.
- Students who are the children of an employee of the charter school.
- Students who are the children of:
  - An employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which the charter school is located; or
  - A resident or employee of a municipality that operates a charter school-in-a-municipality or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.
- Students who have successfully completed a voluntary prekindergarten education (VPK) program provided by the charter school or the charter school's governing board during the previous school year.
- Students who are the children of an active duty member of any branch of the United States Armed Forces.
- Students who attended or are assigned to failing schools and have received an opportunity scholarship to enroll and attend a higher performing school.[38]

[32] Section 1002.33(7)(b), F.S.
[33] Section 1002.33(8)(b), F.S.
[34] Section 1002.33(20)(b), F.S.
[35] Section 1002.33(8)(c), F.S.; *See also* Championship Academy of Distinction at Davie, Inc. v. Broward County School Board, Case No.20-4344F (Fla. DOAH Dec. 17, 2020). The final order denied the petitioners entitlement to attorney's fees and costs under s. 1002.33(c) finding that the fee provision under 1002.33(8)(b), F.S. is substantive, rather than procedural, and as such, it cannot be included among the procedures set forth in paragraph (b) that have been incorporated into s. 1002.33(8)(c), F.S.
[36] Section 1002.33(10)(b), F.S.
[37] Section 1002.33(10)(d)1.-7., F.S.
[38] Section 1002.38(2), F.S.

A charter school may be exempt from specific enrollment requirements if the school is open to any student covered in an inter-district agreement and any student residing in the school district in which the charter school is located.[39] A charter school may limit the enrollment process only to target the following student populations:

- Students within specific age groups or grade levels.
- Students considered at risk of dropping out of school or academic failure.
- Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality.[40]
- Students residing within a reasonable distance of the charter school.
- Students who meet established academic, artistic, or other eligibility standards.
- Students articulating from one charter school to another.
- Students living in a development in which a business entity provides the school facility and related property having an appraised value of at least $5 million.[41]

Effect of Proposed Changes

Charter School Application

The bill modifies s. 1002.33, F.S., by repealing an obsolete August 1 application deadline and specifying that each sponsor's report to the DOE must reflect the applications it receives by the February 1 deadline. The bill modifies the charter school application process to specify that an application may be submitted at any time, rather than by February 1.

The bill repeals the requirement that a charter school sponsor report on draft applications it receives and revises the date by which a sponsor must annually report the number of applications it receives from August 31 to November 1. Accordingly, the bill revises the date by which the DOE annually reports the number of applications on its website from November 1 to January 15.

Additionally, the bill allows a charter school to be opened at a time determined by the applicant and removes the requirement that the charter school initial startup commences with the beginning of the public school calendar for the district where the charter is granted.

The bill authorizes the SBE to withhold state funds from a district school board that is in violation of a state board decision on a charter school.

Charter Contract

The bill authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.

The bill specifies that changes to a charter school's curriculum consistent with state standards and necessary to implement blended learning are deemed approved in terms of modifications to the charter, unless the sponsor determines in writing that the curriculum is inconsistent with state standards.

[39] Section 1002.33(10)(a), F.S.
[40] Section 1002.33(15), F.S.
[41] Section 1002.33(10)(e), F.S.

Charter School Student Enrollment

The bill expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.

The bill expands the criteria by which a charter school may limit the enrollment process to include students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools, facilities and related property in an amount equal to or having a total appraised value of at least $5 million.

Termination

In the case of an immediate termination of a charter school, the bill requires the sponsor to provide the facts and circumstances supporting the termination in writing. They must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.

The bill authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.

The bill removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.

Award of Attorney Fees and Costs

The bill revises requirements for awarding reasonable attorney fees and costs in disputes relating to charter schools by:

- Authorizing the prevailing party in the appeal of a charter school application denial to file an action with the Division of Administrative Hearings to recover reasonable attorney's fees and costs incurred during the denial and any appeals; and
- Authorizes an administrative law judge to award reasonable attorney fees and costs to the prevailing parting of any inunction, administrative proceeding, or appeal.

High-Performing Charter Schools

Present Situation

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status.[42] A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no school grade below "B;"
- Has received an unqualified opinion[43] on each annual financial audit; and

[42] Section 1002.331(1), F.S.

[43] An unqualified audit opinion means that the charter school's financial statements are materially correct.

- Has not received an annual financial audit that reveals a financial emergency condition.[44]

Initial eligibility for "high-performing" status is verified by the commissioner, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.[45]

High-performing charter schools may take advantage of various benefits, such as, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools. The application process for such applications is streamlined to expedite approval.[46]

A high-performing charter school may not be replicated more than twice in any given year and may not replicate again until the new charter school achieves "high-performing" status.[47] Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.[48] Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.[49]

A high-performing charter school may increase the school's enrollment once per year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect. If the school chooses to expand the grade levels it serves, e.g., a K-5 school adding grade six, the facility capacity must include any improvements to an existing facility or any new facility in which a majority of the high-performing charter school students will enroll. A high-performing charter school may also expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.[50]

Effect of Proposed Changes

The bill modifies s. 1002.331, F.S., to allow a high-performing charter school to submit two applications at a time instead of two per year. Subsequent applications may be submitted so long as each previous charter school application is withdrawn or has commenced operation instead of upon each school being designated high-performing.

The bill revises the determination of a high-performing charter school facility's capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school's facilities at the time the expansion will take effect.

[44] Section 1002.331(1), F.S.; *see* s. 218.503(1), F.S. (financial emergency conditions).
[45] Sections 1002.331(4) and 1002.332(2)(a), F.S.
[46] Section 1002.331(3)(a)1. and 2., F.S.
[47] Section 1002.331(3)(b), F.S.
[48] Section 1002.332(2)(b), F.S.
[49] Section 1002.331(2)(e), F.S.
[50] Section 1002.331(2)(a) and (b), F.S.

Charter School Funding

Present Situation

Charter school operations, like other public schools, are funded through the Florida Education Finance Program (FEFP). Each charter school reports student enrollment to its sponsor for inclusion in the district's report of student enrollment for FEFP funding. Operating funds from the FEFP are distributed to the charter school by the sponsor. A charter school is entitled to receive its proportionate share of categorical funds included in the FEFP for qualifying students.[51] Categorical funds must be spent for specified purposes, such as student transportation, safe schools, and supplemental academic instruction.

Charter schools are eligible to receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA), Title I programs for disadvantaged students, and Title II programs for improving teaching and leadership in the same manner as district school board-operated public schools and must be included in requests for federal funding by the school district or the DOE.[52] A high performing charter school system[53] governing board may be designated as a local educational agency for the purpose of receiving federal funds, the same as if the charter school system were in the school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsoring district school board and the DOE.[54]

Capital outlay funding for charter schools consists of state funds when appropriated in the General Appropriations Act (GAA) and revenue resulting from discretionary millage authorized in law.[55] To be eligible to receive capital outlay funds, a charter school must:

- Have operated for two or more years and meet specified requirements.[56]
- Have an annual audit that does not reveal any financial emergency conditions.
- Have satisfactory student achievement based on state accountability standards.
- Have received final approval from its sponsor for operation during that fiscal year.
- Serve students in facilities that are not provided by the charter school's sponsor.[57]

[51] Section 1002.33(17)(a) and (b), F.S.

[52] Section 1002.33(17)(c), F.S.

[53] A high-performing charter school system is an entity that operated at least three high-performing charter schools in the state during each of the previous 3 school years; operated a system of charter schools in which at least 50 percent of the charter schools were high-performing charter schools and no charter school earned a school grade of "D" or "F", and did not receive a financial audit that revealed one or more of the financial emergency conditions. Section 1002.332 (1)(b), F.S.

[54] Section, 1002.33(25), F.S.

[55] Section 10013.62, F.S.

[56] Specified requirements include being governed by a governing board established in the state for two or more years which operates both charter schools and conversion charter schools within the state; being an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds; having been accredited by a regional accrediting association as defined by State Board of Education rule; or serving students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s.1002.33(15)(b). Section 1013.62(1)(a), F.S.

[57] Section 10013.62(1)(a), F.S.

While each university receives additional state capital funding, unlike local school districts, university lab schools are dependent on funding from the Legislature for both operational and capital needs.[58]

Effect of Proposed Changes

The bill modifies s. 1002.33, F.S., to provide that students enrolled in a charter school sponsored by a state university or FCS institution be funded as if they are in a basic program or special program in the school district.

The bill establishes the basis for funding these students as the sum of the total operating funds for the school district in which the school is located as provided from the FEFP and the GAA, including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy; divided by total funded weighted FTE students in the school district; and multiplied by the FTE membership of the charter school.

The bill specifies that a board of trustees of a sponsoring state university or FCS institution is the local education agency (LEA) for the charter schools it sponsors. As the LEA, the sponsor may receive federal funds and accepts full responsibility for the schools it oversees, including LEA requirements.

The DOE is required to develop a tool that each state university or FCS institution sponsoring a charter school must use for purposes of calculating the funding amount for each eligible charter school student. The total obtained by the calculation must be appropriated to the charter school from state funds in the GAA.

In addition, the bill requires capital outlay funding for state university or FCS-sponsored charter schools to be determined in accordance with the requirements established in law for other charter schools.

Exceptional Student Education Centers

Present Situation

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.[59] A student may not be given special instruction or services as an ESE student until after the student has been properly evaluated and found eligible.[60]

With regard to students with disabilities, the IDEA requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.[61] A FAPE must include special education and related services[62] that are provided by the public school

[58] Board of Governors, *2020 Agency Analysis of SB 1578* (Jan. 27, 2020) (on file with the Senate Committee on Education).
[59] Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m) and (n), F.A.C.
[60] Section 1003.57(1)(c), F.S.; *see also* Rule 6A-6.0331, F.A.C.
[61] 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.
[62] "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology

system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).[63]

An ESE center is a separate public school to which nondisabled students ages six through 21 years of age do not have access to.[64] For school accountability purposes, an ESE center school is one which is specifically designed to meet the needs of students with disabilities and in which all students in attendance in grades K-12 are identified as students with a disability.[65] Each ESE center must choose to receive a school grade based on student performance on statewide standardized assessments or to receive a school improvement rating.[66] An ESE center school that does not choose to receive a school grade must be assigned a school improvement rating of Commendable, Maintaining, or Unsatisfactory annually, and the school must assess at least 80 percent of their eligible students to receive a school improvement rating. A school that tests less than 90 percent of its students may not earn a rating higher than maintaining.[67]

The school improvement rating is calculated using student learning gains on statewide, standardized English Language Arts and Mathematics assessments for all eligible students who are enrolled in the school and who have assessment scores, concordant scores, or comparable scores for the preceding school year.[68]

The overall school improvement rating is calculated based on the percentage of possible points, 100 points are available for each component, earned by each school.[69] A school's overall improvement rating based, on applicable points earned, are as follows:

- "Commendable" – a significant percentage of students attending the school are making learning gains
- "Maintaining" – a sufficient percentage of students attending the school are making learning gains
- "Unsatisfactory" – an insufficient percentage of students attending the school are making learning gains

Effect of Proposed Changes

The bill modifies s. 1008.3415, F.S., by requiring the commissioner, upon request by a charter school that is an ESE center that has two consecutive ratings of "maintaining" or higher, to provide a letter to the charter school authorizing it to replicate its educational programs in the same manner as a high-performing charter school.

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services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

[63] 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.

[64] Section 1003.57(1)(a)1.a., F.S.

[65] Rule 6A-1.099828(2)(b), F.A.C.

[66] Section 1008.3415, F.S.; *see also* s. 1008.34(3)(a), F.S.

[67] Rule 6A-1.099822(3)(c)-(d), F.A.C.

[68] Section 1008.341(3), F.S.

[69] Section 1008.341(4)(b)1, F.S.

The bill modifies s. 1002.33, F.S., by specifying the charter school sponsor's administrative fee for up to two percent for enrollment of up to and including 250 students in an ESE center.

Virtual Instruction Programs

Present Situation

Florida law establishes a variety of options to make virtual instruction accessible to K-12 students. These options include:

- Full-time or part-time enrollment in a school district virtual instruction program;[70]
- Full-time enrollment in a virtual charter school;[71]
- Enrollment in individual virtual courses offered by school districts and approved by the DOE;[72] and
- Full-time and part-time enrollment in Florida Virtual Schools (FLVS) or school district FLVS franchises.[73]

The DOE is required to annually publish online a list of providers approved to offer virtual instruction programs in Florida. To be approved by the DOE, among other requirements specified in law, a virtual provider must document that the provider makes available to parents and students in their virtual program specific contact information. The contact information must be posted and accessible online and include, but is not limited to, the following teacher-parent and teacher-student contact information for each virtual course:

- How to contact the instructor via phone, e-mail, or online messaging tools.
- How to contact technical support via phone, e-mail, or online messaging tools.
- How to contact the administration office via phone, e-mail, or online messaging tools.
- Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.
- The requirement that the instructor in each course must, at minimum, conduct one contact via phone with the parent and the student each month.

Effect of Proposed Changes

The bill amends s. 1002.45, F.S. to allow a virtual charter school to offer part-time instruction; be an approved provider; and to contract with any public or charter school to allow the participation of the virtual charter school's students in courses that the virtual school is unable to provide.

Career and Professional Academies

Present Situation

In 2007, the Legislature enacted the Florida Career and Professional Education (CAPE) Act to provide a statewide planning partnership between the business and education communities to

[70] Section 1002.45, F.S.
[71] Sections 1002.33(1) and 1002.45(1)(d), F.S.
[72] Section 1003.498, F.S.
[73] Section 1002.45(2)(a), F.S.; see also Florida Department of Education, List of Approved Program and Course Providers, https://www.fldoe.org/schools/school-choice/virtual-edu/provider-resources/approved-providers/ (last visited April 7, 2021).

attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.[74] The primary purpose of the CAPE Act is to:

- Improve middle and high school academic performance by providing rigorous and relevant curriculum opportunities;
- Provide rigorous and relevant career-themed courses that articulate to post-secondary level coursework and lead to industry certification;
- Support local and regional economic development;
- Respond to Florida's critical workforce needs; and
- Provide state residents with access to high-wage and high-demand careers.[75]

Each school board must offer career and professional academies[76] and include plans to implement a career and professional academy or career-themed course in at least one middle school in the district as part of its three-year strategic plan.[77] A career and professional academy is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs.[78] During the 2019-20 school year, 67 school districts, as well as, the Florida Virtual School, Florida School for Deaf and Blind, the Florida State University School, and the Florida A&M University Laboratory School registered 1,706 high school and 301 middle school career and professional academies with 194,197 participating students.[79]

Current law does not expressly authorize charter schools to offer career and professional academies.

Effect of Proposed Changes

The bill modifies s. 1003.493 F.S., to authorize charter schools to provide career and professional academies. This may increase the number of charter middle and high schools offering career and professional academies to better meet career and workforce needs.

Schools of Hope

Present Situation

In 2017, the Legislature established the Schools of Hope Program to provide students in areas of persistently low-performing schools the opportunity to access a high-quality education designed to close the opportunity gap and increase student achievement.[80] A school of hope is defined as a charter school operated by a hope operator to serve students from one or more persistently low-performing schools; is located within the attendance zone of the persistently low-performing

[74] Section 1003.491, F.S.
[75] *Id*. at (1).
[76] Section 1003.493(1)(a), F.S.
[77] Section 1003.4935(1), F.S.
[78] Section 1003.493(1)(a), F.S.
[79] Florida Department of Education, *Career and Professional Education Act, Enrollment and Performance Report, 2019-20* (2021), *available at* http://www.fldoe.org/core/fileparse.php/9904/urlt/1920capepr.pdf.
[80] Section 43, ch. 2017-116, L.O.F., codified at s.1002.333, F.S.

school or within a five mile radius of the school, whichever is greater; and is a Title I eligible school.[81]

Under the Schools of Hope Program administered by the DOE, a school of hope may receive additional funding for certain expenses such as funds for initial school facility leasing, hiring instructional support personnel, or acquiring supplies and educational materials, along with other expenses specified in law. Funds allocated which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to five years.[82]

A school of hope may request that the SBE designate the school as an LEA for the purposes of receiving federal funds. As an LEA, the school accepts the full responsibility for all LEA requirements and the schools for which it will perform LEA responsibilities. Students enrolled in a school established by a hope operator designated as an LEA are not eligible students for purposes of calculating a district's school grade.[83]

A school of hope must report its students to the school district for purposes of determining the school district's full-time equivalent FTE membership in calculating the FEFP.[84]

Persistently Low Performing Schools

A persistently low-performing school is a school that has earned three grades lower than a "C" in at least three of the previous five school years and has not earned a grade of "B" or higher in the most recent two school years. A school is also a persistently low-performing school if it was closed pursuant to the school's turnaround option plan within two years after the submission of a notice of intent.[85] The SBE must publish annually a list of persistently low-performing schools and must provide students in persistently low-performing schools with a public school that meets accountability standards.[86] For school year 2018-2019, the SBE's published list includes 183 persistently low-performing schools.[87]

Pursuant to the DOE Emergency Order No. 2020-EO-1, the spring administration of K-12 statewide, standardized assessments for the 2019-2020 school year was canceled and accountability measures reliant on the assessment data, such as school grades, were not calculated for the 2019-2020 school year.[88]

Hope Operators

A hope operator is a tax-exempt, nonprofit organization that operates three or more charter schools that serve students in grades K-12 in Florida or other states with a record of serving

[81] Section 1002.333(1)(d)1., F.S.
[82] Section 1002.333(10), F.S.
[83] Section 1002.333(6)(a), F.S.
[84] Section 1002.333(6)(g), F.S.
[85] Section 1002.333(1)(c), F.S.
[86] Section 1002.333(11)(d), F.S.
[87] Florida Department of Education, Florida School Accountability Reports, *Persistently Low-Performing Schools (2019), available at* http://fldoe.org/core/fileparse.php/18534/urlt/PLPSchools19.xls.
[88] Florida Department of Education, *Emergency Order No. 2020-EO-1 (March 2020), available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.

students from low-income families and is designated by the SBE as a hope operator.[89] SBE rule designates an entity as a hope operator if it submits a complete application and meets at least one of the following criteria: [90]

- The entity was awarded a United States Department of Education Charter School Program grant for the Replication and Expansion of High-Quality Charter Schools pursuant to Title IV, Part C of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (20 U.S.C. 7221-7221j) within the preceding three years from the date the entity submits an application to the Department;
- The entity has a current and active grant award for funding through the National Fund of the Charter School Growth Fund; or
- The entity is a non-profit charter school that is selected by a district school board to turnaround the performance of a low-performing public school.

Designation as a hope operator is valid for five years from the opening of a school of hope.[91] Presently, Florida has designated five hope operators: Democracy Prep Public Schools, Inc., Individuals Dedicated to Excellence and Achievement (IDEA) Public Schools, the Knowledge is Power Program (KIPP) New Jersey, Mater Academy, and Somerset Academy, Inc.[92]

Facilities

A school of hope must use facilities that comply with the Florida Building Code, except for the State Requirements for Educational Facilities (SREF). A school of hope that uses school district facilities must comply with SREF only if the school district and the hope operator have entered into a mutual management plan for the reasonable maintenance of such facilities, as specified in law.[93]

Each school district must provide to the DOE, no later than October 1, a list of all underused, vacant, or surplus facilities owned or operated by the school district. A hope operator establishing a school of hope may use an educational facility identified by a school district at no cost or at a mutually agreeable cost not to exceed $600 per student. Also, a hope operator that uses a facility owned or operated by a school district may not sell or dispose of the facility without the written permission of the school district.[94]

Personnel Background Screening

Each person who seeks educator certification in Florida must be fingerprinted and undergo a state and national criminal history background screening by a district school board or the DOE.[95] If a background screening reveals a criminal history, or if an applicant for certification acknowledges a criminal history, the applicant's records must be assigned to DOE's Office of

[89] Section 1002.333(2), F.S.
[90] Rule 6A-1.0998271(2)(b), F.A.C.
[91] Section 1002.333(3), F.S.
[92] Florida Department of Education, *Schools of Hope*, http://www.fldoe.org/schools/school-choice/other-school-choice-options/schools-of-hope/ (last visited March 22, 2021).
[93] Section 1002.333(7)(a), F.S.
[94] Section 1002.333(7)(d), F.S.
[95] Section 1012.56(10)(a), F.S.

Professional Practices Services (OPPS) for review and determination of eligibility for certification.[96]

Instructional and non-instructional personnel hired or contracted to fill positions that require direct contact with students in any charter school are required to undergo background screening[97] by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.[98] Current law provides a list of disqualifying criminal offenses for educator certification or employment in any position that requires direct contact with students in a charter school.[99] Instructional and non-instructional personnel who are hired must be rescreened every five years.[100]

Charter School Capital Outlay Funding

Capital outlay funds appropriated by the Legislature in the GAA are allocated to eligible charter schools by the DOE based on a methodology specified in law.[101] For fiscal year 2020-2021, the Legislature appropriated $169.6 million for charter school capital outlay funding.[102] As of March 2021, 610 charter schools received capital outlay disbursements from the DOE.[103]

To be eligible for charter school capital outlay funding, a charter school must:[104]

- Be in operation for at least two years;
- Be governed by a governing board established in Florida for two or more years which operates both charter schools and conversion charter schools within the state;
- Be part of an expanded feeder chain[105] with an existing charter school in the district that is currently receiving charter school capital outlay funds;
- Be accredited by a regional accrediting association as defined by state board rule; or
- Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace.

In addition, a charter school must:

- Have an annual audit that does not reveal a financial emergency for the most recent fiscal year for which such audit results are available;[106]

[96] Section 1012.56(2)(d), F.S. The OPPS administers a state-level grievance process. The OPPS investigates alleged misconduct by educators in Florida who hold an educator's certificate and pursues disciplinary actions against the certificates of educators found to have committed acts of misconduct. *See* Florida Department of Education, *Professional Practices*, http://www.fldoe.org/teaching/professional-practices/ (last visited March 22, 2021).
[97] Section 1002.33(12)(g)1., F.S.
[98] Section 1012.32(2)(b), F.S.
[99] Section 1012.315, F.S.
[100] Section 1012.56(10)(b), F.S.
[101] Section 1013.62(2)(a)-(e), F.S.
[102] Specific appropriation 21, s. 2, ch. 2020-21, L.O.F.
[103] Florida Department of Education, *Charter School Capital Outlay 2020-21*, http://www.fldoe.org/finance/fco/charter-school-capital-outlay/index.stml (last visited March 22, 2021).
[104] Section 1013.62(1)(a)1.a., F.S.
[105] A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to s. 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.
[106] The definition of financial emergency is provided in s. 218.503(1), F.S.

- Have satisfactory student achievement based upon the state accountability standards applicable to charter schools;[107]
- Have received final approval from its sponsor for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.[108]

Capital outlay funds may be used by a charter school's governing board for the:

- Purchase of real property;
- Construction of school facilities;
- Purchase, lease-purchase or lease of permanent or relocatable school facilities;
- Purchase of vehicles to transport students to and from the charter school;
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer;
- Purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources;
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities;
- Purchase, lease-purchase or lease of driver's education vehicles, motor vehicles used for the maintenance or operation of plants and equipment, security vehicles, or vehicles used in storing or distributing materials and equipment; and
- Payment of the cost of the opening day collection for the library media center of a new school.[109]

Financial Accountability

Like other charter schools, a school of hope must provide for an annual audit.[110] The Auditor General may choose to conduct the audit. If not, the school must arrange for an audit by an independent certified public accountant.[111] The audit must:

- Examine the school's financial statements to determine if its financial position and any changes in financial position comply with generally accepted accounting principles;
- Examine the school's operations to determine compliance with legal and regulatory requirements; and
- Examine any additional financial information necessary to comply with generally accepted accounting principles.[112]

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[107] Section 1013.62(1)(a)3., F.S.; rule 6A-2.0020, F.A.C. A charter school that receives a grade of "F," two consecutive grades lower than a "C" or a school improvement rating of "Unsatisfactory" is not eligible for capital outlay funding. *See also, Florida Assoc. of Independent Charter Schools vs. Florida Dept. of Education, Case No. 17-1986RP (2017), available at* https://www.doah.state.fl.us/ROS/2017/17001986.pdf.

[108] Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(b), F.S.

[109] Section 1013.62(4), F.S.

[110] Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.

[111] Sections 11.45(3)(c) and 218.39(1)(e) and (f), F.S.

[112] Rules of the Auditor General, *Chapter 10.850 Audits of Charter Schools and Charter Technical Career Centers, The Florida Virtual Schools, and Virtual Instruction Program Providers (effective June 30, 2020), available at* https://flauditor.gov/pages/pdf_files/10_850.pdf.

Each school of hope must file a copy of its audit report with the sponsor, the district school board, if not the sponsor, the Auditor General and the DOE.[113]

Generally, each charter school must also submit a monthly financial statement summary sheet to the charter's sponsor.[114] The monthly summary sheet must include a balance sheet and a statement of revenue, expenditures, and changes in fund balance in a governmental funds format prescribed by the Governmental Accounting Standards Board.[115] The sponsor must review the financial statement summary to determine if the school exhibits a deteriorating financial condition.[116] The law allows a school of hope to submit its financial statement summary sheet on a quarterly basis, rather than monthly.[117]

Effect of Proposed Changes

Financial Accountability

The bill specifies that a school of hope operated by a nonprofit entity designated by an LEA is in compliance with financial reporting requirements if the nonprofit submits to each school district a financial statement summary for all its schools of hope in the district, and an annual financial audit of the nonprofit for all schools of hope it operates in the state that complies with s. 218.39, F.S.

Additionally, the bill modifies s. 1002.333, F.S., by providing that a hope operator, rather than each school of hope it operates, is the entity responsible for providing quarterly financial statements to the school district and meeting annual financial audit requirements.

Persistently Low Performing Schools

The bill modifies s. 1002.333, F.S., by revising the definition of a persistently low-performing school to be a school that has earned three grades lower than a "C" in at least three of the previous five years in which the school received a grade. This change would allow a school to be designated as persistently low performing even if it does not receive a school grade for one or more of the school years during a 5-year period.

Hope Operators

The bill modifies s. 1002.333, F.S., by authorizing a school of hope, which has been designated as a LEA, to report its students to the DOE according to procedures and timelines established by the DOE. A school of hope which has not been designated as a LEA must continue to report its students to the school district.

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[113] Section 218.39(10), F.S.
[114] Section 1002.33(9)(g)3., F.S. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S. Pursuant to Rule 6A-1.0081, F.A.C., DOE adopted two monthly financial statement forms for use by charter schools. Florida Department of Education, *Government Accountability and Standards Board (GASB) Monthly Financial Form (Form IEPC-F1) and Non-Profit Monthly Financial Form (Form IEPC-F2),* http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference (last visited March 15, 2021).
[115] Florida Department of Education, *Government Accountability and Standards Board (GASB) Monthly Financial Form (Form IEPC-F1) and Non-Profit Monthly Financial Form (Form IEPC-F2),* http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference (last visited March 15, 2021).
[116] Section 1002.33(9)(g)3., F.S.
[117] Section 1002.333(6)(h), F.S.

The bill specifies that a nonprofit entity that operates more than one school of hope may be designated as an LEA by the department.

Facilities

The bill modifies s. 1002.333, F.S., by requiring that the DOE must annually provide to school districts a list of underused, vacant, or surplus facilities operated by the school district as reported in the Florida Inventory of School Houses no later than January 1. The bill also specifies:

- A school district may provide evidence to the DOE that the list contains errors or omissions within 30 days after receipt of the list.
- By each April 1, the DOE must update and publish a final list based on updated information provided by each school district.

Personnel Background Screening

The bill modifies s. 1012.32, F.S., to authorize instructional and non-instructional personnel who are hired or contracted to fill positions in any school of hope to complete background screening requirements by filing with the school a set of fingerprints taken by:

- An authorized law enforcement agency;
- An employee of the charter school or school district who is trained to take fingerprints; or
- A private vendor who maintains an agreement with the Florida Department of Law Enforcement.

Charter School Capital Outlay Funding

The bill modifies s. 1002.333, F.S., to extend the authorization for undisbursed Schools of Hope Program funds to be carried forward from five years to seven years and modifies s. 1013.62, F.S., to authorize a charter school operated as a school of hope to be eligible to receive charter school capital outlay funding.

The bill provides for severability.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that the funds for eligible university or FCS institution sponsored charter school students must be appropriated from state funds in the GAA to the charter school. Currently full-time equivalent students funded in the FEFP are funded with a combination of state and local funds. Since the eligible university or FCS institution sponsored charter school student will only be funded from state funds appropriated in the FEFP, there may need to be additional state funds provided to offset the potential loss of local funds; however, at this time the individual amounts cannot be determined and would vary based upon the school district and its total amount of local funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.32, 1002.33, 1002.331, 1002.333, 1002.45, 1003.493, 1008.3415, 1012.32, and 1013.62.

IX. Additional Information:

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

PCS 479284 by Appropriations (Recommended by the Appropriations Subcommittee on Education):
The proposed committee substitute makes the following changes:

- Specifies that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county.
- Authorizes all lab schools with permanent high school center to receive sparsity supplement, not just those in operation prior to Sept. 1, 2013.
- Authorizes a prevailing party to file an action with the Division of Administrative Hearings to recover reasonable attorney fees and costs incurred during the denial of the application and any appeals.
- Authorizes the State Board of Education to withhold state funds from a district school board that is in violation of a state board decision on a charter school.
- Authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.
- Specifies that changes to a charter school's curriculum consistent with state standards and necessary to implement blended learning are deemed approved in terms of modifications to the charter, unless the sponsor determines in writing that the curriculum is inconsistent with state standards.
- In the case of an immediate termination of a charter school, the amendment requires the sponsor to provide the facts and circumstances supporting the termination in writing. The sponsor must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.
- Authorizes an administrative law judge to award reasonable attorney fees and costs to the prevailing parting of any inunction, administrative proceeding, or appeal.
- Authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.
- Removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.
- Expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.
- Specifies that a nonprofit entity that operates more than one school of hope may be designated as an LEA by the department.
- Revises the determination of a high-performing charter school facility's capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school's facilities at the time the expansion will take effect.
- Specifies that a school of hope operated by a nonprofit entity designated by an LEA is in compliance with financial reporting requirements if the nonprofit submits to school district a financial statement summary for all its schools of hope in the district, and an annual financial audit of nonprofit for all schools of hope it operates in state that complies with s. 218.39.
- Allows for a virtual charter school to provide part-time instruction.
- Allows for a virtual charter school to be an approved provider.

- Allows for a virtual charter to contract with any public school or charter school to allow the participation of the virtual charter school's students in courses that the virtual school is unable to provide.
- Provides for severability.

CS by Education on March 23, 2021:
The committee substitute retains the original bill provisions, and:
- Adds hope operators to the list of entities required to perform an annual financial audit.
- Modifies the charter school application process to specify that an application may be submitted at any time, rather than by February 1, for a school opening at a time of the applicant's choosing.
- Adds provisions specifying the charter school sponsor's administrative fee for up to two percent for enrollment of up to and including 250 students in an exceptional student education center.
- Modifies provisions that a high-performing charter school may submit two applications for a charter school within the state to be opened at a time determined by the high-performing charter school.
- Clarifies that a subsequent application may not be submitted unless the applicant commences operations or an application is withdrawn and that the provisions apply to an existing high-performing charter school.
- Specifies each school of hope that has not been designated as local education agency must report its students to the school district. Additionally, each school of hope that has been designated as a local education agency may report its students to the department.
- Clarifies that instructional and noninstructional personnel hired or contracted to fill positions at a school of hope must file with the school of hope, rather than the district school board as for other charter schools, a complete set of fingerprints taken by an authorized law enforcement agency or other recognized entity.
- Requires the DOE to annually provide to school districts, no later than January 1, a list of underused, vacant, or surplus facilities operated by the school district as reported in the Florida Inventory of School Houses, and:
  - A school district may provide evidence to the DOE that the list contains errors or omissions within 30 days after receipt of the list.
  - By each April 1, the DOE must update and publish a final list based on updated information provided by each school district.
- Authorizes a charter school that is an exceptional student education center that receives a rating of "maintaining" or higher may replicate its educational program.
- Requires the Commissioner of Education to verify that the charter school meets the specified requirements and provide a letter to the charter school and sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school.
- Extends the authorization for undispersed Schools of Hope Program funds to be carried forward from five years to seven years.
- Authorizes a charter school operated as a school of hope to be eligible to receive charter school capital outlay funding.

B. Amendments:

None.

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

608684

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) and paragraph (a) of subsection (9) of section 1002.32, Florida Statutes, are amended to read:

1002.32 Developmental research (laboratory) schools.—

(2) ESTABLISHMENT.—There is established a category of public schools to be known as developmental research (laboratory) schools (lab schools). Each lab school shall

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provide sequential instruction and shall be affiliated with the college of education within the state university of closest geographic proximity. A lab school to which a charter has been issued under s. 1002.33(5)(a)2. must be affiliated with the college of education within the state university that issued the charter, but is not subject to the requirement that the state university be of closest geographic proximity. For the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school. The limitation of one lab school per university shall not apply to the following legislatively allowed charter lab schools ~~authorized prior to June 1, 2003~~: Florida State University Charter Lab K-12 School in Broward County, Florida Atlantic University Charter Lab K-12 ~~9-12 High~~ School in Palm Beach County, and Florida Atlantic University Charter Lab K-12 School in St. Lucie County. The limitation of one lab school per university does not apply to a university that establishes a lab school to serve families of a military installation that is within the same county as a branch campus that offers programs from the university's college of education.

(9) FUNDING.—Funding for a lab school, including a charter lab school, shall be provided as follows:

(a) Each lab school shall be allocated its proportional share of operating funds from the Florida Education Finance Program as provided in s. 1011.62 based on the county in which the lab school is located and the General Appropriations Act.

The nonvoted ad valorem millage that would otherwise be required for lab schools shall be allocated from state funds. The required local effort funds calculated pursuant to s. 1011.62 shall be allocated from state funds to the schools as a part of the allocation of operating funds pursuant to s. 1011.62. Each eligible lab school ~~in operation as of September 1, 2013,~~ with a permanent high school center shall also receive a proportional share of the sparsity supplement as calculated pursuant to s. 1011.62. In addition, each lab school shall receive its proportional share of all categorical funds, with the exception of s. 1011.68, and new categorical funds enacted after July 1, 1994, for the purpose of elementary or secondary academic program enhancement. The sum of funds available as provided in this paragraph shall be included annually in the Florida Education Finance Program and appropriate categorical programs funded in the General Appropriations Act.

Section 2. Paragraph (c) of subsection (2), subsection (5), paragraphs (b) and (d) of subsection (6), paragraphs (a), (b), and (d) of subsection (7), paragraphs (c), (d), and (e) of subsection (8), paragraphs (g) and (n) of subsection (9), paragraphs (d) and (e) of subsection (10), subsection (14), paragraph (c) of subsection (15), subsection (17), paragraph (e) of subsection (18), subsections (20) and (21), paragraph (a) of subsection (25), and subsection (28) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(2) GUIDING PRINCIPLES; PURPOSE.—

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.

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2. Provide rigorous competition within the public school system ~~district~~ to stimulate continual improvement in all public schools.

3. Expand the capacity of the public school system.

4. Mitigate the educational impact created by the development of new residential dwelling units.

5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.

(5) SPONSOR; DUTIES.—

(a) *Sponsoring entities.*—

1. A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.

2. A state university may grant a charter to a lab school created under s. 1002.32 and shall be considered to be the school's sponsor. Such school shall be considered a charter lab school.

3. Because needs relating to educational capacity, workforce qualifications, and career education opportunities are constantly changing and extend beyond school district boundaries:

a. A state university may, upon approval by the Department of Education, solicit applications and sponsor a charter school to meet regional education or workforce demands by serving students from multiple school districts.

b. A Florida College System institution may, upon approval by the Department of Education, solicit applications and sponsor a charter school in any county within its service area to meet workforce demands and may offer postsecondary programs leading

to industry certifications to eligible charter school students. A charter school established under subparagraph (b)4. may not be sponsored by a Florida College System institution until its existing charter with the school district expires as provided under subsection (7).

c. Notwithstanding paragraph (6)(b), a state university or Florida College System institution may, at its discretion, deny an application for a charter school.

(b) *Sponsor duties.*—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school. If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.

e. The sponsor shall ensure that the charter is innovative

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and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

k. The sponsor shall submit an annual report to the Department of Education in a web-based format to be determined by the department.

(I) The report shall include the following information:

(A) ~~The number of draft applications received on or before May 1 and each applicant's contact information.~~

~~(B)~~ The number of ~~final~~ applications received during the school year and up to ~~on or before~~ August 1 and each applicant's contact information.

(B) ~~(C)~~ The date each application was approved, denied, or

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withdrawn.

(C) ~~(D)~~ The date each final contract was executed.

(II) Annually, by November 1 ~~Beginning August 31, 2013, and each year thereafter~~, the sponsor shall submit to the department the information for the applications submitted the previous year.

(III) The department shall compile an annual report, by sponsor ~~district~~, and post the report on its website by January 15 ~~November 1~~ of each year.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a sponsor's ~~district school board's~~ sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate ~~no more than one~~ charter schools ~~school~~ that serve ~~serves~~ students in kindergarten through grade 12 in any school district within the service area of the institution. ~~In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of~~

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~~student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school.~~ District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students participating under this subparagraph who receive FTE funding through the Florida Education Finance Program.

5. For purposes of assisting the development of a charter school, a school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity’s fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not

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included within the services to be provided pursuant to subsection (20). Notwithstanding any other provision of law, an interlocal agreement between a school district and a federal or state agency, county, municipality, or other governmental entity which prohibits or limits the creation of a charter school within the geographic borders of the school district is void and unenforceable.

6. The board of trustees of a sponsoring state university or Florida College System institution under paragraph (a) is the local educational agency for all charter schools it sponsors for purposes of receiving federal funds and accepts full responsibility for all local educational agency requirements and the schools for which it will perform local educational agency responsibilities. A student enrolled in a charter school that is sponsored by a state university or Florida College System institution may not be included in the calculation of the school district's grade under s. 1008.34(5) for the school district in which he or she resides.

(c) *Sponsor accountability.*—

1. The department shall, in collaboration with charter school sponsors and charter school operators, develop a sponsor evaluation framework that must address, at a minimum:

a. The sponsor's strategic vision for charter school authorization and the sponsor's progress toward that vision.

b. The alignment of the sponsor's policies and practices to best practices for charter school authorization.

c. The academic and financial performance of all operating charter schools overseen by the sponsor.

d. The status of charter schools authorized by the sponsor,

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including approved, operating, and closed schools.

2. The department shall compile the results by sponsor and include the results in the report required under sub-sub-subparagraph (b)1.k.(III).

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(b) A sponsor shall receive and review all applications for a charter school using the evaluation instrument developed by the Department of Education. ~~A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses. Beginning in 2018 and thereafter,~~ A sponsor shall receive and consider charter school applications ~~received on or before February 1 of each calendar year~~ for charter schools ~~to be opened 18 months later at the beginning of the school district's school year, or~~ to be opened at a time determined by the applicant. ~~A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.~~ A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before approving or denying any application, the sponsor shall

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allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 90 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of

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Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 or a high-performing charter school system identified pursuant to s. 1002.332 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application of a high-performing charter school does not materially comply with the requirements in paragraph (a) or, for a high-performing charter school system, the application does not materially comply with s. 1002.332(2)(b);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a

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violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school or a high-performing charter school system, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application in accordance with paragraph (c).

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of an application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. ~~Upon approval of an application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted.~~ A charter school may defer the opening of the school's operations for up

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to 3 years to provide time for adequate facility planning. The charter school must provide written notice of such intent to the sponsor and the parents of enrolled students at least 30 calendar days before the first day of school.

(d)1. The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received. The State Board of Education's decision is a final action subject to judicial review in the district court of appeal. A prevailing party may file an action with the Division of Administrative Hearings to recover reasonable attorney fees and costs incurred during the denial of the application and any appeals.

2. A school district that fails to implement the decision affirmed by a district court of appeal shall reduce the administrative fees withheld pursuant to subsection (20) to 1 percent for all charter schools operating in the school district. Such school districts shall file a monthly report detailing the reduction in the amount of administrative fees withheld. Upon execution of the charter, the sponsor may resume withholding the full amount of administrative fees but may not recover any fees that would have otherwise accrued during the period of noncompliance. Any charter school that had administrative fees withheld in violation of this paragraph may recover attorney fees and costs to enforce the requirements of this paragraph.

(7) CHARTER.—The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor and the governing board of the charter school shall

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use the standard charter contract pursuant to subsection (21), which shall incorporate the approved application and any addenda approved with the application. Any term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education shall be presumed a limitation on charter school flexibility. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school’s mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

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b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school pursuant to s. 1011.61(1)(a)1. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while

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attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

A ~~The~~ district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school’s code of student conduct. Admission or dismissal must not be based on a student’s academic performance.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or

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within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the

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charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 5 years, excluding 2 planning years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which

addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-

performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(b) The sponsor has 30 days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor have 40 days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days before the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except a dispute regarding a charter school application denial. If either the charter school or the sponsor indicates in writing that the party does not desire to settle any dispute arising under this section through mediation procedures offered by the Department of Education, a charter school may immediately appeal any formal or informal decision by the sponsor to an administrative law judge appointed by the Division of Administrative Hearings. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may also be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on issues of equitable treatment of the

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charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or any other matter regarding this section, except a dispute regarding charter school application denial, a charter termination, or a charter nonrenewal. The administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the party whom the administrative law judge rules against.

(d) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Changes to curriculum which are consistent with state standards and are necessary to implement blended learning shall be deemed approved unless the sponsor determines in writing that the curriculum is inconsistent with state standards. Modification during any term may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board, regardless of the renewal cycle. A charter school that is not subject to a school improvement plan and that closes as part of a consolidation shall be reported by the sponsor ~~school district~~ as a consolidation.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(c) A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances demonstrating ~~indicating~~ that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists, that the immediate and serious danger is likely to

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continue, and that an immediate termination of the charter is necessary. The sponsor's determination is subject to the procedures set forth in paragraph (b), except that the hearing may take place after the charter has been terminated. The sponsor shall notify in writing the charter school's governing board, the charter school principal, and the department of the facts and circumstances supporting the immediate termination ~~if a charter is terminated immediately~~. The sponsor shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination, if applicable ~~when appropriate~~. Upon receiving written notice from the sponsor, the charter school's governing board has 10 calendar days to request a hearing. A requested hearing must be expedited and the final order must be issued within 60 days after the date of request. The administrative law judge shall award reasonable attorney fees and costs to the prevailing party of any injunction, administrative proceeding, or appeal. The sponsor may seek an injunction in the circuit court in which the charter school is located to enjoin continued operation of the charter school if ~~shall assume operation of the charter school throughout the pendency of the hearing under paragraph (b) unless the~~ continued operation ~~of the charter school~~ would materially threaten the health, safety, or welfare of the students. ~~Failure by the sponsor to assume and continue operation of the charter school shall result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.~~

(d) When a charter is not renewed or is terminated, the

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school shall be dissolved under the provisions of law under which the school was organized, and any unencumbered public funds, except for capital outlay funds and federal charter school program grant funds, from the charter school shall revert to the sponsor. Capital outlay funds provided pursuant to s. 1013.62 and federal charter school program grant funds that are unencumbered shall revert to the department to be redistributed among eligible charter schools. In the event a charter school is dissolved or is otherwise terminated, all sponsor ~~district school board~~ property and improvements, furnishings, and equipment purchased with public funds shall automatically revert to full ownership by the sponsor ~~district school board~~, subject to complete satisfaction of any lawful liens or encumbrances. Any unencumbered public funds from the charter school, ~~district school board~~ property and improvements, furnishings, and equipment purchased with public funds, or financial or other records pertaining to the charter school, in the possession of any person, entity, or holding company, other than the charter school, shall be held in trust upon the sponsor's ~~district school board's~~ request, until any appeal status is resolved.

(e) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The sponsor ~~district~~ may not assume the debt from any contract made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the sponsor ~~district~~ and the governing body of the school and that may not reasonably be assumed to have been satisfied by the sponsor ~~district~~.

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b. At the discretion of the charter school's governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in sponsor ~~district~~ reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall, upon approval of the charter contract, provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. A high-performing charter school

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pursuant to s. 1002.331 may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. The sponsor shall review each monthly or quarterly financial statement to identify the existence of any conditions identified in s. 1002.345(1)(a).

4. A charter school shall maintain and provide financial information as required in this paragraph. The financial statement required in subparagraph 3. must be in a form prescribed by the Department of Education.

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades below a "C," the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

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(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade below a "C."

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 3.

d. A charter school is no longer required to implement a corrective action if it improves to a "C" or higher. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 4.

e. A charter school implementing a corrective action that does not improve to a "C" or higher after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve to a "C" or higher if additional time is provided to implement the existing corrective action. Notwithstanding this sub-

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subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 3.

3. A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all school grade appeals are final unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)2. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school subject to s. 1008.33(4) and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby ~~district~~ public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

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The sponsor shall notify the charter school's governing board, the charter school principal, and the department in writing when a charter contract is terminated under this subparagraph. A charter terminated under this subparagraph must follow the procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(d)-(f) and (9)(o).

4. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

5. Notwithstanding any provision of this paragraph except sub-subparagraphs 3.a.-c., the sponsor may terminate the charter at any time pursuant to subsection (8).

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

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a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident or employee of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c) or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.

5. Students who have successfully completed, during the previous year, a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school, ~~or~~ the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board ~~during the previous year~~.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools pursuant to s. 1002.38(2).

(e) A charter school may limit the enrollment process only to target the following student populations:

1. Students within specific age groups or grade levels.

2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.

3. Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established pursuant to subsection (15).

4. Students residing within a reasonable distance of the

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charter school, as described in paragraph (20)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph (7)(a)8. or any federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

5. Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school's mission and purpose. Such standards shall be in accordance with current state law and practice in public schools and may not discriminate against otherwise qualified individuals.

6. Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.

7. Students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools or charter ~~provides the~~ school facilities ~~facility~~ and related property in an amount equal to or having a total ~~an~~ appraised value of at least $5 million to be used as ~~a~~ charter schools ~~school~~ to mitigate the educational impact created by the development of new residential dwelling units. Students living in the development are ~~shall be~~ entitled to ~~no more than~~ 50 percent of the student stations in the charter schools ~~school~~.

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The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions, as described in subparagraph 4. The remainder of the student stations must ~~shall~~ be filled in accordance with subparagraph 4.

(14) CHARTER SCHOOL FINANCIAL ARRANGEMENTS; INDEMNIFICATION OF THE STATE AND SPONSOR ~~SCHOOL DISTRICT~~; CREDIT OR TAXING POWER NOT TO BE PLEDGED.—Any arrangement entered into to borrow or otherwise secure funds for a charter school authorized in this section from a source other than the state or a sponsor ~~school district~~ shall indemnify the state and the sponsor ~~school district~~ from any and all liability, including, but not limited to, financial responsibility for the payment of the principal or interest. Any loans, bonds, or other financial agreements are not obligations of the state or the sponsor ~~school district~~ but are obligations of the charter school authority and are payable solely from the sources of funds pledged by such agreement. The credit or taxing power of the state or the sponsor ~~school district~~ shall not be pledged and no debts shall be payable out of any moneys except those of the legal entity in possession of a valid charter approved by a sponsor ~~district school board~~ pursuant to this section.

(15) CHARTER SCHOOLS-IN-THE-WORKPLACE; CHARTER SCHOOLS-IN-A-MUNICIPALITY.—

(c) A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment, as provided for in subsection (10); and enrolls

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students according to the racial/ethnic balance provisions described in subparagraph (7)(a)8. When a municipality has submitted charter applications for the establishment of a charter school feeder pattern, consisting of elementary, middle, and senior high schools, and each individual charter application is approved by the sponsor ~~district school board~~, such schools shall then be designated as one charter school for all purposes listed pursuant to this section. Any portion of the land and facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in a ~~the~~ school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(a) Each charter school shall report its student enrollment to the sponsor as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The sponsor shall include each charter school's enrollment in the sponsor's ~~district's~~ report of student enrollment. All charter schools submitting student record information required by the Department of Education shall comply with the Department of Education's guidelines for electronic data formats for such data, and all sponsors ~~districts~~ shall accept electronic data that complies with the Department of Education's electronic format.

(b)1. The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school

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district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; and multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation, the research-based reading allocation, and the Florida digital classrooms allocation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education. For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district. Unrestricted current assets shall be used in accordance with s. 1011.62, and any unrestricted capital assets shall be used in accordance with s. 1013.62(2).

2.a. Students enrolled in a charter school sponsored by a state university or Florida College System institution pursuant

to paragraph (5)(a) shall be funded as if they are in a basic program or a special program in the school district. The basis for funding these students is the sum of the total operating funds from the Florida Education Finance Program for the school district in which the school is located as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy, divided by total funded weighted full-time equivalent students in the district, and multiplied by the full-time equivalent membership of the charter school. The Department of Education shall develop a tool that each state university or Florida College System institution sponsoring a charter school shall use for purposes of calculating the funding amount for each eligible charter school student. The total amount obtained from the calculation must be appropriated from state funds in the General Appropriations Act to the charter school.

b. Capital outlay funding for a charter school sponsored by a state university or Florida College System institution pursuant to paragraph (5)(a) is determined pursuant to s. 1013.62 and the General Appropriations Act.

(c) Pursuant to 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds,

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the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars; the federal Education Department General Administrative Regulations; and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

(d) Charter schools shall be included by the Department of Education and the district school board in requests for federal stimulus funds in the same manner as district school board-operated public schools, including Title I and IDEA funds and shall be entitled to receive such funds. Charter schools are eligible to participate in federal competitive grants that are available as part of the federal stimulus funds.

(e) Sponsors ~~District school boards~~ shall make timely and

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efficient payment and reimbursement to charter schools, including processing paperwork required to access special state and federal funding for which they may be eligible. Payments of funds under paragraph (b) shall be made monthly or twice a month, beginning with the start of the sponsor's ~~district school board's~~ fiscal year. Each payment shall be one-twelfth, or one twenty-fourth, as applicable, of the total state and local funds described in paragraph (b) and adjusted as set forth therein. For the first 2 years of a charter school's operation, if a minimum of 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month, the sponsor ~~district school board~~ shall distribute funds to the school for the months of July through October based on the projected full-time equivalent student membership of the charter school as submitted in the approved application. If less than 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month, the sponsor shall base payments on the actual number of student enrollment entered into the sponsor's student information system. Thereafter, the results of full-time equivalent student membership surveys shall be used in adjusting the amount of funds distributed monthly to the charter school for the remainder of the fiscal year. The payments shall be issued no later than 10 working days after the sponsor ~~district school board~~ receives a distribution of state or federal funds or the date the payment is due pursuant to this subsection. If a warrant for payment is not issued within 10 working days after receipt of funding by the sponsor ~~district school board~~, the sponsor ~~school district~~ shall pay to the

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charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the expiration of the 10 working days until such time as the warrant is issued. The district school board may not delay payment to a charter school of any portion of the funds provided in paragraph (b) based on the timing of receipt of local funds by the district school board.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(g) To be eligible for public education capital outlay (PECO) funds, a charter school must be located in the State of Florida.

(h) A charter school that implements a schoolwide standard student attire policy pursuant to s. 1011.78 is eligible to receive incentive payments.

(18) FACILITIES.—

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the sponsor ~~school district~~ may not sell or dispose of such property without written permission of the sponsor ~~school district~~. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The

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charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program, consistent with the needs of the charter school, are provided by the sponsor ~~school district~~ at the request of the charter school, that any funds due to the charter school under the National School Lunch Program be paid to the charter school as soon as the charter school begins serving food under the National School Lunch Program, and that the charter school is paid at the same time and in the same manner under the National School Lunch Program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to the sponsor's student information systems that are used by public schools in the district in which the charter school is located or by schools in the sponsor's portfolio of charter schools if

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the sponsor is not a school district. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district.

2. A sponsor may withhold an administrative fee for the provision of such services which shall be a percentage of the available funds defined in paragraph (17)(b) calculated based on weighted full-time equivalent students. If the charter school serves 75 percent or more exceptional education students as defined in s. 1003.01(3), the percentage shall be calculated based on unweighted full-time equivalent students. The administrative fee shall be calculated as follows:

a. Up to 5 percent for:

(I) Enrollment of up to and including 250 students in a charter school as defined in this section.

(II) Enrollment of up to and including 500 students within a charter school system which meets all of the following:

(A) Includes conversion charter schools and nonconversion charter schools.

(B) Has all of its schools located in the same county.

(C) Has a total enrollment exceeding the total enrollment of at least one school district in this ~~the~~ state.

(D) Has the same governing board for all of its schools.

(E) Does not contract with a for-profit service provider for management of school operations.

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(III) Enrollment of up to and including 250 students in a virtual charter school.

b. Up to 2 percent for enrollment of up to and including 250 students in a high-performing charter school as defined in s. 1002.331.

c. Up to 2 percent for enrollment of up to and including 250 students in an exceptional student education center that meets the requirements of the rules adopted by the State Board of Education pursuant to s. 1008.3415(3).

3. A sponsor may not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum percentage of administrative fees withheld pursuant to this paragraph.

4. A sponsor shall provide to the department by September 15 of each year the total amount of funding withheld from charter schools pursuant to this subsection for the prior fiscal year. The department must include the information in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(b) If goods and services are made available to the charter school through the contract with the sponsor ~~school district~~, they shall be provided to the charter school at a rate no greater than the sponsor's ~~district's~~ actual cost unless mutually agreed upon by the charter school and the sponsor in a contract negotiated separately from the charter. When mediation has failed to resolve disputes over contracted services or contractual matters not included in the charter, an appeal may be made to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on the dispute. The administrative

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law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the party whom the administrative law judge rules against. To maximize the use of state funds, sponsors ~~school districts~~ shall allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. 1012.45. The governing body of the charter school may provide transportation through an agreement or contract with the sponsor ~~district school board~~, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

(d) Each charter school shall annually complete and submit a survey, provided in a format specified by the Department of Education, to rate the timeliness and quality of services provided by the sponsor ~~district~~ in accordance with this section. The department shall compile the results, by sponsor ~~district~~, and include the results in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include the standard

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application form, standard charter contract, standard evaluation instrument, and standard charter renewal contract, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both sponsors ~~school districts~~ and charter schools before implementation. The charter and charter renewal contracts shall be used by charter school sponsors.

(b)1. The Department of Education shall report to each charter school receiving a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341 the school's student assessment data.

2. The charter school shall report the information in subparagraph 1. to each parent of a student at the charter school, the parent of a child on a waiting list for the charter school, the sponsor ~~district in which the charter school is located~~, and the governing board of the charter school. This paragraph does not abrogate the provisions of s. 1002.22, relating to student records, or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

(25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—

(a) A charter school system's governing board shall be designated a local educational agency for the purpose of receiving federal funds, the same as though the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsor ~~sponsoring district school board~~ and the Department of Education in which the governing board of the charter school system accepts the full responsibility for all local education

agency requirements and the charter school system meets all of the following:

1. Has all schools located in the same county;

2. Has a total enrollment exceeding the total enrollment of at least one school district in this ~~the~~ state; and

3. Has the same governing board.

Such designation does not apply to other provisions unless specifically provided in law.

(28) RULEMAKING.—The Department of Education, after consultation with sponsors ~~school districts~~ and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a standard charter application form, standard application form for the replication of charter schools in a high-performing charter school system, standard evaluation instrument, and standard charter and charter renewal contracts in accordance with this section.

Section 3. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (b) of subsection (3) of section 1002.331, Florida Statutes, are amended to read:

1002.331 High-performing charter schools.—

(1) A charter school is a high-performing charter school if it:

(a)1. Received at least two school grades of "A" and no school grade below "B," pursuant to s. 1008.34, during each of

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the previous 3 school years or received at least two consecutive school grades of "A" in the most recent 2 school years for the years that the school received a grade; or

2. Receives, during its first 3 years of operation, funding through the National Fund of the Charter School Growth Fund.

For purposes of determining initial eligibility, the requirements of paragraphs (b) and (c) only apply for the most recent 2 fiscal years if the charter school earns two consecutive grades of "A." A virtual charter school established under s. 1002.33 is not eligible for designation as a high-performing charter school.

(2) A high-performing charter school is authorized to:

(a) Increase its student enrollment once per school year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect. Facility capacity for purposes of ~~grade level~~ expansion shall include any improvements to an existing facility or any new facility in which ~~a majority of~~ the students of the high-performing charter school will enroll.

A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable. If a charter school notifies the sponsor of its intent to expand, the sponsor shall modify the charter within 90 days to include the new

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enrollment maximum and may not make any other changes. The sponsor may deny a request to increase the enrollment of a high-performing charter school if the commissioner has declassified the charter school as high-performing. If a high-performing charter school requests to consolidate multiple charters, the sponsor shall have 40 days after receipt of that request to provide an initial draft charter to the charter school. The sponsor and charter school shall have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

(3)

(b) A high-performing charter school may submit ~~not establish more than~~ two applications for a charter school to be opened ~~schools~~ within this ~~the~~ state under paragraph (a) at a time determined by the high-performing charter school ~~in any year~~. A subsequent application to establish a charter school under paragraph (a) may not be submitted unless each charter school applicant commences operations or an application is otherwise withdrawn ~~established in this manner achieves high-performing charter school status~~. However, a high-performing charter school may establish more than one charter school within this ~~the~~ state under paragraph (a) in any year if it operates in the area of a persistently low-performing school and serves students from that school. This paragraph applies to any high-performing charter school with an existing approved application.

Section 4. Paragraph (c) of subsection (1), paragraphs (a), (g), and (h) of subsection (6), paragraph (d) of subsection (7), and paragraph (b) of subsection (10) of section 1002.333, Florida Statutes, are amended, and paragraph (e) is added to

subsection (9) of that section, to read:

1002.333 Persistently low-performing schools.—

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

(c) "Persistently low-performing school" means a school that has earned three grades lower than a "C," pursuant to s. 1008.34, in at least 3 of the previous 5 years that the school received a grade and has not earned a grade of "B" or higher in the most recent 2 school years, and a school that was closed pursuant to s. 1008.33(4) within 2 years after the submission of a notice of intent.

(6) STATUTORY AUTHORITY.—

(a) A school of hope or a nonprofit entity that operates more than one school of hope through a performance-based agreement with a school district may be designated as a local education agency by the department, if requested, for the purposes of receiving federal funds and, in doing so, accepts the full responsibility for all local education agency requirements and the schools for which it will perform local education agency responsibilities.

1. A nonprofit entity designated as a local education agency may report its students to the department in accordance with the definitions in s. 1011.61 and pursuant to the department's procedures and timelines.

2. Students enrolled in a school established by a hope operator designated as a local educational agency are not eligible students for purposes of calculating the district grade pursuant to s. 1008.34(5).

(g) Each school of hope that has not been designated as a local education agency shall report its students to the school

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district as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The school district shall include each charter school's enrollment in the district's report of student enrollment. All charter schools submitting student record information required by the department shall comply with the department's guidelines for electronic data formats for such data, and all districts shall accept electronic data that complies with the department's electronic format.

(h)1. A school of hope shall provide the school district with a concise, uniform, quarterly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental fund format prescribed by the Governmental Accounting Standards Board. Additionally, a school of hope shall comply with the annual audit requirement for charter schools in s. 218.39.

2. A school of hope is in compliance with subparagraph 1. if it is operated by a nonprofit entity designated as a local education agency and if the nonprofit submits to each school district in which it operates a school of hope:

a. A concise, uniform, quarterly financial statement summary sheet that contains a balance sheet summarizing the revenue, expenditures, and changes in fund balance for the entity and for its schools of hope within the school district.

b. An annual financial audit of the nonprofit which includes all schools of hope it operates within this state and which complies with s. 218.39 regarding audits of a school board.

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(7) FACILITIES.—

(d) No later than January ~~October~~ 1, the department ~~each school district~~ shall annually provide to school districts ~~the Department of Education~~ a list of all underused, vacant, or surplus facilities owned or operated by the school district as reported in the Florida Inventory of School Houses. A school district may provide evidence to the department that the list contains errors or omissions within 30 days after receipt of the list. By each April 1, the department shall update and publish a final list of all underused, vacant, or surplus facilities owned or operated by each school district, based upon updated information provided by each school district. A hope operator establishing a school of hope may use an educational facility identified in this paragraph at no cost or at a mutually agreeable cost not to exceed $600 per student. A hope operator using a facility pursuant to this paragraph may not sell or dispose of such facility without the written permission of the school district. For purposes of this paragraph, the term "underused, vacant, or surplus facility" means an entire facility or portion thereof which is not fully used or is used irregularly or intermittently by the school district for instructional or program use.

(9) FUNDING.—

(e) For a nonprofit entity designated by the department as a local education agency pursuant to paragraph (6)(h), any unrestricted current and capital assets identified in the annual financial audit required by sub-subparagraph (6)(h)2.b. may be used for any other school of hope operated by the local education agency within the same district. Unrestricted current

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assets shall be used in accordance with s. 1011.62, and any unrestricted capital assets shall be used in accordance with s. 1013.62(2).

(10) SCHOOLS OF HOPE PROGRAM.—The Schools of Hope Program is created within the Department of Education.

(b) Notwithstanding s. 216.301 and pursuant to s. 216.351, funds allocated for the purpose of this subsection which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 7 ~~5~~ years after the effective date of the original appropriation.

Section 5. Paragraph (d) of subsection (1) and paragraph (a) of subsection (2) of section 1002.45, Florida Statutes, are amended to read:

1002.45 Virtual instruction programs.—

(1) PROGRAM.—

(d) A virtual charter school may provide full-time or part-time virtual instruction for students in kindergarten through grade 12 if the virtual charter school has a charter approved pursuant to s. 1002.33 ~~authorizing full-time virtual instruction~~. A virtual charter school may:

1. Contract with the Florida Virtual School.

2. Contract with an approved provider under subsection (2).

3. Enter into an agreement with a school district to allow the participation of the virtual charter school's students in the school district's virtual instruction program. The agreement must indicate a process for reporting of student enrollment and the transfer of funds required by paragraph (7)(e).

(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online a list of

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providers approved to offer virtual instruction programs. To be approved by the department, a provider must document that it:

1. Is nonsectarian in its programs, admission policies, employment practices, and operations;

2. Complies with the antidiscrimination provisions of s. 1000.05;

3. Locates an administrative office or offices in this state, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers under chapter 1012 and conducts background screenings for all employees or contracted personnel, as required by s. 1012.32, using state and national criminal history records;

4. Provides to parents and students specific information posted and accessible online that includes, but is not limited to, the following teacher-parent and teacher-student contact information for each course:

a. How to contact the instructor via phone, e-mail, or online messaging tools.

b. How to contact technical support via ~~phone,~~ e-mail~~,~~ or online messaging tools.

c. How to contact the administration office via phone, e-mail, or online messaging tools.

d. Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.

e. The requirement that the instructor in each course must, at a minimum, conduct one contact via phone with the parent and the student each month;

5. Possesses prior, successful experience offering online

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courses to elementary, middle, or high school students as demonstrated by quantified student learning gains in each subject area and grade level provided for consideration as an instructional program option. However, for a provider without sufficient prior, successful experience offering online courses, the department may conditionally approve the provider to offer courses measured pursuant to subparagraph (8)(a)2. Conditional approval shall be valid for 1 school year only and, based on the provider's experience in offering the courses, the department shall determine whether to grant approval to offer a virtual instruction program;

6. Is accredited by a regional accrediting association as defined by State Board of Education rule;

7. Ensures instructional and curricular quality through a detailed curriculum and student performance accountability plan that addresses every subject and grade level it intends to provide through contract with the school district, including:

a. Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.

b. Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.

c. Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate;

8. Publishes for the general public, in accordance with disclosure requirements adopted in rule by the State Board of Education, as part of its application as a provider and in all

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contracts negotiated pursuant to this section:

a. Information and data about the curriculum of each full-time and part-time program.

b. School policies and procedures.

c. Certification status and physical location of all administrative and instructional personnel.

d. Hours and times of availability of instructional personnel.

e. Student-teacher ratios.

f. Student completion and promotion rates.

g. Student, educator, and school performance accountability outcomes;

9. If the provider is a Florida College System institution, employs instructors who meet the certification requirements for instructional staff under chapter 1012; and

10. Performs an annual financial audit of its accounts and records conducted by an independent certified public accountant which is in accordance with rules adopted by the Auditor General, is conducted in compliance with generally accepted auditing standards, and includes a report on financial statements presented in accordance with generally accepted accounting principles.

Section 6. Paragraph (a) of subsection (1) of section 1003.493, Florida Statutes, is amended to read:

1003.493 Career and professional academies and career-themed courses.—

(1)(a) A "career and professional academy" is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to

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priority workforce needs established by the local workforce development board or the Department of Economic Opportunity. Career and professional academies shall be offered by public schools and school districts. Career and professional academies may be offered by charter schools. The Florida Virtual School is encouraged to develop and offer rigorous career and professional courses as appropriate. Students completing career and professional academy programs must receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the academy partners with a postsecondary institution approved to operate in the state.

Section 7. Present subsection (3) of section 1008.3415, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(3) A charter school that is an exceptional student education center and that receives two consecutive ratings of "maintaining" or higher may replicate its educational program under s. 1002.331(3). The Commissioner of Education, upon request by a charter school, shall verify that the charter school meets the requirements of this subsection and provide a letter to the charter school and the sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school under s. 1002.331(3).

Section 8. Subsection (2) of section 1012.32, Florida Statutes, is amended to read:

1012.32 Qualifications of personnel.—

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(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable.

(b)1. Instructional and noninstructional personnel who are hired or contracted to fill positions in a ~~any~~ charter school other than a school of hope as defined in s. 1002.333, and members of the governing board of such ~~any~~ charter school, in compliance with s. 1002.33(12)(g), ~~must,~~ upon employment, engagement of services, or appointment, shall undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

2. Instructional and noninstructional personnel who are hired or contracted to fill positions in a school of hope as defined in s. 1002.333, and members of the governing board of such school of hope, shall file with the school of hope a complete set of fingerprints taken by an authorized law enforcement agency, by an employee of the school of hope or school district who is trained to take fingerprints, or by any other entity recognized by the Department of Law Enforcement to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct

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contact with students in an alternative school that operates under contract with a district school system must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(d) Student teachers and persons participating in a field experience pursuant to s. 1004.04(5) or s. 1004.85 in any district school system, lab school, or charter school must, upon engagement to provide services, undergo background screening as required under s. 1012.56.

Required fingerprints must ~~shall~~ be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person

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subject to this subsection. A district school board shall reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the Florida Department of Law Enforcement or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional personnel.

Section 9. Paragraph (a) of subsection (1) of section 1013.62, Florida Statutes, is amended to read:

1013.62 Charter schools capital outlay funding.—

(1) For the 2020-2021 fiscal year, charter school capital outlay funding shall consist of state funds appropriated in the 2020-2021 General Appropriations Act. Beginning in fiscal year 2021-2022, charter school capital outlay funding shall consist of state funds when such funds are appropriated in the General Appropriations Act and revenue resulting from the discretionary millage authorized in s. 1011.71(2) if the amount of state funds appropriated for charter school capital outlay in any fiscal year is less than the average charter school capital outlay funds per unweighted full-time equivalent student for the 2018-2019 fiscal year, multiplied by the estimated number of charter school students for the applicable fiscal year, and adjusted by changes in the Consumer Price Index issued by the United States Department of Labor from the previous fiscal year. Nothing in this subsection prohibits a school district from distributing to charter schools funds resulting from the discretionary millage authorized in s. 1011.71(2).

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(a) To be eligible to receive capital outlay funds, a charter school must:

1.a. Have been in operation for 2 or more years;

b. Be governed by a governing board established in the state for 2 or more years which operates both charter schools and conversion charter schools within the state;

c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds;

d. Have been accredited by a regional accrediting association as defined by State Board of Education rule; ~~or~~

e. Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b)<u>; or</u>

<u>f. Be operated by a hope operator pursuant to s. 1002.333</u>.

2. Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1) for the most recent fiscal year for which such audit results are available.

3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.

4. Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.

5. Serve students in facilities that are not provided by the charter school’s sponsor.

Section 10. <u>If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or</u>

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application, and to this end the provisions of this act are severable.

Section 11. This act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to charter schools; amending s. 1002.32, F.S.; providing that the limitation on lab schools does not apply to a school serving a military installation; removing a limitation on lab schools receiving a share of the sparsity supplement; amending s. 1002.33, F.S.; authorizing state universities and Florida College System institutions to solicit applications and sponsor charter schools under certain circumstances; prohibiting certain charter schools from being sponsored by a Florida College System institution until such charter schools' existing charter expires; authorizing a state university or Florida College System institution to, at its discretion, deny an application for a charter school; revising the contents of an annual report that charter school sponsors must provide to the Department of Education; revising the date by which the department must post a specified annual report; revising provisions relating to Florida College System institutions that are operating charter schools;

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prohibiting certain interlocal agreements; requiring the board of trustees of a state university or Florida College System institution that is sponsoring a charter school to serve as the local educational agency for such school; prohibiting certain charter school students from being included in specified school district grade calculations; requiring the department to develop a sponsor evaluation framework; providing requirements for the framework; requiring the department to compile results in a specified manner; deleting obsolete language; revising requirements for the charter school application process; requiring certain school districts to reduce administrative fees withheld; requiring such school districts to file monthly reports; authorizing school districts to resume withholding the full amount of administrative fees under specified circumstance; authorizing certain charter schools to recover attorney fees and costs; requiring the State Board of Education to withhold state funds from a district school board that is in violation of a state board decision on a charter school; authorizing parties to appeal without first mediating in certain circumstances; providing that certain changes to curriculum are deemed approved; providing an exception; revising the circumstances in which a charter may be immediately terminated; providing that certain information must be provided to specified entities upon immediate termination of a charter;

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authorizing the award of specified fees and costs in certain circumstances; authorizing a sponsor to seek an injunction in certain circumstances; revising provisions related to sponsor assumption of operation; revising the student populations for which a charter school is authorized to limit the enrollment process; providing a calculation for the operational funding for a charter school sponsored by a state university or Florida College System institution; requiring the department to develop a tool for state universities and Florida College System institutions for specified purposes relating to certain funding calculations; providing that such funding must be appropriated to the charter school; providing for capital outlay funding for such schools; authorizing a sponsor to withhold an administrative fee for the provision of certain services to an exceptional student education center that meets specified requirements; conforming provisions to changes made by the act; amending s. 1002.331, F.S.; revising requirements for a charter school to be a high-performing charter school; revising a limitation on the expansion of high-performing charter schools; revising provisions relating to the opening of additional high-performing charter schools; amending s. 1002.333, F.S.; revising the definition of the term "persistently low-performing school"; providing that certain nonprofit entities may be designated as a local education agency; providing that certain entities report

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students to the department in a specified manner; specifying reporting provisions that apply only to certain schools of hope; providing that schools of hope may comply with certain financial reporting in a specified manner; revising the manner in which underused, vacant, or surplus facilities owned or operated by school districts are identified; authorizing a nonprofit entity designated as a local education agency to use any capital assets identified in a certain annual financial audit for another school of hope operated by the local education agency within the same district; increasing the number of years for which certain funds may be carried forward; amending s. 1002.45, F.S.; authorizing a virtual charter school to provide part-time virtual instruction; amending s. 1003.493, F.S.; authorizing a charter school to offer a career and professional academy; amending s. 1008.3415, F.S.; requiring the Commissioner of Education, upon request by a charter school that meets specified criteria, to provide a letter to the charter school and the charter school's sponsor authorizing the charter school to replicate its educational program; amending s. 1012.32, F.S.; providing an alternate screening method for specified persons employed by certain schools of hope or serving on certain school of hope governing boards; amending s. 1013.62, F.S.; expanding eligibility to receive capital outlay funds to schools of hope operated by a hope operator; providing for severability; providing

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an effective date.

672026

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (608684)

Delete lines 604 - 605

and insert:

consistent with state standards shall be deemed approved unless the sponsor

408536

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (608684) (with title amendment)

Delete lines 1147 - 1150.

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

And the title is amended as follows:

Delete lines 1736 - 1739

and insert:

funding for such schools; conforming

933456

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (608684)

Delete line 1262
and insert:
through the National Fund of the Charter School Growth Fund, and has received no school grade lower than a "C," pursuant to s. 1008.34, during each of the previous 3 school years for the years that the school received a grade.

781700

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (608684)

Delete lines 1450 - 1458
and insert:
b. How to contact technical support via phone, e-mail, or online messaging tools.
c. How to contact the administration office via phone, e-mail, or online messaging tools.
d. Any requirement for regular contact with the instructor for the course and clear expectations for meeting the

781700

requirement.

e. The requirement that the instructor in each course must, at a minimum, conduct one contact ~~via phone~~ with the parent and

576-03915-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to charter schools; amending s. 1002.32, F.S.; providing that the limitation on lab schools does not apply to a school serving a military installation; removing a limitation on lab schools receiving a share of the sparsity supplement; amending s. 1002.33, F.S.; authorizing state universities and Florida College System institutions to solicit applications and sponsor charter schools under certain circumstances; prohibiting certain charter schools from being sponsored by a Florida College System institution until such charter school's existing charter expires; authorizing a state university or Florida College System institution to, at its discretion, deny an application for a charter school; revising the contents of an annual report that charter school sponsors must provide to the Department of Education; revising the date by which the department must post a specified annual report; revising provisions relating to Florida College System institutions that are operating charter schools; requiring the board of trustees of a state university or Florida College System institution that is sponsoring a charter school to serve as the local educational agency for such school; prohibiting certain charter school students from being included in specified school district grade calculations;

576-03915-21

requiring the department to develop a sponsor evaluation framework; providing requirements for the framework; requiring the department to compile results in a specified manner; deleting obsolete language; revising requirements for the charter school application process; authorizing certain parties to file an action with the Division of Administrative Hearings to recover specified fees and costs; requiring the State Board of Education to withhold state funds from a district school board that is in violation of a state board decision on a charter school; authorizing parties to appeal without first mediating in certain circumstances; providing that certain changes to curriculum are deemed approved; providing an exception; revising the circumstances in which a charter may be immediately terminated; providing that certain information must be provided to specified entities upon immediate termination of a charter; authorizing the of award specified fees and costs in certain circumstances; authorizing a sponsor to seek an injunction in certain circumstances; revising provisions related to sponsor assumption of operation; revising the student populations for which a charter school is authorized to limit the enrollment process; providing a calculation for the operational funding for a charter school sponsored by a state university or Florida College System institution; requiring the department to develop a tool for state universities and Florida College System institutions

for specified purposes relating to certain funding calculations; providing that such funding must be appropriated to the charter school; providing for capital outlay funding for such schools; authorizing a sponsor to withhold an administrative fee for the provision of certain services to an exceptional student education center that meets specified requirements; conforming provisions to changes made by the act; amending s. 1002.331, F.S.; revising a limitation on the expansion of high-performing charter schools; revising provisions relating to the opening of additional high-performing charter schools; amending s. 1002.333, F.S.; revising the definition of the term "persistently low-performing school"; providing that certain nonprofit entities may be designated as a local education agency; providing that certain entities report students to the department in a specified manner; specifying reporting provisions that apply only to certain schools of hope; providing that schools of hope may comply with certain financial reporting in a specified manner; revising the manner in which underused, vacant, or surplus facilities owned or operated by school districts are identified; increasing the number of years for which certain funds may be carried forward; amending s. 1002.45, F.S.; authorizing a virtual charter school to provide part-time virtual instruction and be an approved provider; authorizing a virtual charter school to contract, rather than enter into an agreement, with a public or

charter school for specified purposes; amending s. 1003.493, F.S.; authorizing a charter school to offer a career and professional academy; amending s. 1008.3415, F.S.; requiring the Commissioner of Education, upon request by a charter school that meets specified criteria, to provide a letter to the charter school and the charter school's sponsor authorizing the charter school to replicate the charter school's education program; amending s. 1012.32, F.S.; providing an alternate screening method for specified persons employed by certain schools of hope or serving on certain school of hope governing boards; amending s. 1013.62, F.S.; expanding eligibility to receive capital outlay funds to schools of hope operated by a hope operator; providing for severability; providing an effective date.

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

Section 1. Subsection (2) and paragraph (a) of subsection (9) of section 1002.32, Florida Statutes, are amended to read:

1002.32 Developmental research (laboratory) schools.—

(2) ESTABLISHMENT.—There is established a category of public schools to be known as developmental research (laboratory) schools (lab schools). Each lab school shall provide sequential instruction and shall be affiliated with the college of education within the state university of closest geographic proximity. A lab school to which a charter has been issued under s. 1002.33(5)(a) 2. must be affiliated with the

college of education within the state university that issued the charter, but is not subject to the requirement that the state university be of closest geographic proximity. For the purpose of state funding, Florida Agricultural and Mechanical University, Florida Atlantic University, Florida State University, the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school. The limitation of one lab school per university shall not apply to the following charter lab schools authorized prior to June 1, 2003: Florida State University Charter Lab K-12 School in Broward County, Florida Atlantic University Charter Lab 9-12 High School in Palm Beach County, and Florida Atlantic University Charter Lab K-12 School in St. Lucie County. The limitation of one lab school per university does not apply to a university that establishes a lab school to serve families of a military installation that is within the same county as a branch campus that offers programs from the university's college of education.

(9) FUNDING.—Funding for a lab school, including a charter lab school, shall be provided as follows:

(a) Each lab school shall be allocated its proportional share of operating funds from the Florida Education Finance Program as provided in s. 1011.62 based on the county in which the lab school is located and the General Appropriations Act. The nonvoted ad valorem millage that would otherwise be required for lab schools shall be allocated from state funds. The required local effort funds calculated pursuant to s. 1011.62 shall be allocated from state funds to the schools as a part of the allocation of operating funds pursuant to s. 1011.62. Each

eligible lab school ~~in operation as of September 1, 2013,~~ with a permanent high school center shall also receive a proportional share of the sparsity supplement as calculated pursuant to s. 1011.62. In addition, each lab school shall receive its proportional share of all categorical funds, with the exception of s. 1011.68, and new categorical funds enacted after July 1, 1994, for the purpose of elementary or secondary academic program enhancement. The sum of funds available as provided in this paragraph shall be included annually in the Florida Education Finance Program and appropriate categorical programs funded in the General Appropriations Act.

Section 2. Paragraph (c) of subsection (2), subsection (5), paragraphs (b) and (d) of subsection (6), paragraphs (a), (b), and (d) of subsection (7), paragraphs (c), (d), and (e) of subsection (8), paragraphs (g) and (n) of subsection (9), paragraphs (d) and (e) of subsection (10), subsection (14), paragraph (c) of subsection (15), subsection (17), paragraph (e) of subsection (18), subsections (20) and (21), paragraph (a) of subsection (25), and subsection (28) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(2) GUIDING PRINCIPLES; PURPOSE.—

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.

2. Provide rigorous competition within the public school system ~~district~~ to stimulate continual improvement in all public schools.

3. Expand the capacity of the public school system.

4. Mitigate the educational impact created by the

development of new residential dwelling units.

5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.

(5) SPONSOR; DUTIES.—

(a) *Sponsoring entities.*—

1. A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.

2. A state university may grant a charter to a lab school created under s. 1002.32 and shall be considered to be the school's sponsor. Such school shall be considered a charter lab school.

3. Because needs relating to educational capacity, workforce qualifications, and career education opportunities are constantly changing and extend beyond school district boundaries:

a. A state university may, upon approval by the Department of Education, solicit applications and sponsor a charter school to meet regional education or workforce demands by serving students from multiple school districts.

b. A Florida College System institution may, upon approval by the Department of Education, solicit applications and sponsor a charter school in any county within its service area to meet workforce demands and may offer postsecondary programs leading to industry certifications to eligible charter school students. A charter school established under subparagraph (b)4. may not be sponsored by a Florida College System institution until its existing charter with the school district expires as provided under subsection (7).

c. Notwithstanding paragraph (6)(b), a state university or Florida College System institution may, at its discretion, deny an application for a charter school.

(b) *Sponsor duties.*—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school. If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in

the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

k. The sponsor shall submit an annual report to the Department of Education in a web-based format to be determined by the department.

(I) The report shall include the following information:

(A) ~~The number of draft applications received on or before May 1 and each applicant's contact information.~~

~~(B)~~ The number of ~~final~~ applications received during the school year and up to ~~on or before~~ August 1 and each applicant's contact information.

(B) ~~(C)~~ The date each application was approved, denied, or withdrawn.

(C) ~~(D)~~ The date each final contract was executed.

(II) Annually, by November 1 ~~Beginning August 31, 2013, and each year thereafter~~, the sponsor shall submit to the department the information for the applications submitted the previous

year.

(III) The department shall compile an annual report, by sponsor ~~district~~, and post the report on its website by January 15 ~~November 1~~ of each year.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a sponsor's ~~district school board's~~ sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate ~~no more than one~~ charter schools ~~school~~ that serve ~~serves~~ students in kindergarten through grade 12 in any school district within the service area of the institution. ~~In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school.~~ District school boards shall

cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students participating under this subparagraph who receive FTE funding through the Florida Education Finance Program.

5. A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity's fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not included within the services to be provided pursuant to subsection (20).

6. The board of trustees of a sponsoring state university or Florida College System institution under paragraph (a) is the local educational agency for all charter schools it sponsors for purposes of receiving federal funds and accepts full

responsibility for all local educational agency requirements and the schools for which it will perform local educational agency responsibilities. A student enrolled in a charter school that is sponsored by a state university or Florida College System institution may not be included in the calculation of the school district's grade under s. 1008.34(5) for the school district in which he or she resides.

(c) *Sponsor accountability.*—

1. The department shall, in collaboration with charter school sponsors and charter school operators, develop a sponsor evaluation framework that must address, at a minimum:

a. The sponsor's strategic vision for charter school authorizing and the sponsor's progress toward that vision.

b. The alignment of the sponsor's policies and practices to best practices for charter school authorizing.

c. The academic and financial performance of all operating charter schools overseen by the sponsor.

d. The status of charter schools authorized by the sponsor, including approved, operating, and closed schools.

2. The department shall compile the results by sponsor and include the results in the report required under sub-sub-subparagraph (b)1.k.(III).

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(b) A sponsor shall receive and review all applications for a charter school using the evaluation instrument developed by the Department of Education. ~~A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened~~

~~at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses. Beginning in 2018 and thereafter,~~ A sponsor shall receive and consider charter school applications ~~received on or before February 1 of each calendar year~~ for charter schools ~~to be opened 18 months later at the beginning of the school district's school year, or~~ to be opened at a time determined by the applicant. ~~A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.~~ A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before approving or denying any application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection,

within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 90 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 or a high-performing charter school system identified pursuant to s. 1002.332 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application of a high-performing charter school does not materially comply with the requirements in paragraph (a) or, for a high-performing charter school system, the application does not materially comply with s. 1002.332(2)(b);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a

high-performing charter school or a high-performing charter school system, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application in accordance with paragraph (c).

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of an application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. ~~Upon approval of an application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted.~~ A charter school may defer the opening of the school's operations for up to 3 years to provide time for adequate facility planning. The charter school must provide written notice of such intent to the sponsor and the parents of enrolled students at least 30 calendar days before the first day of school.

(d)1. The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received. The State Board of Education's decision is a final action subject to judicial review in the district court of appeal. A prevailing party may file an action with the Division of Administrative Hearings to recover reasonable attorney fees and costs incurred during the denial of the application and any

appeals.

2. If the State Board of Education determines that a district school board is in violation of a state board decision on a charter school application and of a court order for the school board to enter into a charter with a charter school governing board, the state board must withhold state funds provided under s. 1011.62 by the total number of K-12 students, as applicable, projected to be enrolled in the charter school in the first year of operation as reported in the charter school application. The state board shall withhold the amount in each disbursement of such funds until the district school board enters into a charter with the charter school governing board. If the district school board enters into such charter during the same fiscal year, all withheld funds must be disbursed to the district school board.

(7) CHARTER.—The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor and the governing board of the charter school shall use the standard charter contract pursuant to subsection (21), which shall incorporate the approved application and any addenda approved with the application. Any term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education shall be presumed a limitation on charter school flexibility. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The charter shall be signed by the governing board of the charter school and the sponsor, following

a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-

time students of the charter school pursuant to s. 1011.61(1)(a)1. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

A ~~The~~ district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct. Admission or dismissal must not be based on a student's academic performance.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and

establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 5 years, excluding 2 planning years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter

school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However,

alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(b) The sponsor has 30 days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor have 40 days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an

extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days before the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except a dispute regarding a charter school application denial. If either the charter school or the sponsor indicates in writing that the party does not desire to settle any dispute arising under this section through mediation procedures offered by the Department of Education, a charter school may immediately appeal any formal or informal decision by the sponsor to an administrative law judge appointed by the Division of Administrative Hearings. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may also be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or any other matter regarding this section, except a dispute regarding charter school application denial, a charter termination, or a charter nonrenewal. The administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the party whom the administrative law judge rules against.

(d) A charter may be modified during its initial term or

any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Changes to curriculum that are consistent with state standards and are necessary to implement blended learning shall be deemed approved unless the sponsor determines in writing that the curriculum is inconsistent with state standards. Modification during any term may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board, regardless of the renewal cycle. A charter school that is not subject to a school improvement plan and that closes as part of a consolidation shall be reported by the sponsor ~~school district~~ as a consolidation.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(c) A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances demonstrating ~~indicating~~ that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary. The sponsor's determination is subject to the procedures set forth in paragraph (b), except that the hearing may take place after the charter has been terminated. The sponsor shall notify in writing the charter school's governing board, the charter school principal, and the department of the facts and circumstances supporting the immediate termination ~~if a charter is terminated immediately~~. The sponsor shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues

resulting in the immediate termination, if applicable ~~when appropriate~~. Upon receiving written notice from the sponsor, the charter school's governing board has 10 calendar days to request a hearing. A requested hearing must be expedited and the final order must be issued within 60 days after the date of request. The administrative law judge shall award reasonable attorney fees and costs to the prevailing party of any injunction, administrative proceeding, or appeal. The sponsor may seek an injunction in the circuit court in which the charter school is located to enjoin continued operation of the charter school if ~~shall assume operation of the charter school throughout the pendency of the hearing under paragraph (b) unless the~~ continued operation ~~of the charter school~~ would materially threaten the health, safety, or welfare of the students. ~~Failure by the sponsor to assume and continue operation of the charter school shall result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.~~

(d) When a charter is not renewed or is terminated, the school shall be dissolved under the provisions of law under which the school was organized, and any unencumbered public funds, except for capital outlay funds and federal charter school program grant funds, from the charter school shall revert to the sponsor. Capital outlay funds provided pursuant to s. 1013.62 and federal charter school program grant funds that are unencumbered shall revert to the department to be redistributed among eligible charter schools. In the event a charter school is dissolved or is otherwise terminated, all sponsor ~~district school board~~ property and improvements, furnishings, and

equipment purchased with public funds shall automatically revert to full ownership by the sponsor ~~district school board~~, subject to complete satisfaction of any lawful liens or encumbrances. Any unencumbered public funds from the charter school, ~~district school board~~ property and improvements, furnishings, and equipment purchased with public funds, or financial or other records pertaining to the charter school, in the possession of any person, entity, or holding company, other than the charter school, shall be held in trust upon the sponsor's ~~district school board's~~ request, until any appeal status is resolved.

(e) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The sponsor ~~district~~ may not assume the debt from any contract made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the sponsor ~~district~~ and the governing body of the school and that may not reasonably be assumed to have been satisfied by the sponsor ~~district~~.

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b. At the discretion of the charter school's governing board, a charter school may elect to follow generally accepted

accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in sponsor ~~district~~ reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall, upon approval of the charter contract, provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. A high-performing charter school pursuant to s. 1002.331 may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. The sponsor shall review each monthly or quarterly financial statement to identify the existence of any conditions identified in s. 1002.345(1)(a).

4. A charter school shall maintain and provide financial information as required in this paragraph. The financial statement required in subparagraph 3. must be in a form prescribed by the Department of Education.

(n)1. The director and a representative of the governing

board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades below a "C," the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade below a "C."

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school

improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 3.

d. A charter school is no longer required to implement a corrective action if it improves to a "C" or higher. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 4.

e. A charter school implementing a corrective action that does not improve to a "C" or higher after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve to a "C" or higher if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 3.

3. A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all school grade appeals are final unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)2. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school subject to s. 1008.33(4) and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waiver termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby ~~district~~ public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

The sponsor shall notify the charter school's governing board, the charter school principal, and the department in writing when a charter contract is terminated under this subparagraph. A charter terminated under this subparagraph must follow the procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(d)-(f) and (9)(o).

4. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding

the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

5. Notwithstanding any provision of this paragraph except sub-subparagraphs 3.a.-c., the sponsor may terminate the charter at any time pursuant to subsection (8).

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident or employee of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c) or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.

5. Students who have successfully completed, during the

previous year, a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school, ~~or~~ the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board ~~during the previous year~~.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools pursuant to s. 1002.38(2).

(e) A charter school may limit the enrollment process only to target the following student populations:

1. Students within specific age groups or grade levels.

2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.

3. Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established pursuant to subsection (15).

4. Students residing within a reasonable distance of the charter school, as described in paragraph (20)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph (7)(a)8. or any federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

5. Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or,

in the case of existing charter schools, standards that are consistent with the school's mission and purpose. Such standards shall be in accordance with current state law and practice in public schools and may not discriminate against otherwise qualified individuals.

6. Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.

7. Students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools or charter ~~provides the~~ school facilities ~~facility~~ and related property in an amount equal to or having a total ~~an~~ appraised value of at least $5 million to be used as ~~a~~ charter schools ~~school~~ to mitigate the educational impact created by the development of new residential dwelling units. Students living in the development are ~~shall be~~ entitled to ~~no more than~~ 50 percent of the student stations in the charter schools ~~school~~. The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions, as described in subparagraph 4. The remainder of the student stations must ~~shall~~ be filled in accordance with subparagraph 4.

(14) CHARTER SCHOOL FINANCIAL ARRANGEMENTS; INDEMNIFICATION OF THE STATE AND SPONSOR ~~SCHOOL DISTRICT~~; CREDIT OR TAXING POWER NOT TO BE PLEDGED.—Any arrangement entered into to borrow or otherwise secure funds for a charter school authorized in this section from a source other than the state or a sponsor ~~school~~

~~district~~ shall indemnify the state and the sponsor ~~school district~~ from any and all liability, including, but not limited to, financial responsibility for the payment of the principal or interest. Any loans, bonds, or other financial agreements are not obligations of the state or the sponsor ~~school district~~ but are obligations of the charter school authority and are payable solely from the sources of funds pledged by such agreement. The credit or taxing power of the state or the sponsor ~~school district~~ shall not be pledged and no debts shall be payable out of any moneys except those of the legal entity in possession of a valid charter approved by a sponsor ~~district school board~~ pursuant to this section.

(15) CHARTER SCHOOLS-IN-THE-WORKPLACE; CHARTER SCHOOLS-IN-A-MUNICIPALITY.—

(c) A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment, as provided for in subsection (10); and enrolls students according to the racial/ethnic balance provisions described in subparagraph (7)(a)8. When a municipality has submitted charter applications for the establishment of a charter school feeder pattern, consisting of elementary, middle, and senior high schools, and each individual charter application is approved by the sponsor ~~district school board~~, such schools shall then be designated as one charter school for all purposes listed pursuant to this section. Any portion of the land and facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the

duration of its use as a public school.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in a ~~the~~ school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(a) Each charter school shall report its student enrollment to the sponsor as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The sponsor shall include each charter school's enrollment in the sponsor's ~~district's~~ report of student enrollment. All charter schools submitting student record information required by the Department of Education shall comply with the Department of Education's guidelines for electronic data formats for such data, and all sponsors ~~districts~~ shall accept electronic data that complies with the Department of Education's electronic format.

(b)1. The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; and multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the

total funds available in the Florida Education Finance Program by the Legislature, including transportation, the research-based reading allocation, and the Florida digital classrooms allocation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education. For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district. Unrestricted current assets shall be used in accordance with s. 1011.62, and any unrestricted capital assets shall be used in accordance with s. 1013.62(2).

2.a. Students enrolled in a charter school sponsored by a state university or Florida College System institution pursuant to paragraph (5)(a) shall be funded as if they are in a basic program or a special program in the school district. The basis for funding these students is the sum of the total operating funds from the Florida Education Finance Program for the school district in which the school is located as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy, divided by total funded weighted full-time equivalent students in the district, and multiplied by the full-

time equivalent membership of the charter school. The Department of Education shall develop a tool that each state university or Florida College System institution sponsoring a charter school shall use for purposes of calculating the funding amount for each eligible charter school student. The total amount obtained from the calculation must be appropriated from state funds in the General Appropriations Act to the charter school.

b. Capital outlay funding for a charter school sponsored by a state university or Florida College System institution pursuant to paragraph (5)(a) is determined pursuant to s. 1013.62 and the General Appropriations Act.

(c) Pursuant to 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of

reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars; the federal Education Department General Administrative Regulations; and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

(d) Charter schools shall be included by the Department of Education and the district school board in requests for federal stimulus funds in the same manner as district school board-operated public schools, including Title I and IDEA funds and shall be entitled to receive such funds. Charter schools are eligible to participate in federal competitive grants that are available as part of the federal stimulus funds.

(e) Sponsors ~~District school boards~~ shall make timely and efficient payment and reimbursement to charter schools, including processing paperwork required to access special state and federal funding for which they may be eligible. Payments of funds under paragraph (b) shall be made monthly or twice a month, beginning with the start of the sponsor's ~~district school board's~~ fiscal year. Each payment shall be one-twelfth, or one twenty-fourth, as applicable, of the total state and local funds described in paragraph (b) and adjusted as set forth therein. For the first 2 years of a charter school's operation, if a minimum of 75 percent of the projected enrollment is entered

into the sponsor's student information system by the first day of the current month, the sponsor ~~district school board~~ shall distribute funds to the school for the months of July through October based on the projected full-time equivalent student membership of the charter school as submitted in the approved application. If less than 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month, the sponsor shall base payments on the actual number of student enrollment entered into the sponsor's student information system. Thereafter, the results of full-time equivalent student membership surveys shall be used in adjusting the amount of funds distributed monthly to the charter school for the remainder of the fiscal year. The payments shall be issued no later than 10 working days after the sponsor ~~district school board~~ receives a distribution of state or federal funds or the date the payment is due pursuant to this subsection. If a warrant for payment is not issued within 10 working days after receipt of funding by the sponsor ~~district school board~~, the sponsor ~~school district~~ shall pay to the charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the expiration of the 10 working days until such time as the warrant is issued. The district school board may not delay payment to a charter school of any portion of the funds provided in paragraph (b) based on the timing of receipt of local funds by the district school board.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(g) To be eligible for public education capital outlay (PECO) funds, a charter school must be located in the State of Florida.

(h) A charter school that implements a schoolwide standard student attire policy pursuant to s. 1011.78 is eligible to receive incentive payments.

(18) FACILITIES.—

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the sponsor ~~school district~~ may not sell or dispose of such property without written permission of the sponsor ~~school district~~. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and

data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program, consistent with the needs of the charter school, are provided by the sponsor ~~school district~~ at the request of the charter school, that any funds due to the charter school under the National School Lunch Program be paid to the charter school as soon as the charter school begins serving food under the National School Lunch Program, and that the charter school is paid at the same time and in the same manner under the National School Lunch Program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to the sponsor's student information systems that are used by public schools in the district in which the charter school is located or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district.

2. A sponsor may withhold an administrative fee for the provision of such services which shall be a percentage of the

available funds defined in paragraph (17)(b) calculated based on weighted full-time equivalent students. If the charter school serves 75 percent or more exceptional education students as defined in s. 1003.01(3), the percentage shall be calculated based on unweighted full-time equivalent students. The administrative fee shall be calculated as follows:

a. Up to 5 percent for:

(I) Enrollment of up to and including 250 students in a charter school as defined in this section.

(II) Enrollment of up to and including 500 students within a charter school system which meets all of the following:

(A) Includes conversion charter schools and nonconversion charter schools.

(B) Has all of its schools located in the same county.

(C) Has a total enrollment exceeding the total enrollment of at least one school district in this ~~the~~ state.

(D) Has the same governing board for all of its schools.

(E) Does not contract with a for-profit service provider for management of school operations.

(III) Enrollment of up to and including 250 students in a virtual charter school.

b. Up to 2 percent for enrollment of up to and including 250 students in a high-performing charter school as defined in s. 1002.331.

c. Up to 2 percent for enrollment of up to and including 250 students in an exceptional student education center that meets the requirements of the rules adopted by the State Board of Education pursuant to s. 1008.3415(3).

3. A sponsor may not charge charter schools any additional

fees or surcharges for administrative and educational services in addition to the maximum percentage of administrative fees withheld pursuant to this paragraph.

4. A sponsor shall provide to the department by September 15 of each year the total amount of funding withheld from charter schools pursuant to this subsection for the prior fiscal year. The department must include the information in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(b) If goods and services are made available to the charter school through the contract with the sponsor ~~school district~~, they shall be provided to the charter school at a rate no greater than the sponsor's ~~district's~~ actual cost unless mutually agreed upon by the charter school and the sponsor in a contract negotiated separately from the charter. When mediation has failed to resolve disputes over contracted services or contractual matters not included in the charter, an appeal may be made to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on the dispute. The administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the party whom the administrative law judge rules against. To maximize the use of state funds, sponsors ~~school districts~~ shall allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. 1012.45. The governing

body of the charter school may provide transportation through an agreement or contract with the sponsor ~~district school board~~, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

(d) Each charter school shall annually complete and submit a survey, provided in a format specified by the Department of Education, to rate the timeliness and quality of services provided by the sponsor ~~district~~ in accordance with this section. The department shall compile the results, by sponsor ~~district~~, and include the results in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include the standard application form, standard charter contract, standard evaluation instrument, and standard charter renewal contract, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both sponsors ~~school districts~~ and charter schools before implementation. The charter and charter renewal contracts shall be used by charter school sponsors.

(b)1. The Department of Education shall report to each charter school receiving a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341 the

school's student assessment data.

2. The charter school shall report the information in subparagraph 1. to each parent of a student at the charter school, the parent of a child on a waiting list for the charter school, the sponsor ~~district in which the charter school is located~~, and the governing board of the charter school. This paragraph does not abrogate the provisions of s. 1002.22, relating to student records, or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

(25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—

(a) A charter school system's governing board shall be designated a local educational agency for the purpose of receiving federal funds, the same as though the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsor ~~sponsoring district school board~~ and the Department of Education in which the governing board of the charter school system accepts the full responsibility for all local education agency requirements and the charter school system meets all of the following:

1. Has all schools located in the same county;

2. Has a total enrollment exceeding the total enrollment of at least one school district in this ~~the~~ state; and

3. Has the same governing board.

Such designation does not apply to other provisions unless specifically provided in law.

(28) RULEMAKING.—The Department of Education, after

consultation with sponsors ~~school districts~~ and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a standard charter application form, standard application form for the replication of charter schools in a high-performing charter school system, standard evaluation instrument, and standard charter and charter renewal contracts in accordance with this section.

Section 3. Paragraph (a) of subsection (2) and paragraph (b) of subsection (3) of section 1002.331, Florida Statutes, are amended to read:

1002.331 High-performing charter schools.—

(2) A high-performing charter school is authorized to:

(a) Increase its student enrollment once per school year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect. Facility capacity for purposes of ~~grade level~~ expansion shall include any improvements to an existing facility or any new facility in which ~~a majority of~~ the students of the high-performing charter school will enroll.

A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and

the grade levels that will be added, as applicable. If a charter school notifies the sponsor of its intent to expand, the sponsor shall modify the charter within 90 days to include the new enrollment maximum and may not make any other changes. The sponsor may deny a request to increase the enrollment of a high-performing charter school if the commissioner has declassified the charter school as high-performing. If a high-performing charter school requests to consolidate multiple charters, the sponsor shall have 40 days after receipt of that request to provide an initial draft charter to the charter school. The sponsor and charter school shall have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

(3)

(b) A high-performing charter school may submit ~~not establish more than~~ two applications for a charter school to be opened ~~schools~~ within this ~~the~~ state under paragraph (a) at a time determined by the high-performing charter school ~~in any year~~. A subsequent application to establish a charter school under paragraph (a) may not be submitted unless each charter school applicant commences operations or an application is otherwise withdrawn ~~established in this manner achieves high-performing charter school status~~. However, a high-performing charter school may establish more than one charter school within this ~~the~~ state under paragraph (a) in any year if it operates in the area of a persistently low-performing school and serves students from that school. This paragraph applies to any high-performing charter school with an existing approved application.

Section 4. Paragraph (c) of subsection (1), paragraphs (a),

(g), and (h) of subsection (6), paragraph (d) of subsection (7), and paragraph (b) of subsection (10) of section 1002.333, Florida Statutes, are amended to read:

1002.333 Persistently low-performing schools.—

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

(c) "Persistently low-performing school" means a school that has earned three grades lower than a "C," pursuant to s. 1008.34, in at least 3 of the previous 5 years that the school received a grade and has not earned a grade of "B" or higher in the most recent 2 school years, and a school that was closed pursuant to s. 1008.33(4) within 2 years after the submission of a notice of intent.

(6) STATUTORY AUTHORITY.—

(a) A school of hope or a nonprofit entity that operates more than one school of hope through a performance-based agreement with a school district may be designated as a local education agency by the department, if requested, for the purposes of receiving federal funds and, in doing so, accepts the full responsibility for all local education agency requirements and the schools for which it will perform local education agency responsibilities.

1. A nonprofit entity designated as a local education agency may report its students to the department in accordance with the definitions in s. 1011.61 and pursuant to the department's procedures and timelines.

2. Students enrolled in a school established by a hope operator designated as a local educational agency are not eligible students for purposes of calculating the district grade pursuant to s. 1008.34(5).

(g) Each school of hope that has not been designated as a local education agency shall report its students to the school district as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The school district shall include each charter school's enrollment in the district's report of student enrollment. All charter schools submitting student record information required by the department shall comply with the department's guidelines for electronic data formats for such data, and all districts shall accept electronic data that complies with the department's electronic format.

(h)1. A school of hope shall provide the school district with a concise, uniform, quarterly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental fund format prescribed by the Governmental Accounting Standards Board. Additionally, a school of hope shall comply with the annual audit requirement for charter schools in s. 218.39.

2. A school of hope is in compliance with subparagraph 1. if it is operated by a nonprofit entity designated as a local education agency and if the nonprofit submits to each school district in which it operates a school of hope:

a. A concise, uniform, quarterly financial statement summary sheet that contains a balance sheet summarizing the revenue, expenditures, and changes in fund balance for the entity and for its schools of hope within the school district.

b. An annual financial audit of the nonprofit that includes all schools of hope it operates within this state and that

complies with s. 218.39 regarding audits of a school board.

(7) FACILITIES.—

(d) No later than January ~~October~~ 1, the department ~~each school district~~ shall annually provide to school districts ~~the Department of Education~~ a list of all underused, vacant, or surplus facilities owned or operated by the school district as reported in the Florida Inventory of School Houses. A school district may provide evidence to the department that the list contains errors or omissions within 30 days after receipt of the list. By each April 1, the department shall update and publish a final list of all underused, vacant, or surplus facilities owned or operated by each school district, based upon updated information provided by each school district. A hope operator establishing a school of hope may use an educational facility identified in this paragraph at no cost or at a mutually agreeable cost not to exceed $600 per student. A hope operator using a facility pursuant to this paragraph may not sell or dispose of such facility without the written permission of the school district. For purposes of this paragraph, the term "underused, vacant, or surplus facility" means an entire facility or portion thereof which is not fully used or is used irregularly or intermittently by the school district for instructional or program use.

(10) SCHOOLS OF HOPE PROGRAM.—The Schools of Hope Program is created within the Department of Education.

(b) Notwithstanding s. 216.301 and pursuant to s. 216.351, funds allocated for the purpose of this subsection which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 7 ~~5~~ years after the

effective date of the original appropriation.

Section 5. Paragraph (d) of subsection (1) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(1) PROGRAM.—

(d) A virtual charter school may provide full-time or part-time virtual instruction for students in kindergarten through grade 12 if the virtual charter school has a charter approved pursuant to s. 1002.33 ~~authorizing full-time virtual instruction~~. A virtual charter school may:

1. Contract with the Florida Virtual School.

2. Contract with or be an approved provider under subsection (2).

3. Contract with any public school or charter school ~~Enter into an agreement with a school district~~ to allow the participation of the virtual charter school's students in courses that the virtual school is unable to provide ~~the school district's virtual instruction program~~. The agreement must indicate a process for reporting of student enrollment and the transfer of funds required by paragraph (7)(e).

Section 6. Paragraph (a) of subsection (1) of section 1003.493, Florida Statutes, is amended to read:

1003.493 Career and professional academies and career-themed courses.—

(1)(a) A "career and professional academy" is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs established by the local workforce development board or the Department of Economic Opportunity.

Career and professional academies shall be offered by public schools and school districts. Career and professional academies may be offered by charter schools. The Florida Virtual School is encouraged to develop and offer rigorous career and professional courses as appropriate. Students completing career and professional academy programs must receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the academy partners with a postsecondary institution approved to operate in the state.

Section 7. Present subsection (3) of section 1008.3415, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(3) The Commissioner of Education, upon request by a charter school that is an exceptional student education center and that has received two consecutive ratings of "maintaining" or higher pursuant to s. 1008.341(2), shall provide a letter to the charter school and to the charter school's sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school under s. 1002.331(3).

Section 8. Subsection (2) of section 1012.32, Florida Statutes, is amended to read:

1012.32 Qualifications of personnel.—

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or

university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable.

(b)1. Instructional and noninstructional personnel who are hired or contracted to fill positions in a ~~any~~ charter school other than a school of hope as defined in s. 1002.333, and members of the governing board of such ~~any~~ charter school, in compliance with s. 1002.33(12)(g), ~~must,~~ upon employment, engagement of services, or appointment, shall undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

2. Instructional and noninstructional personnel who are hired or contracted to fill positions in a school of hope as defined in s. 1002.333, and members of the governing board of such school of hope, shall file with the school of hope a complete set of fingerprints taken by an authorized law enforcement agency, by an employee of the school of hope or school district who is trained to take fingerprints, or by any other entity recognized by the Department of Law Enforcement to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system must, upon employment or engagement to provide services, undergo background

screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(d) Student teachers and persons participating in a field experience pursuant to s. 1004.04(5) or s. 1004.85 in any district school system, lab school, or charter school must, upon engagement to provide services, undergo background screening as required under s. 1012.56.

Required fingerprints must ~~shall~~ be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection. A district school board shall reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a

governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the Florida Department of Law Enforcement or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional personnel.

Section 9. Paragraph (a) of subsection (1) of section 1013.62, Florida Statutes, is amended to read:

1013.62 Charter schools capital outlay funding.—

(1) For the 2020-2021 fiscal year, charter school capital outlay funding shall consist of state funds appropriated in the 2020-2021 General Appropriations Act. Beginning in fiscal year 2021-2022, charter school capital outlay funding shall consist of state funds when such funds are appropriated in the General Appropriations Act and revenue resulting from the discretionary millage authorized in s. 1011.71(2) if the amount of state funds appropriated for charter school capital outlay in any fiscal year is less than the average charter school capital outlay funds per unweighted full-time equivalent student for the 2018-2019 fiscal year, multiplied by the estimated number of charter school students for the applicable fiscal year, and adjusted by changes in the Consumer Price Index issued by the United States Department of Labor from the previous fiscal year. Nothing in this subsection prohibits a school district from distributing to charter schools funds resulting from the discretionary millage authorized in s. 1011.71(2).

(a) To be eligible to receive capital outlay funds, a charter school must:

1.a. Have been in operation for 2 or more years;

b. Be governed by a governing board established in the state for 2 or more years which operates both charter schools and conversion charter schools within the state;

c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds;

d. Have been accredited by a regional accrediting association as defined by State Board of Education rule; ~~or~~

e. Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b); or

f. Be operated by a hope operator pursuant to s. 1002.333.

2. Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1) for the most recent fiscal year for which such audit results are available.

3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.

4. Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.

5. Serve students in facilities that are not provided by the charter school's sponsor.

Section 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 11. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

BILL:	CS/CS/SB 1028
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Hutson and others
SUBJECT:	Charter Schools
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1028 adds provisions for public postsecondary institutions to serve as a charter school sponsor, modifies provisions for hope operators, and authorizes a career and professional academy to be offered by a charter school. Specifically, the bill:

- Authorizes state universities and Florida College System (FCS) institutions to solicit applications and sponsor charter schools upon approval by the Department of Education (DOE).
- Provides that a state university sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands, and an FCS sponsored charter school may serve students from any county within the college's service area to meet workforce demands.
- Authorizes an FCS institution that operates an approved teacher preparation program to operate additional charter schools.
- Provides that the board of trustees of a sponsoring state university or FCS institution charter school is a local educational agency for the purpose of receiving federal funds and accepting responsibility for all requirements in that role.
- Provides that students attending a state university or FCS institution sponsored charter school are not to be included in the school district's grade calculation.
- Establishes operational funding and capital outlay funding formulas for charter schools sponsored by a state university or FCS institution.
- Requires the DOE to collaborate to develop a charter school sponsor evaluation framework.

- Authorizes charter schools to provide career and professional academies and revises charter school enrollment limitations.
- Adds hope operators to the list of entities required to perform an annual financial audit.
- Modifies provisions that a high-performing charter school may submit two applications for a charter school within the state to be opened at a time determined by the high-performing charter school.
- Clarifies that instructional and noninstructional personnel at a school of hope must file with the school of hope, rather than the district school board as for other charter schools, a complete set of fingerprints taken by an authorized law enforcement agency or other recognized entity.
- Authorizes a charter school that is an exceptional student education center that receives a rating of "maintaining" or higher may replicate its educational program.
- Specifies that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county.
- Allows a virtual charter school to offer part-time instruction.
- Provides for a direct appeal in a charter dispute if a party wants to bypass mediation.
- Revises the procedures for immediately terminating a charter school.
- Provides for the award of attorney fees and costs in certain circumstances.

The fiscal impact of the bill is discussed in Section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Charter Schools

Present Situation

Charter schools are tuition-free public schools created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools.[1] Forty-four states and the District of Columbia have enacted charter school laws as of January 2018.[2] Between the 2000-2001 and 2017-2018 school years, the percentage of all public schools that were charter schools increased from two to seven percent, and the total number of charter schools increased from 2,000 to 7,200. The percentage of public school students nationwide attending public charter schools increased from one to six percent between fall 2000 and fall 2017.[3]

[1] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (October 2020), *available at* http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2020.pdf.
[2] Education Commission of the States, *50-State Comparison Charter School Policies* http://ecs.force.com/mbdata/mbquestNB2C?rep=CS1708 (last visited March 17, 2021).
[3] National Center for Education Statistics, *Public Charter School Enrollment*, https://nces.ed.gov/programs/coe/indicator_cgb.asp (last visited March 17, 2021).

All charter schools in Florida are public schools and are part of the state's public education system.[4] During the 2019-2020 school year, over 329,000 students were enrolled in 673 charter schools in Florida. Sixty-nine percent of the students attending charter schools in the 2019-2020 school year were minorities. Hispanic students comprised 44 percent of Florida's charter school enrollment, and 19 percent were African-American students.[5]

Charter School Sponsors

Under current Florida law, a district school board may sponsor a charter school in the county over which the district school board has jurisdiction. In addition, a state university may sponsor a charter developmental research school (charter lab school).[6] FCS institutions may work with school districts to develop charter schools as provided for in law, but may not sponsor a K-12 charter school.[7]

A charter school sponsor has several responsibilities, including:

- Approving or denying charter school applications.
- Overseeing each sponsored school's progress toward the goals established in the charter.
- Monitoring the revenues and expenditures of the school.
- Ensuring that the school participates in the state's education accountability system.
- Intervening when a sponsored school demonstrates deficient student performance or financial instability.[8]

A sponsor must provide administrative and educational services and may withhold a fee of up to five percent of each charter school's total operating funds.[9]

Florida College System and State University Charter Schools

FCS institutions may work with school districts in the FCS institution's designated service area to develop charter schools that offer secondary education, including an option for students to receive an associate degree upon high school graduation. If an FCS institution offers a teacher preparation program, it may operate one charter school for students in kindergarten through grade 12 and must implement innovative blended learning instructional models for students in kindergarten through grade 8.[10]

[4] Section 1002.33(1), F.S.
[5] Florida Department of Education, Fact Sheet Office of Independent Education & Parental Choice, *Florida's Charter Schools* (October 2020), *available at* http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2020.pdf.
[6] Section 1002.33(5)(a)1. and 2., F.S.
[7] FCS institutions may only sponsor a charter technical career center. Section 1002.33(5)(b)4., F.S. and Section 1002.34(3)(b), F.S.
[8] Section 1002.33(5)(b), F.S.
[9] Administrative and educational services include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program; test administration services; processing of teacher certificate data services; and information services. Section 1002.33(20)(a)1. and 2., F.S.
[10] Section 1002.33(5)(b)4., F.S.

The table below lists the 15 FCS institution-operated charter schools in Florida:[11]

District Sponsor	Charter School	Affiliated FCS Institution
Charlotte	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Lee	Florida SouthWestern Collegiate High School	Florida SouthWestern State College
Manatee	State College of Florida Collegiate School - Bradenton	State College of Florida Manatee-Sarasota
Sumter	The Villages High School Early College Program	Lake-Sumter State College
Duval	San Jose Prep Charter	Florida State College at Jacksonville
Duval	Duval Charter at Baymeadows	Florida State College at Jacksonville
Duval	River City Science Academy	Florida State College at Jacksonville
Martin	Clark Advanced Learning Center	Indian River State College
Okaloosa	Collegiate High School at Northwest Florida State College	Northwest Florida State College
Polk	Polk State College Collegiate High School	Polk State College
Polk	Chain of Lakes Collegiate High School	Polk State College
Polk	Polk State Lakeland Gateway to College Charter High School	Polk State College
Pinellas	St. Petersburg Collegiate High School	St. Petersburg College
Pinellas	St. Petersburg Collegiate High School North Pinellas	St. Petersburg College
Sarasota	State College of Florida Collegiate School - Venice	State College of Florida Manatee-Sarasota

There are six existing university developmental research (laboratory) schools (lab schools). Of these, three are charter lab schools. Charter lab schools are not required to be established by the nearest state university.[12] The limitation of one lab school per university does not apply to charter lab schools authorized prior to June 1, 2003.[13] In considering an application to establish a charter lab school, a state university must consult with the district school board of the county in which the school is located. If a state university denies or does not act on the application, the applicant may appeal such decision to the State Board of Education (SBE).[14]

The table below lists the three charter lab schools operating in Florida:[15]

State University Sponsor	County	Charter Lab School
Florida Atlantic University	St. Lucie	Florida Atlantic University/St. Lucie Public Schools Palm Pointe Research School
Florida State University	Leon	Florida State University Schools
Florida State University	Broward	The Pembroke Pines Florida School

[11] Email, Department of Education (March 19, 2021) (on file with the Senate Committee on Education).
[12] Board of Governors, *2020 Agency Analysis of SB 1578* (Jan. 27, 2020), at 2. Developmental research (laboratory) schools (lab schools) are public schools. Each lab school must be affiliated with the college of education within the state university of closest geographic proximity. A lab school to which a charter has been issued is known as a charter lab school. Section 1002.32(2), F.S.
[13] Section 1002.32(2)(a), F.S.
[14] Section 1002.33(6)(g), F.S.
[15] Email, Department of Education (March 17, 2021) (on file with the Senate Committee on Education).

Sparsity Supplement for Developmental Research (lab) Schools

The FEFP recognizes the relatively higher operating cost of smaller districts due to sparse student populations through a statutory formula in which the variable factor is a sparsity index.[16] This index is computed by dividing the FTE student membership of the qualified district by the number of permanent senior high school centers, not to exceed three. For districts with at least 20,000 FTE, but no more than 24,000 FTE, the index is computed by dividing the total FTE by the number of permanent senior high school centers, not to exceed four.[17]

Each eligible lab school in operation as of September 1, 2013, with a permanent high school center must also receive a proportional share of the sparsity supplement.[18]

Effect of Proposed Changes

To address the needs of educational capacity, workforce qualifications, and career education opportunities that may extend beyond a school district's boundaries, the bill modifies s. 1002.33, F.S., and:

- Authorizes state universities and FCS institutions to solicit applications and sponsor charter schools upon approval by the SBE. A state university or FCS institution may deny an application for a charter school. Additionally:
  - A state university-sponsored charter school may serve students from multiple school districts to meet regional education or workforce demands.
  - An FCS-sponsored charter may exist in any county within its service area[19] to meet workforce demands; however, a charter school currently operated by an FCS institution is not eligible to be sponsored by an FCS institution until its existing charter with the school district expires. An FCS-sponsored charter may offer postsecondary programs leading to industry certifications for eligible charter school students.
- Removes the requirements that an FCS institution that operates an approved teacher preparation program:
  - May operate no more than one charter school; and
  - Implement an innovative blended learning instructional model for students in kindergarten through grade eight at a charter school it operates.
- Specifies that a charter's racial/ethnic balance must reflect that of nearby public schools rather than public schools located geographically within the district to address state university and FCS sponsored charter schools which may serve students from multiple school districts.
- Prohibits an FCS institution from reporting the full-time equivalent (FTE) for any students participating in FCS-sponsored charter schools who receive FTE funding through the FEFP.
- Clarifies that a student enrolled in a charter school sponsored by a state university or FCS institution may not be included in the calculation of the school district's grade.

The bill modifies s. 1002.32, F.S. to clarify that the limitation of one lab school per university does not apply to a legislatively allowed charter lab school, and:

[16] Florida Department of Education, *2020-21 Funding for Florida School Districts* (2020), available at http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf.
[17] Section 1011.62(7), F.S.
[18] Section 1002.32(9)(a), F.S.
[19] FCS institution service areas are defined in s. 1000.21(3), F.S.

- Removes an obsolete authorization date;
- Updates Florida Atlantic University Charter lab as a K-12 school, instead of a 9-12 high school;
- Specifies that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county; and
- Authorizes all lab schools with permanent high school centers to receive a proportional share of the sparsity supplement, not just for those in operation prior to September 1, 2013.

To ensure charter school sponsor accountability, the bill requires the DOE, in collaboration with charter school sponsors and operators, to develop a sponsor evaluation framework that must address, at a minimum:

- The sponsor's strategic vision for charter school authorizing and progress towards that vision;
- Alignment of the sponsor's policies and practices to best practices for charter school authorizing;
- Academic and financial performance of all operating charter schools overseen by the sponsor; and
- The status of charter schools authorized by the sponsor, including approved, operating and closed schools.

The bill requires the DOE to compile the results of the evaluation framework, by sponsor, and add them to its annual charter school sponsor report.

The bill requires the sponsor to provide equal access to student information systems that at are used by public schools in the district or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district. Additionally, the sponsor must provide student performance data, such as standardized test scores and previous public school student report cards, for each student in the charter school.
The bill replaces the terms "public school district" with "public school system" and "school district" with "sponsor" to conform to the establishment of FCS institutions and state universities as authorized charter school sponsors.

Establishing a Charter School

Present Situation

Charter schools are created when an individual, a group of parents or teachers, a business, a municipality, or a legal entity submits an application to the school district; the school district approves the application; the applicants form a governing board that negotiates a contract with the district school board; and the applicants and district school board agree upon a charter or contract. The district school board then becomes the sponsor of the charter school. The negotiated contract outlines expectations of both parties regarding the school's academic and financial performance.[20]

[20] *See* Florida Department of Education, Charter Schools, *Frequently Asked Questions*, http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited March 17, 2021).

Charter School Application

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state.[21] All charter applicants must prepare and submit a standard application, which:[22]

- Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
- Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
- Contains goals and objectives for improving student learning and measuring that improvement.
- Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level.
- Contains an annual financial plan for each year requested by the charter for operation of the school for up to five years.
- Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor must consider in deciding whether to approve or deny the application.
- Contains additional information a sponsor may require.
- Documents, for the establishment of a virtual charter school, the applicant has contracted with a provider of virtual instruction services in accordance with law.[23]

A sponsor receives and reviews all charter school applications and, within 90 calendar days of receipt, must by majority vote approve or deny the application. A sponsor must receive and consider charter school applications received on or before February 1 of each year for charter schools to be opened 18 months later at the beginning of the school district's school year, or to be opened at a time determined by the applicant.[24]

If an application is denied, the sponsor must within ten calendar days provide specific written reasons, based upon good cause, for its denial to the applicant and the DOE.[25] The applicant has 30 calendar days to file an appeal with the SBE after the denial of or failure to act upon an application. The state board's decision is a final action subject to judicial review in the District Court of Appeal.[26]

Charter School Sponsor Reporting

A charter school sponsor must submit an annual report to the DOE summarizing the following:

[21] Section 1002.33(3)(a), F.S.
[22] Section 1002.33(6)(a), F.S. Charter school applications are incorporated into State Board of Education (SBE) Rule 6A-6.0786, F.A.C.
[23] Section 1002.45(1)(d), F.S.
[24] A sponsor may receive and consider applications after February 1, if it chooses. Section 1002.33(6)(b), F.S.
[25] Section 1002.33(6)(b)3.a.,F.S.
[26] Section 1002.33(6)(c)-(d), F.S.; *see also* s. 120.68, F.S.

- The number of draft applications received on or before May 1 and each applicant's contact information;
- The number of final applications received on or before August 1 and each applicant's contact information;
- The date each application was approved, denied, or withdrawn; and
- The date each final contract was executed.[27]

The DOE must compile the reported sponsor information into an annual report, by district, and post the information on its website by November 1 each year.[28]

Causes for Nonrenewal or Termination

A charter school sponsor must make student academic achievement for all students the most important factor when determining whether to renew or terminate a charter, but may terminate or not renew a charter for any of the following reasons:

- Failure to participate in the state's education accountability system or failure to meet the charter's requirements for student performance.
- Failure to meet generally accepted standards of fiscal management.
- Material violation of law.
- Other good cause shown.[29]

A sponsor must provide 90-days written notice to the charter school prior to termination or nonrenewal, except that a charter may be terminated immediately if the sponsor sets forth particular facts and circumstances indicating an immediate and serious danger to the health, safety or welfare of the students.[30] The sponsor must notify in writing the charter school's governing board, the charter school principal, and the DOE of an immediate termination. The governing board is entitled to a formal hearing with an administrative law judge (ALJ), who must issue a final order to the sponsor. The governing board may appeal the final order in the District Court of Appeal. Under these circumstances, the sponsor must assume operation of the charter school throughout the pendency of the hearing.[31]

Award of Attorney Fees and Costs

Current law provides the award of a reasonable attorney fees and costs to the prevailing party in a dispute between a sponsor and a charter school, including:

- A dispute under the charter;[32]
- The termination of nonrenewal of a charter school;[33] and
- Disputes relating to contracts for goods and services separate from the charter.[34]

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[27] Section 1002.33(5)(b)1.k.(I)-(II), F.S.

[28] Section 1002.33(5)(b)1.k.(III)., F.S. *See* Florida Department of Education, *Annual Authorizer Report 2019* (2020), *available at* http://www.fldoe.org/core/fileparse.php/9905/urlt/19-AuthorizerReport.pdf.

[29] Section 1002.33(8)(a)1.-4., F.S.

[30] Section 1002.33(8)(b) and (c), F.S.

[31] Section 1002.33(8)(c), F.S. The administrative law judge must award the prevailing party reasonable attorney fees and costs incurred during the administrative proceedings and any appeals.

[32] Section 1002.33(7)(b), F.S.

[33] Section 1002.33(8)(b), F.S.

[34] Section 1002.33(20)(b), F.S.

For a charter school that is terminated immediately due to an immediate and serious danger to the health, safety or welfare of the school's students, the sponsor must assume operation of the charter school during any hearing to dispute the termination. Failure by the sponsor to assume and continue operation of the charter school must result in the awarding of reasonable costs and attorney's fees if the charter school prevails on appeal.[35]

Charter School Student Enrollment

Prospective students must apply for enrollment in a charter school, and if the number of applications exceeds the school's capacity, a random lottery must be used to determine which students are enrolled.[36] A charter school may give enrollment preference to the following specific student populations:[37]

- Students who are siblings of a student enrolled in the charter school.
- Students who are the children of a member of the governing board of the charter school.
- Students who are the children of an employee of the charter school.
- Students who are the children of:
  - An employee of the business partner of a charter school-in-the-workplace or a resident of the municipality in which the charter school is located; or
  - A resident or employee of a municipality that operates a charter school-in-a-municipality or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.
- Students who have successfully completed a voluntary prekindergarten education (VPK) program provided by the charter school or the charter school's governing board during the previous school year.
- Students who are the children of an active duty member of any branch of the United States Armed Forces.
- Students who attended or are assigned to failing schools and have received an opportunity scholarship to enroll and attend a higher performing school.[38]

A charter school may be exempt from specific enrollment requirements if the school is open to any student covered in an inter-district agreement and any student residing in the school district in which the charter school is located.[39] A charter school may limit the enrollment process only to target the following student populations:

- Students within specific age groups or grade levels.
- Students considered at risk of dropping out of school or academic failure.
- Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality.[40]
- Students residing within a reasonable distance of the charter school.

[35] Section 1002.33(8)(c), F.S.; *See also* Championship Academy of Distinction at Davie, Inc. v. Broward County School Board, Case No.20-4344F (Fla. DOAH Dec. 17, 2020). The final order denied the petitioners entitlement to attorney's fees and costs under s. 1002.33(c) finding that the fee provision under 1002.33(8)(b), F.S. is substantive, rather than procedural, and as such, it cannot be included among the procedures set forth in paragraph (b) that have been incorporated into s. 1002.33(8)(c), F.S.
[36] Section 1002.33(10)(b), F.S.
[37] Section 1002.33(10)(d)1.-7., F.S.
[38] Section 1002.38(2), F.S.
[39] Section 1002.33(10)(a), F.S.
[40] Section 1002.33(15), F.S.

- Students who meet established academic, artistic, or other eligibility standards.
- Students articulating from one charter school to another.
- Students living in a development in which a business entity provides the school facility and related property having an appraised value of at least $5 million.[41]

Effect of Proposed Changes

Charter School Application

The bill modifies s. 1002.33, F.S., by repealing an obsolete August 1 application deadline. The bill modifies the charter school application process to specify that an application may be submitted at any time, rather than by February 1.

The bill repeals the requirement that a charter school sponsor report on draft applications it receives and specifies that each sponsor's report to the DOE must reflect the applications it receives during the school year and up to August 1. The bill revises the date by which a sponsor must annually report the number of applications it receives from August 31 to November 1. Accordingly, the bill revises the date by which the DOE annually reports the number of applications on its website from November 1 to January 15.

Additionally, the bill allows a charter school to be opened at a time determined by the applicant and removes the requirement that the charter school initial startup commences with the beginning of the public school calendar for the district where the charter is granted.

Charter Contract

The bill authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.

The bill requires a school district that fails to implement the decision affirmed by a district court of appeal to reduce the administrative fees withheld to one percent for all charter schools operating in the school district. Such school district is required to file a monthly report detailing the reduction in the amount of administrative fees withheld. In addition, the bill specifies that upon execution of the charter, the sponsor can resume withholding the full amount of administrative fees but may not recover any fees that would have accrued during the period of noncompliance.

The bill specifies that changes to a charter school's curriculum consistent with state standards are deemed approved in terms of modifications to the charter, unless the sponsor determines in writing that the curriculum is inconsistent with state standards.

The bill specifies that, for the purpose of assisting the development of a charter school, a school district may enter into a nonexclusive interlocal agreement with federal and state agencies, counties, municipalities, and other government entities. An interlocal agreement between a school district and a federal or state agency, county, municipality, or other governmental entity

[41] Section 1002.33(10)(e), F.S.

which prohibits or limits the creation of a charter school within the geographic borders of the school district is void and unenforceable.

Charter School Student Enrollment

The bill expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.

The bill expands the criteria by which a charter school may limit the enrollment process to include students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools, facilities and related property in an amount equal to or having a total appraised value of at least $5 million.

Termination

In the case of an immediate termination of a charter school, the bill requires the sponsor to provide the facts and circumstances supporting the termination in writing. They must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.

The bill authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.

The bill removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.

Award of Attorney Fees and Costs

The bill revises requirements for awarding reasonable attorney fees and costs in disputes relating to charter schools by:

- Authorizing the prevailing party in the appeal of a charter school application denial to file an action with the Division of Administrative Hearings to recover reasonable attorney's fees and costs incurred during the denial and any appeals; and
- Authorizes an administrative law judge to award reasonable attorney fees and costs to the prevailing parting of any inunction, administrative proceeding, or appeal.

In addition, the bill authorizes any charter school that had administrative fees withheld to recover attorney fees and costs to enforce these requirements.

High-Performing Charter Schools

Present Situation

Charter schools and operators of systems of charter schools with a track record of academic excellence and financial stability may earn "high-performing" status.[42] A high-performing charter school is a charter school that during each of the three previous years:

- Received at least two school grades of "A" and no school grade below "B;"
- Has received an unqualified opinion[43] on each annual financial audit; and
- Has not received an annual financial audit that reveals a financial emergency condition.[44]

Initial eligibility for "high-performing" status is verified by the commissioner, upon request by a charter school. Thereafter, the commissioner must annually verify continued eligibility.[45]

High-performing charter schools may take advantage of various benefits, such as, the operator of a high-performing charter school may submit an application in any Florida school district to establish and operate a new charter school that substantially replicates one of its high-performing charter schools. The application process for such applications is streamlined to expedite approval.[46]

A high-performing charter school may not be replicated more than twice in any given year and may not replicate again until the new charter school achieves "high-performing" status.[47] Systems may replicate their high-performing charter schools using the same process applicable to high-performing charter schools.[48] Additionally, a high-performing charter school may have the term of its charter extended to up to 15 years.[49]

A high-performing charter school may increase the school's enrollment once per year to more than the capacity identified in the charter, but student enrollment may not exceed the capacity of the facility at the time the enrollment increase will take effect. If the school chooses to expand the grade levels it serves, e.g., a K-5 school adding grade six, the facility capacity must include any improvements to an existing facility or any new facility in which a majority of the high-performing charter school students will enroll. A high-performing charter school may also expand grade levels within kindergarten through grade 12 to add grade levels not already served as long as the increase in enrollment in either case does not exceed the current facility capacity.[50]

Effect of Proposed Changes

The bill modifies s. 1002.331, F.S., to allow a high-performing charter school to submit two applications at a time instead of two per year. Subsequent applications may be submitted so long

[42] Section 1002.331(1), F.S.
[43] An unqualified audit opinion means that the charter school's financial statements are materially correct.
[44] Section 1002.331(1), F.S.; *see* s. 218.503(1), F.S. (financial emergency conditions).
[45] Sections 1002.331(4) and 1002.332(2)(a), F.S.
[46] Section 1002.331(3)(a)1. and 2., F.S.
[47] Section 1002.331(3)(b), F.S.
[48] Section 1002.332(2)(b), F.S.
[49] Section 1002.331(2)(e), F.S.
[50] Section 1002.331(2)(a) and (b), F.S.

as each previous charter school application is withdrawn or has commenced operation instead of upon each school being designated high-performing.

The bill revises the determination of a high-performing charter school facility's capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school's facilities at the time the expansion will take effect.

The bill clarifies that a charter school is high-performing if the school received at least two consecutive grades of "A" in the most recent two school years for the years that the school received a grade or receives, during its first three years of operation, or funding through the National Fund of the Charter School Growth Fund, and has received no school grade lower than a "C," during each of the previous three school years for the years that the school received a grade.

Charter School Funding

Present Situation

Charter school operations, like other public schools, are funded through the Florida Education Finance Program (FEFP). Each charter school reports student enrollment to its sponsor for inclusion in the district's report of student enrollment for FEFP funding. Operating funds from the FEFP are distributed to the charter school by the sponsor. A charter school is entitled to receive its proportionate share of categorical funds included in the FEFP for qualifying students.[51] Categorical funds must be spent for specified purposes, such as student transportation, safe schools, and supplemental academic instruction.

Charter schools are eligible to receive federal education funding through such programs as the Individuals with Disabilities Education Act (IDEA), Title I programs for disadvantaged students, and Title II programs for improving teaching and leadership in the same manner as district school board-operated public schools and must be included in requests for federal funding by the school district or the DOE.[52] A high performing charter school system[53] governing board may be designated as a local educational agency for the purpose of receiving federal funds, the same as if the charter school system were in the school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsoring district school board and the DOE.[54]

Capital outlay funding for charter schools consists of state funds when appropriated in the General Appropriations Act (GAA) and revenue resulting from discretionary millage authorized in law.[55] To be eligible to receive capital outlay funds, a charter school must:

[51] Section 1002.33(17)(a) and (b), F.S.
[52] Section 1002.33(17)(c), F.S.
[53] A high-performing charter school system is an entity that operated at least three high-performing charter schools in the state during each of the previous 3 school years; operated a system of charter schools in which at least 50 percent of the charter schools were high-performing charter schools and no charter school earned a school grade of "D" or "F", and did not receive a financial audit that revealed one or more of the financial emergency conditions. Section 1002.332 (1)(b), F.S.
[54] Section, 1002.33(25), F.S.
[55] Section 10013.62, F.S.

- Have operated for two or more years and meet specified requirements.[56]
- Have an annual audit that does not reveal any financial emergency conditions.
- Have satisfactory student achievement based on state accountability standards.
- Have received final approval from its sponsor for operation during that fiscal year.
- Serve students in facilities that are not provided by the charter school's sponsor.[57]

While each university receives additional state capital funding, unlike local school districts, university lab schools are dependent on funding from the Legislature for both operational and capital needs.[58]

Effect of Proposed Changes

The bill modifies s. 1002.33, F.S., to provide that students enrolled in a charter school sponsored by a state university or FCS institution be funded as if they are in a basic program or special program in the school district.

The bill establishes the basis for funding these students as the sum of the total operating funds for the school district in which the school is located as provided from the FEFP and the GAA, including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy; divided by total funded weighted FTE students in the school district; and multiplied by the FTE membership of the charter school.

The bill specifies that a board of trustees of a sponsoring state university or FCS institution is the local education agency (LEA) for the charter schools it sponsors. As the LEA, the sponsor may receive federal funds and accepts full responsibility for the schools it oversees, including LEA requirements.

The DOE is required to develop a tool that each state university or FCS institution sponsoring a charter school must use for purposes of calculating the funding amount for each eligible charter school student. The total obtained by the calculation must be appropriated to the charter school from state funds in the GAA.

In addition, the bill requires capital outlay funding for state university or FCS-sponsored charter schools to be determined in accordance with the requirements established in law for other charter schools.

[56] Specified requirements include being governed by a governing board established in the state for two or more years which operates both charter schools and conversion charter schools within the state; being an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds; having been accredited by a regional accrediting association as defined by State Board of Education rule; or serving students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s.1002.33(15)(b). Section 1013.62(1)(a), F.S.
[57] Section 10013.62(1)(a), F.S.
[58] Board of Governors, *2020 Agency Analysis of SB 1578* (Jan. 27, 2020) (on file with the Senate Committee on Education).

Exceptional Student Education Centers

Present Situation

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.[59] A student may not be given special instruction or services as an ESE student until after the student has been properly evaluated and found eligible.[60]

With regard to students with disabilities, the IDEA requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.[61] A FAPE must include special education and related services[62] that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).[63]

An ESE center is a separate public school to which nondisabled students ages six through 21 years of age do not have access.[64] For school accountability purposes, an ESE center school is one which is specifically designed to meet the needs of students with disabilities and in which all students in attendance in grades K-12 are identified as students with a disability.[65] Each ESE center must choose to receive a school grade based on student performance on statewide standardized assessments or to receive a school improvement rating.[66] An ESE center school that does not choose to receive a school grade must be assigned a school improvement rating of Commendable, Maintaining, or Unsatisfactory annually, and the school must assess at least 80 percent of their eligible students to receive a school improvement rating. A school that tests less than 90 percent of its students may not earn a rating higher than maintaining.[67]

The school improvement rating is calculated using student learning gains on statewide, standardized English Language Arts and Mathematics assessments for all eligible students who are enrolled in the school and who have assessment scores, concordant scores, or comparable scores for the preceding school year.[68]

[59] Section 1003.57(1)(b), F.S.; Rule 6A-6.03411(1)(m) and (n), F.A.C.
[60] Section 1003.57(1)(c), F.S.; *see also* Rule 6A-6.0331, F.A.C.
[61] 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; Rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.
[62] "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).
[63] 34 C.F.R. s. 300.17; Rule 6A-6.03411(1)(p), F.A.C.
[64] Section 1003.57(1)(a)1.a., F.S.
[65] Rule 6A-1.099828(2)(b), F.A.C.
[66] Section 1008.3415, F.S.; *see also* s. 1008.34(3)(a), F.S.
[67] Rule 6A-1.099822(3)(c)-(d), F.A.C.
[68] Section 1008.341(3), F.S.

The overall school improvement rating is calculated based on the percentage of possible points, 100 points are available for each component, earned by each school.[69] A school's overall improvement rating based, on applicable points earned, are as follows:

- "Commendable" – a significant percentage of students attending the school are making learning gains
- "Maintaining" – a sufficient percentage of students attending the school are making learning gains
- "Unsatisfactory" – an insufficient percentage of students attending the school are making learning gains

Effect of Proposed Changes

The bill modifies s. 1008.3415, F.S., by authorizing a charter school that is an exceptional student education center and receives two consecutive ratings of "maintaining" or higher to replicate its educational program. In addition, the bill requires the Commissioner of Education, upon request by a charter school, to verify that the charter school meets the specified requirements and provide a letter to the charter school and the sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school.

The bill modifies s. 1002.33, F.S., by specifying the charter school sponsor's administrative fee for up to two percent for enrollment of up to and including 250 students in an ESE center.

Virtual Instruction Programs

Present Situation

Florida law establishes a variety of options to make virtual instruction accessible to K-12 students. These options include:

- Full-time or part-time enrollment in a school district virtual instruction program;[70]
- Full-time enrollment in a virtual charter school;[71]
- Enrollment in individual virtual courses offered by school districts and approved by the DOE;[72] and
- Full-time and part-time enrollment in Florida Virtual Schools (FLVS) or school district FLVS franchises.[73]

The DOE is required to annually publish online a list of providers approved to offer virtual instruction programs in Florida. To be approved by the DOE, among other requirements specified in law, a virtual provider must document that the provider makes available to parents and students in their virtual program specific contact information. The contact information must be posted and accessible online and include, but is not limited to, the following teacher-parent and teacher-student contact information for each virtual course:

[69] Section 1008.341(4)(b)1, F.S.
[70] Section 1002.45, F.S.
[71] Sections 1002.33(1) and 1002.45(1)(d), F.S.
[72] Section 1003.498, F.S.
[73] Section 1002.45(2)(a), F.S.; see also Florida Department of Education, List of Approved Program and Course Providers, https://www.fldoe.org/schools/school-choice/virtual-edu/provider-resources/approved-providers/ (last visited April 7, 2021).

- How to contact the instructor via phone, e-mail, or online messaging tools.
- How to contact technical support via phone, e-mail, or online messaging tools.
- How to contact the administration office via phone, e-mail, or online messaging tools.
- Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.
- The requirement that the instructor in each course must, at minimum, conduct one contact via phone with the parent and the student each month.

Effect of Proposed Changes

The bill amends s. 1002.45, F.S. to allow a virtual charter school to offer part-time instruction. In addition, the bill removes the requirement for a virtual provider to contact a parent by phone only.

Career and Professional Academies

Present Situation

In 2007, the Legislature enacted the Florida Career and Professional Education (CAPE) Act to provide a statewide planning partnership between the business and education communities to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.[74] The primary purpose of the CAPE Act is to:

- Improve middle and high school academic performance by providing rigorous and relevant curriculum opportunities;
- Provide rigorous and relevant career-themed courses that articulate to post-secondary level coursework and lead to industry certification;
- Support local and regional economic development;
- Respond to Florida's critical workforce needs; and
- Provide state residents with access to high-wage and high-demand careers.[75]

Each school board must offer career and professional academies[76] and include plans to implement a career and professional academy or career-themed course in at least one middle school in the district as part of its three-year strategic plan.[77] A career and professional academy is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs.[78] During the 2019-20 school year, 67 school districts, as well as, the Florida Virtual School, Florida School for Deaf and Blind, the Florida State University School, and the Florida A&M University Laboratory School registered 1,706 high school and 301 middle school career and professional academies with 194,197 participating students.[79]

[74] Section 1003.491, F.S.
[75] *Id*. at (1).
[76] Section 1003.493(1)(a), F.S.
[77] Section 1003.4935(1), F.S.
[78] Section 1003.493(1)(a), F.S.
[79] Florida Department of Education, *Career and Professional Education Act, Enrollment and Performance Report, 2019-20* (2021), *available at* http://www.fldoe.org/core/fileparse.php/9904/urlt/1920capepr.pdf.

Current law does not expressly authorize charter schools to offer career and professional academies.

Effect of Proposed Changes

The bill modifies s. 1003.493 F.S., to authorize charter schools to provide career and professional academies. This may increase the number of charter middle and high schools offering career and professional academies to better meet career and workforce needs.

Schools of Hope

Present Situation

In 2017, the Legislature established the Schools of Hope Program to provide students in areas of persistently low-performing schools the opportunity to access a high-quality education designed to close the opportunity gap and increase student achievement.[80] A school of hope is defined as a charter school operated by a hope operator to serve students from one or more persistently low-performing schools; is located within the attendance zone of the persistently low-performing school or within a five mile radius of the school, whichever is greater; and is a Title I eligible school.[81]

Under the Schools of Hope Program administered by the DOE, a school of hope may receive additional funding for certain expenses such as funds for initial school facility leasing, hiring instructional support personnel, or acquiring supplies and educational materials, along with other expenses specified in law. Funds allocated that are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to five years.[82]

A school of hope may request that the SBE designate the school as an LEA for the purposes of receiving federal funds. As an LEA, the school accepts the full responsibility for all LEA requirements and the schools for which it will perform LEA responsibilities. Students enrolled in a school established by a hope operator designated as an LEA are not eligible students for purposes of calculating a district's school grade.[83]

A school of hope must report its students to the school district for purposes of determining the school district's full-time equivalent FTE membership in calculating the FEFP.[84]

<u>Persistently Low Performing Schools</u>

A persistently low-performing school is a school that has earned three grades lower than a "C" in at least three of the previous five school years and has not earned a grade of "B" or higher in the most recent two school years. A school is also a persistently low-performing school if it was closed pursuant to the school's turnaround option plan within two years after the submission of a notice of intent.[85] The SBE must publish annually a list of persistently low-performing schools

[80] Section 43, ch. 2017-116, L.O.F., codified at s.1002.333, F.S.
[81] Section 1002.333(1)(d)1., F.S.
[82] Section 1002.333(10), F.S.
[83] Section 1002.333(6)(a), F.S.
[84] Section 1002.333(6)(g), F.S.
[85] Section 1002.333(1)(c), F.S.

and must provide students in persistently low-performing schools with a public school that meets accountability standards.[86] For school year 2018-2019, the SBE's published list includes 183 persistently low-performing schools.[87]

Pursuant to the DOE Emergency Order No. 2020-EO-1, the spring administration of K-12 statewide, standardized assessments for the 2019-2020 school year was canceled and accountability measures reliant on the assessment data, such as school grades, were not calculated for the 2019-2020 school year.[88]

Hope Operators

A hope operator is a tax-exempt, nonprofit organization that operates three or more charter schools that serve students in grades K-12 in Florida or other states with a record of serving students from low-income families and is designated by the SBE as a hope operator.[89] SBE rule designates an entity as a hope operator if it submits a complete application and meets at least one of the following criteria: [90]

- The entity was awarded a United States Department of Education Charter School Program grant for the Replication and Expansion of High-Quality Charter Schools pursuant to Title IV, Part C of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (20 U.S.C. 7221-7221j) within the preceding three years from the date the entity submits an application to the Department;
- The entity has a current and active grant award for funding through the National Fund of the Charter School Growth Fund; or
- The entity is a non-profit charter school that is selected by a district school board to turnaround the performance of a low-performing public school.

Designation as a hope operator is valid for five years from the opening of a school of hope.[91] Presently, Florida has designated five hope operators: Democracy Prep Public Schools, Inc., Individuals Dedicated to Excellence and Achievement (IDEA) Public Schools, the Knowledge is Power Program (KIPP) New Jersey, Mater Academy, and Somerset Academy, Inc.[92]

Facilities

A school of hope must use facilities that comply with the Florida Building Code, except for the State Requirements for Educational Facilities (SREF). A school of hope that uses school district facilities must comply with SREF only if the school district and the hope operator have entered into a mutual management plan for the reasonable maintenance of such facilities, as specified in law.[93]

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[86] Section 1002.333(11)(d), F.S.
[87] Florida Department of Education, Florida School Accountability Reports, *Persistently Low-Performing Schools (2019), available at* http://fldoe.org/core/fileparse.php/18534/urlt/PLPSchools19.xls.
[88] Florida Department of Education, *Emergency Order No. 2020-EO-1 (March 2020), available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[89] Section 1002.333(2), F.S.
[90] Rule 6A-1.0998271(2)(b), F.A.C.
[91] Section 1002.333(3), F.S.
[92] Florida Department of Education, *Schools of Hope*, http://www.fldoe.org/schools/school-choice/other-school-choice-options/schools-of-hope/ (last visited March 22, 2021).
[93] Section 1002.333(7)(a), F.S.

Each school district must provide to the DOE, no later than October 1, a list of all underused, vacant, or surplus facilities owned or operated by the school district. A hope operator establishing a school of hope may use an educational facility identified by a school district at no cost or at a mutually agreeable cost not to exceed $600 per student. In addition, a hope operator that uses a facility owned or operated by a school district may not sell or dispose of the facility without the written permission of the school district.[94]

Personnel Background Screening

Each person who seeks educator certification in Florida must be fingerprinted and undergo a state and national criminal history background screening by a district school board or the DOE.[95] If a background screening reveals a criminal history, or if an applicant for certification acknowledges a criminal history, the applicant's records must be assigned to DOE's Office of Professional Practices Services (OPPS) for review and determination of eligibility for certification.[96]

Instructional and non-instructional personnel hired or contracted to fill positions that require direct contact with students in any charter school are required to undergo background screening[97] by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.[98] Current law provides a list of disqualifying criminal offenses for educator certification or employment in any position that requires direct contact with students in a charter school.[99] Instructional and non-instructional personnel who are hired must be rescreened every five years.[100]

Charter School Capital Outlay Funding

Capital outlay funds appropriated by the Legislature in the GAA are allocated to eligible charter schools by the DOE based on a methodology specified in law.[101] For fiscal year 2020-2021, the Legislature appropriated $169.6 million for charter school capital outlay funding.[102] As of March 2021, 610 charter schools received capital outlay disbursements from the DOE.[103]

To be eligible for charter school capital outlay funding, a charter school must:[104]

- Be in operation for at least two years;

[94] Section 1002.333(7)(d), F.S.
[95] Section 1012.56(10)(a), F.S.
[96] Section 1012.56(2)(d), F.S. The OPPS administers a state-level grievance process. The OPPS investigates alleged misconduct by educators in Florida who hold an educator's certificate and pursues disciplinary actions against the certificates of educators found to have committed acts of misconduct. *See* Florida Department of Education, *Professional Practices*, http://www.fldoe.org/teaching/professional-practices/ (last visited March 22, 2021).
[97] Section 1002.33(12)(g)1., F.S.
[98] Section 1012.32(2)(b), F.S.
[99] Section 1012.315, F.S.
[100] Section 1012.56(10)(b), F.S.
[101] Section 1013.62(2)(a)-(e), F.S.
[102] Specific appropriation 21, s. 2, ch. 2020-21, L.O.F.
[103] Florida Department of Education, *Charter School Capital Outlay 2020-21*, http://www.fldoe.org/finance/fco/charter-school-capital-outlay/index.stml (last visited March 22, 2021).
[104] Section 1013.62(1)(a)1.a., F.S.

- Be governed by a governing board established in Florida for two or more years which operates both charter schools and conversion charter schools within the state;
- Be part of an expanded feeder chain[105] with an existing charter school in the district that is currently receiving charter school capital outlay funds;
- Be accredited by a regional accrediting association as defined by state board rule; or
- Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace.

In addition, a charter school must:

- Have an annual audit that does not reveal a financial emergency for the most recent fiscal year for which such audit results are available;[106]
- Have satisfactory student achievement based upon the state accountability standards applicable to charter schools;[107]
- Have received final approval from its sponsor for operation during that fiscal year; and
- Serve students in facilities that are not provided by the charter school sponsor.[108]

Capital outlay funds may be used by a charter school's governing board for the:

- Purchase of real property;
- Construction of school facilities;
- Purchase, lease-purchase or lease of permanent or relocatable school facilities;
- Purchase of vehicles to transport students to and from the charter school;
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer;
- Purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources;
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities;
- Purchase, lease-purchase or lease of driver's education vehicles, motor vehicles used for the maintenance or operation of plants and equipment, security vehicles, or vehicles used in storing or distributing materials and equipment; and
- Payment of the cost of the opening day collection for the library media center of a new school.[109]

[105] A charter school may be considered a part of an expanded feeder chain under s. 1013.62, F.S., if it either sends or receives a majority of its students directly to or from a charter school that is currently receiving capital outlay funding pursuant to s. 1013.62, F.S. Rule 6A-2.0020 (1), F.A.C.
[106] The definition of financial emergency is provided in s. 218.503(1), F.S.
[107] Section 1013.62(1)(a)3., F.S.; rule 6A-2.0020, F.A.C. A charter school that receives a grade of "F," two consecutive grades lower than a "C" or a school improvement rating of "Unsatisfactory" is not eligible for capital outlay funding. *See also, Florida Assoc. of Independent Charter Schools vs. Florida Dept. of Education, Case No. 17-1986RP (2017), available at* https://www.doah.state.fl.us/ROS/2017/17001986.pdf.
[108] Section 1013.62(1)(a), F.S. A conversion charter school, i.e., a charter school created by the conversion of an existing public school to charter status, is not eligible for capital outlay funding if it operates in facilities provided by its sponsor at no charge or for a nominal fee or if it is directly or indirectly operated by the school district. Section 1013.62(1)(b), F.S.
[109] Section 1013.62(4), F.S.

Financial Accountability

Like other charter schools, a school of hope must provide for an annual audit.[110] The Auditor General may choose to conduct the audit. If not, the school must arrange for an audit by an independent certified public accountant.[111] The audit must:

- Examine the school's financial statements to determine if its financial position and any changes in financial position comply with generally accepted accounting principles;
- Examine the school's operations to determine compliance with legal and regulatory requirements; and
- Examine any additional financial information necessary to comply with generally accepted accounting principles.[112]

Each school of hope must file a copy of its audit report with the sponsor, the district school board, if not the sponsor, the Auditor General and the DOE.[113]

Generally, each charter school must also submit a monthly financial statement summary sheet to the charter's sponsor.[114] The monthly summary sheet must include a balance sheet and a statement of revenue, expenditures, and changes in fund balance in a governmental funds format prescribed by the Governmental Accounting Standards Board.[115] The sponsor must review the financial statement summary to determine if the school exhibits a deteriorating financial condition.[116] The law allows a school of hope to submit its financial statement summary sheet on a quarterly basis, rather than monthly.[117]

Effect of Proposed Changes

Financial Accountability

The bill specifies that a school of hope operated by a nonprofit entity designated by an LEA is in compliance with financial reporting requirements if the nonprofit submits to each school district a financial statement summary for all its schools of hope in the district, and an annual financial audit of the nonprofit for all schools of hope it operates in the state that complies with s. 218.39, F.S.

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[110] Sections 218.39(1)(e) and (f) and 1002.33(9)(j)1. and 2., F.S.
[111] Sections 11.45(3)(c) and 218.39(1)(e) and (f), F.S.
[112] Rules of the Auditor General, *Chapter 10.850 Audits of Charter Schools and Charter Technical Career Centers, The Florida Virtual Schools, and Virtual Instruction Program Providers (effective June 30, 2020), available at* https://flauditor.gov/pages/pdf_files/10_850.pdf.
[113] Section 218.39(10), F.S.
[114] Section 1002.33(9)(g)3., F.S. A high-performing charter school may submit quarterly rather than monthly financial statements. Section 1002.331(2)(c), F.S. Pursuant to Rule 6A-1.0081, F.A.C., DOE adopted two monthly financial statement forms for use by charter schools. Florida Department of Education, *Government Accountability and Standards Board (GASB) Monthly Financial Form (Form IEPC-F1) and Non-Profit Monthly Financial Form (Form IEPC-F2),* http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference (last visited March 15, 2021).
[115] Florida Department of Education, *Government Accountability and Standards Board (GASB) Monthly Financial Form (Form IEPC-F1) and Non-Profit Monthly Financial Form (Form IEPC-F2),* http://www.fldoe.org/schools/school-choice/charter-schools/charter-school-reference (last visited March 15, 2021).
[116] Section 1002.33(9)(g)3., F.S.
[117] Section 1002.333(6)(h), F.S.

Additionally, the bill modifies s. 1002.333, F.S., by providing that a hope operator, rather than each school of hope it operates, is the entity responsible for providing quarterly financial statements to the school district and meeting annual financial audit requirements.

Persistently Low Performing Schools

The bill modifies s. 1002.333, F.S., by revising the definition of a persistently low-performing school to be a school that has earned three grades lower than a "C" in at least three of the previous five years in which the school received a grade. This change would allow a school to be designated as persistently low performing even if it does not receive a school grade for one or more of the school years during a 5-year period.

Hope Operators

The bill modifies s. 1002.333, F.S., by authorizing a school of hope, which has been designated as a LEA, to report its students to the DOE according to procedures and timelines established by the DOE. A school of hope that has not been designated as a LEA must continue to report its students to the school district.

The bill specifies that a nonprofit entity that operates more than one school of hope may be designated as an LEA by the department.

Facilities

The bill modifies s. 1002.333, F.S., by requiring that the DOE must annually provide to school districts a list of underused, vacant, or surplus facilities operated by the school district as reported in the Florida Inventory of School Houses no later than January 1. The bill also specifies:

- A school district may provide evidence to the DOE that the list contains errors or omissions within 30 days after receipt of the list.
- By each April 1, the DOE must update and publish a final list based on updated information provided by each school district.

Personnel Background Screening

The bill modifies s. 1012.32, F.S., to authorize instructional and non-instructional personnel who are hired or contracted to fill positions in any school of hope to complete background screening requirements by filing with the school a set of fingerprints taken by:

- An authorized law enforcement agency;
- An employee of the charter school or school district who is trained to take fingerprints; or
- A private vendor who maintains an agreement with the Florida Department of Law Enforcement.

Charter School Capital Outlay Funding

The bill modifies s. 1002.333, F.S., to extend the authorization for undisbursed Schools of Hope Program funds to be carried forward from five years to seven years and modifies s. 1013.62, F.S., to authorize a charter school operated as a school of hope to be eligible to receive charter school capital outlay funding.

The bill authorizes a not for profit entity designated by the department as an LEA to use any unrestricted current and capital assets identified in the annual financial audit to be used by any other school of hope operated by the LEA within the same district.

The bill provides for severability.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that the funds for eligible university or FCS institution sponsored charter school students must be appropriated from state funds in the GAA to the charter school. Currently full-time equivalent students funded in the FEFP are funded with a combination of state and local funds. Since the eligible university or FCS institution sponsored charter school student will only be funded from state funds appropriated in the FEFP, there may need to be additional state funds provided to offset the potential loss of

local funds; however, at this time the individual amounts cannot be determined and would vary based upon the school district and its total amount of local funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.32, 1002.33, 1002.331, 1002.333, 1002.45, 1003.493, 1008.3415, 1012.32, and 1013.62.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute makes the following changes:

- Specifies that the limitation of one lab school per university does not apply to a university that establishes a lab school to serve a military installation within same county.
- Clarifies that the limitation of one lab school per university must not apply to legislatively allowed schools.
- Removes an obsolete authorization date related to charter lab schools.
- Updates Florida Atlantic University Charter Lab to be a K-12 school, instead of 9-12 high school.
- Authorizes all lab schools with permanent high school center to receive sparsity supplement, not just those in operation prior to Sept. 1, 2013.
- Specifies that, for the purpose of assisting the development of a charter school, a school district may enter into a nonexclusive interlocal agreement with federal and state agencies, counties, municipalities, and other government entities.
- Voids an interlocal agreement between a school district and federal or state agency, county, municipality, or other governmental entity that prohibits or limits the creation of a charter school within the geographic border of the school district.
- Authorizes a prevailing party to file an action with the Division of Administrative Hearings to recover reasonable attorney fees and costs incurred during the denial of the application and any appeals.
- Authorizes a charter school to immediately appeal any formal or informal decision by a sponsor in a dispute regarding a charter contract to an administrative law judge. The appeal may occur if either the charter school or the sponsor do not wish to mediate the decision and indicates such a decision in writing.

- Requires a school district that fails to implement the decision affirmed by a district court of appeal to reduce the administrative fees withheld to one percent for all charter schools operating in the school district.
- Requires such school district to file a monthly report detailing the reduction in the amount of administrative fees withheld.
- Specifies that upon execution of the charter, the sponsor can resume withholding the full amount of administrative fees but may not recover any fees that would have accrued during the period of noncompliance.
- Authorizes any charter school that had administrative fees withheld may recover attorney fees and costs to enforce these requirements.
- Specifies that changes to a charter school's curriculum consistent with state standards are deemed approved in terms of modifications to the charter, unless the sponsor determines in writing that the curriculum is inconsistent with state standards.
- In the case of an immediate termination of a charter school, the amendment requires the sponsor to provide the facts and circumstances supporting the termination in writing. The sponsor must demonstrate that an immediate and serious danger exists to the charter school's students, that the immediate and serious danger is likely to continue, and that an immediate termination of the charter is necessary.
- Authorizes an administrative law judge to award reasonable attorney fees and costs to the prevailing parting of any inunction, administrative proceeding, or appeal.
- Authorizes a charter school sponsor to seek an injunction in circuit court to prohibit continued operation of a charter school if continued operation of the school would materially threaten the health, safety, or welfare of the students.
- Removes the requirement for a sponsor to assume and continue operation of a charter school pending a hearing on the school's immediate termination.
- Expands the enrollment preference for students who complete the VPK program provided by the charter school to include students who complete the program at a provider with which the charter school has a written agreement.
- Specifies that a nonprofit entity that operates more than one school of hope may be designated as an LEA by the department.
- Clarifies that a charter school is high-performing if the school received at least two consecutive grades of "A" in the most recent two school years for the years that the school received a grade or receives, during its first three years of operation, funding through the National Fund of the Charter School Growth Fund and has not received a grade lower than "C" in the previous three years for the years that the school received a grade.
- Revises the determination of a high-performing charter school facility's capacity so that any expansion of enrollment, regardless of grade level expansion or where a majority of new students will be enrolled, is based on the school's facilities at the time the expansion will take effect.
- Authorizes a not for profit entity designated by the department as an LEA to use any unrestricted current and capital assets identified in the annual financial audit to be used by any other school of hope operated by the LEA within the same district.
- Authorizes a charter school that is an exceptional student education center and receives two consecutive ratings of "maintaining" or higher to replicate its educational program.

- Modifies bill provision to require the Commissioner of Education, upon request by a charter school, to verify that the charter school meets the specified requirements and provide a letter to the charter school and the sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school under s. 1002.331(3).
- Specifies that a school of hope operated by a nonprofit entity designated by an LEA is in compliance with financial reporting requirements if the nonprofit submits to school district a financial statement summary for all its schools of hope in the district, and an annual financial audit of nonprofit for all schools of hope it operates in state that complies with s. 218.39.
- Allows for a virtual charter school to provide part-time instruction.
- Removes the requirement that a virtual provider contact a parent by phone only.
- Provides for severability.

CS by Education on March 23, 2021:
The committee substitute retains the original bill provisions, and:
- Adds hope operators to the list of entities required to perform an annual financial audit.
- Modifies the charter school application process to specify that an application may be submitted at any time, rather than by February 1, for a school opening at a time of the applicant's choosing.
- Adds provisions specifying the charter school sponsor's administrative fee for up to two percent for enrollment of up to and including 250 students in an exceptional student education center.
- Modifies provisions that a high-performing charter school may submit two applications for a charter school within the state to be opened at a time determined by the high-performing charter school.
- Clarifies that a subsequent application may not be submitted unless the applicant commences operations or an application is withdrawn and that the provisions apply to an existing high-performing charter school.
- Specifies each school of hope that has not been designated as local education agency must report its students to the school district. Additionally, each school of hope that has been designated as a local education agency may report its students to the department.
- Clarifies that instructional and noninstructional personnel hired or contracted to fill positions at a school of hope must file with the school of hope, rather than the district school board as for other charter schools, a complete set of fingerprints taken by an authorized law enforcement agency or other recognized entity.
- Requires the DOE to annually provide to school districts, no later than January 1, a list of underused, vacant, or surplus facilities operated by the school district as reported in the Florida Inventory of School Houses, and:
    - A school district may provide evidence to the DOE that the list contains errors or omissions within 30 days after receipt of the list.
    - By each April 1, the DOE must update and publish a final list based on updated information provided by each school district.

- Authorizes a charter school that is an exceptional student education center that receives a rating of "maintaining" or higher may replicate its educational program.
- Requires the Commissioner of Education to verify that the charter school meets the specified requirements and provide a letter to the charter school and sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school.
- Extends the authorization for undispersed Schools of Hope Program funds to be carried forward from five years to seven years.
- Authorizes a charter school operated as a school of hope to be eligible to receive charter school capital outlay funding.

B. Amendments:

None.

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

By the Committee on Education; and Senator Hutson

581-03259-21 20211028c1

A bill to be entitled

An act relating to charter schools; amending s. 218.39, F.S.; providing that a hope operator that has not been notified that a financial audit for a fiscal year will be performed by the Auditor General must retain an independent certified public accountant to complete, within 9 months after the end of its fiscal year, an annual financial audit of its accounts, which must be paid from its public funds; requiring an auditor to discuss comments that will be included in the audit report with the hope operator's board chair or the chair's designee; requiring the auditor to notify each hope operator board member of specified information; requiring hope operators to file an officer's written statement of explanation or rebuttal concerning an auditor's findings within a certain timeframe; authorizing the Legislative Auditing Committee to require the chair of the hope operator or the chair's designee to appear before the committee if it is determined that the written statement is insufficient; requiring each hope operator to file a copy of its audit report with specified entities; amending s. 1002.33, F.S.; authorizing state universities and Florida College System institutions to solicit applications and sponsor charter schools under certain circumstances; prohibiting certain charter schools from being sponsored by a Florida College System institution until such charter school's existing charter expires; authorizing a state

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university or Florida College System institution to, at its discretion, deny an application for a charter school; revising the contents of an annual report that charter school sponsors must provide to the Department of Education; revising the date by which the department must post a specified annual report; revising provisions relating to Florida College System institutions that are operating charter schools; requiring the board of trustees of a state university or Florida College System institution that is sponsoring a charter school to serve as the local educational agency for such school; prohibiting certain charter school students from being included in specified school district grade calculations; requiring the department to develop a sponsor evaluation framework; providing requirements for the framework; requiring the department to compiles results in a specified manner; deleting obsolete language; revising requirements for the charter school application process; revising the student populations for which a charter school is authorized to limit the enrollment process; providing a calculation for the operational funding for a charter school sponsored by a state university or Florida College System institution; requiring the department to develop a tool for state universities and Florida College System institutions for specified purposes relating to certain funding calculations; providing that such funding must be appropriated to the charter school;

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

providing for capital outlay funding for such schools; authorizing a sponsor to withhold an administrative fee for the provision of certain services to an exceptional student education center that meets specified requirements; conforming provisions to changes made by the act; amending s. 1002.331, F.S.; revising provisions relating to the opening of additional high-performing charter schools; amending s. 1002.333, F.S.; revising the definition of the term "persistently low-performing school"; authorizing, instead of requiring, a school of hope designated as a local education agency to report students in accordance with procedures and timelines adopted by the Department of Education; requiring hope operators, rather than schools of hope, to provide school districts with quarterly financial statement summary sheets; revising the manner in which underused, vacant, or surplus facilities owned or operated by school districts are identified; increasing the number of years for which certain funds may be carried forward; amending s. 1003.493, F.S.; authorizing a charter school to offer a career and professional academy; amending s. 1008.3415, F.S.; requiring the Commissioner of Education, upon request by a charter school that meets specified criteria, to provide a letter to the charter school and the charter school's sponsor authorizing the charter school to replicate the charter school's education program; amending s. 1012.32, F.S.; providing an alternate screening method

for specified persons employed by certain schools of hope or serving on certain school of hope governing boards; amending s. 1013.62, F.S.; expanding eligibility to receive capital outlay funds to schools of hope operated by a hope operator; providing an effective date.

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

Section 1. Subsections (1), (5), and (6), paragraph (b) of subsection (8), and subsection (10) of section 218.39, Florida Statutes, are amended to read:

218.39 Annual financial audit reports.—

(1) If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, hope operator, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

(a) Each county.

(b) Any municipality with revenues or the total of expenditures and expenses in excess of $250,000, as reported on the fund financial statements.

(c) Any special district with revenues or the total of expenditures and expenses in excess of $100,000, as reported on the fund financial statements.

(d) Each district school board.

(e) Each charter school established under s. 1002.33.

(f) Each charter technical center established under s. 1002.34.

(g) Each municipality with revenues or the total of expenditures and expenses between $100,000 and $250,000, as reported on the fund financial statements, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

(h) Each special district with revenues or the total of expenditures and expenses between $50,000 and $100,000, as reported on the fund financial statement, which has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

(i) Each hope operator operating at least one school of hope in this state.

(5) At the conclusion of the audit, the auditor shall discuss with the chair of the governing body of the local governmental entity or the chair's designee, the elected official of each county agency or the elected official's designee, the chair of the district school board or the chair's designee, the chair of the board of the charter school or the chair's designee, the chair of the board of the hope operator or the chair's designee, or the chair of the board of the charter technical career center or the chair's designee, as appropriate, all of the auditor's comments that will be included in the audit report. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office. The auditor shall

notify each member of the governing body of a local governmental entity, district school board, charter school, hope operator, or charter technical career center for which:

(a) Deteriorating financial conditions exist that may cause a condition described in s. 218.503(1) to occur if actions are not taken to address such conditions.

(b) A fund balance deficit in total or a deficit for that portion of a fund balance not classified as restricted, committed, or nonspendable, or a total or unrestricted net assets deficit, as reported on the fund financial statements of entities required to report under governmental financial reporting standards or on the basic financial statements of entities required to report under not-for-profit financial reporting standards, for which sufficient resources of the local governmental entity, charter school, hope operator, charter technical career center, or district school board, as reported on the fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include fund balance or net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Property, plant, and equipment, the disposal of which would impair the ability of a local governmental entity, charter school, hope operator, charter technical career center, or district school board to carry out its functions, are not considered resources available to cover reported deficits.

(6) The officer's written statement of explanation or rebuttal concerning the auditor's findings, including corrective action to be taken, must be filed with the governing body of the

local governmental entity, district school board, charter school, hope operator, or charter technical career center within 30 days after the delivery of the auditor's findings.

(8) The Auditor General shall notify the Legislative Auditing Committee of any audit report prepared pursuant to this section which indicates that an audited entity has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.

(b) If the committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity or the chair's designee, the elected official of each county agency or the elected official's designee, the chair of the district school board or the chair's designee, the chair of the board of the charter school or the chair's designee, the chair of the hope operator or the chair's designee, or the chair of the board of the charter technical career center or the chair's designee, as appropriate, to appear before the committee.

(10) Each charter school, hope operator who operates a charter school, and charter technical career center must file a copy of its audit report with the sponsoring entity; the local district school board, if not the sponsoring entity; the Auditor General; and with the Department of Education.

Section 2. Paragraph (c) of subsection (2), subsection (5), paragraph (b) of subsection (6), paragraphs (a) and (d) of subsection (7), paragraphs (d) and (e) of subsection (8), paragraphs (g) and (n) of subsection (9), paragraph (e) of subsection (10), subsection (14), paragraph (c) of subsection (15), subsection (17), paragraph (e) of subsection (18),

subsections (20) and (21), paragraph (a) of subsection (25), and subsection (28) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(2) GUIDING PRINCIPLES; PURPOSE.—

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.

2. Provide rigorous competition within the public school system ~~district~~ to stimulate continual improvement in all public schools.

3. Expand the capacity of the public school system.

4. Mitigate the educational impact created by the development of new residential dwelling units.

5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.

(5) SPONSOR; DUTIES.—

(a) *Sponsoring entities.*—

1. A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.

2. A state university may grant a charter to a lab school created under s. 1002.32 and shall be considered to be the school's sponsor. Such school shall be considered a charter lab school.

3. Because needs relating to educational capacity, workforce qualifications, and career education opportunities are constantly changing and extend beyond school district boundaries:

a. A state university may, upon approval by the Department

of Education, solicit applications and sponsor a charter school to meet regional education or workforce demands by serving students from multiple school districts.

b. A Florida College System institution may, upon approval by the Department of Education, solicit applications and sponsor a charter school in any county within its service area to meet workforce demands and may offer postsecondary programs leading to industry certifications to eligible charter school students. A charter school established under subparagraph (b)4. may not be sponsored by a Florida College System institution until its existing charter with the school district expires as provided under subsection (7).

c. Notwithstanding paragraph (6)(b), a state university or Florida College System institution may, at its discretion, deny an application for a charter school.

(b) *Sponsor duties.*—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school. If the sponsor subsequently amends any agreed-

upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

k. The sponsor shall submit an annual report to the Department of Education in a web-based format to be determined by the department.

(I) The report shall include the following information:

(A) ~~The number of draft applications received on or before May 1 and each applicant's contact information.~~

~~(B)~~ The number of ~~final~~ applications received on or before February ~~August~~ 1 and each applicant's contact information.

(B) ~~(C)~~ The date each application was approved, denied, or withdrawn.

(C) ~~(D)~~ The date each final contract was executed.

(II) Annually, by November 1 ~~Beginning August 31, 2013, and each year thereafter~~, the sponsor shall submit to the department the information for the applications submitted the previous year.

(III) The department shall compile an annual report, by sponsor ~~district~~, and post the report on its website by January 15 ~~November 1~~ of each year.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a sponsor's ~~district school board's~~ sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate ~~no more than one~~ charter schools ~~school~~

that serve ~~serves~~ students in kindergarten through grade 12 in any school district within the service area of the institution. ~~In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school.~~ District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students participating under this subparagraph who receive FTE funding through the Florida Education Finance Program.

5. A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must

include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity's fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not included within the services to be provided pursuant to subsection (20).

6. The board of trustees of a sponsoring state university or Florida College System institution under paragraph (a) is the local educational agency for all charter schools it sponsors for purposes of receiving federal funds and accepts full responsibility for all local educational agency requirements and the schools for which it will perform local educational agency responsibilities. A student enrolled in a charter school that is sponsored by a state university or Florida College System institution may not be included in the calculation of the school district's grade under s. 1008.34(5) for the school district in which he or she resides.

(c) *Sponsor accountability.*—

1. The department shall, in collaboration with charter school sponsors and charter school operators, develop a sponsor evaluation framework that must address, at a minimum:

a. The sponsor's strategic vision for charter school authorizing and the sponsor's progress toward that vision.

b. The alignment of the sponsor's policies and practices to best practices for charter school authorizing.

c. The academic and financial performance of all operating charter schools overseen by the sponsor.

d. The status of charter schools authorized by the sponsor,

including approved, operating, and closed schools.

2. The department shall compile the results by sponsor and include the results in the report required under sub-sub-subparagraph (b)1.k.(III).

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(b) A sponsor shall receive and review all applications for a charter school using the evaluation instrument developed by the Department of Education. ~~A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses. Beginning in 2018 and thereafter,~~ A sponsor shall receive and consider charter school applications ~~received on or before February 1 of each calendar year~~ for charter schools ~~to be opened 18 months later at the beginning of the school district's school year, or~~ to be opened at a time determined by the applicant. ~~A sponsor may not refuse to receive a charter school application submitted before February 1 and may receive an application submitted later than February 1 if it chooses.~~ A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before approving or denying any application, the sponsor shall

allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 90 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of

Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 or a high-performing charter school system identified pursuant to s. 1002.332 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application of a high-performing charter school does not materially comply with the requirements in paragraph (a) or, for a high-performing charter school system, the application does not materially comply with s. 1002.332(2)(b);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a

violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school or a high-performing charter school system, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application in accordance with paragraph (c).

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of an application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. ~~Upon approval of an application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted.~~ A charter school may defer the opening of the school's operations for up

to 3 years to provide time for adequate facility planning. The charter school must provide written notice of such intent to the sponsor and the parents of enrolled students at least 30 calendar days before the first day of school.

(7) CHARTER.—The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor and the governing board of the charter school shall use the standard charter contract pursuant to subsection (21), which shall incorporate the approved application and any addenda approved with the application. Any term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education shall be presumed a limitation on charter school flexibility. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and

professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school pursuant to s. 1011.61(1)(a)1. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

A ~~The~~ district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in

s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct. Admission or dismissal must not be based on a student's academic performance.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and

staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 5 years, excluding 2 planning years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the sponsor ~~district school board~~. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of

school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father,

mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(d) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Modification during any term may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board, regardless of the renewal cycle. A charter school that is not subject to a school improvement plan and that closes as part of a consolidation shall be reported by the sponsor ~~school district~~ as a consolidation.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(d) When a charter is not renewed or is terminated, the school shall be dissolved under the provisions of law under which the school was organized, and any unencumbered public funds, except for capital outlay funds and federal charter school program grant funds, from the charter school shall revert

to the sponsor. Capital outlay funds provided pursuant to s. 1013.62 and federal charter school program grant funds that are unencumbered shall revert to the department to be redistributed among eligible charter schools. In the event a charter school is dissolved or is otherwise terminated, all sponsor ~~district school board~~ property and improvements, furnishings, and equipment purchased with public funds shall automatically revert to full ownership by the sponsor ~~district school board~~, subject to complete satisfaction of any lawful liens or encumbrances. Any unencumbered public funds from the charter school, ~~district school board~~ property and improvements, furnishings, and equipment purchased with public funds, or financial or other records pertaining to the charter school, in the possession of any person, entity, or holding company, other than the charter school, shall be held in trust upon the sponsor's ~~district school board's~~ request, until any appeal status is resolved.

(e) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The sponsor ~~district~~ may not assume the debt from any contract made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the sponsor ~~district~~ and the governing body of the school and that may not reasonably be assumed to have been satisfied by the sponsor ~~district~~.

(9) CHARTER SCHOOL REQUIREMENTS.—

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools"; or

b. At the discretion of the charter school's governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in sponsor ~~district~~ reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall, upon approval of the charter contract, provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. A high-performing charter school pursuant to s. 1002.331 may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet. The sponsor shall review each monthly or quarterly financial statement to identify

the existence of any conditions identified in s. 1002.345(1)(a).

4. A charter school shall maintain and provide financial information as required in this paragraph. The financial statement required in subparagraph 3. must be in a form prescribed by the Department of Education.

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades below a "C," the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action

in the school year following receipt of a third consecutive grade below a "C."

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 3.

d. A charter school is no longer required to implement a corrective action if it improves to a "C" or higher. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 4.

e. A charter school implementing a corrective action that does not improve to a "C" or higher after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve to a "C" or higher if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 3.

3. A charter school's charter contract is automatically

terminated if the school earns two consecutive grades of "F" after all school grade appeals are final unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)2. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school subject to s. 1008.33(4) and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby ~~district~~ public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

The sponsor shall notify the charter school's governing board, the charter school principal, and the department in writing when a charter contract is terminated under this subparagraph. A charter terminated under this subparagraph must follow the

procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(d)-(f) and (9)(o).

4. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

5. Notwithstanding any provision of this paragraph except sub-subparagraphs 3.a.-c., the sponsor may terminate the charter at any time pursuant to subsection (8).

(10) ELIGIBLE STUDENTS.—

(e) A charter school may limit the enrollment process only to target the following student populations:

1. Students within specific age groups or grade levels.

2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.

3. Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established pursuant to subsection (15).

4. Students residing within a reasonable distance of the charter school, as described in paragraph (20)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph (7)(a)8. or any

federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other nearby public schools ~~in the same school district~~.

5. Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school's mission and purpose. Such standards shall be in accordance with current state law and practice in public schools and may not discriminate against otherwise qualified individuals.

6. Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.

7. Students living in a development in which a developer, including any affiliated business entity or charitable foundation, contributes to the formation, acquisition, construction, or operation of one or more charter schools or charter ~~provides the~~ school facilities ~~facility~~ and related property in an amount equal to or having a total ~~an~~ appraised value of at least $5 million to be used as ~~a~~ charter schools ~~school~~ to mitigate the educational impact created by the development of new residential dwelling units. Students living in the development are ~~shall be~~ entitled to ~~no more than~~ 50 percent of the student stations in the charter schools ~~school~~. The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions, as described in subparagraph 4. The

remainder of the student stations must ~~shall~~ be filled in accordance with subparagraph 4.

(14) CHARTER SCHOOL FINANCIAL ARRANGEMENTS; INDEMNIFICATION OF THE STATE AND SPONSOR ~~SCHOOL DISTRICT~~; CREDIT OR TAXING POWER NOT TO BE PLEDGED.—Any arrangement entered into to borrow or otherwise secure funds for a charter school authorized in this section from a source other than the state or a sponsor ~~school district~~ shall indemnify the state and the sponsor ~~school district~~ from any and all liability, including, but not limited to, financial responsibility for the payment of the principal or interest. Any loans, bonds, or other financial agreements are not obligations of the state or the sponsor ~~school district~~ but are obligations of the charter school authority and are payable solely from the sources of funds pledged by such agreement. The credit or taxing power of the state or the sponsor ~~school district~~ shall not be pledged and no debts shall be payable out of any moneys except those of the legal entity in possession of a valid charter approved by a sponsor ~~district school board~~ pursuant to this section.

(15) CHARTER SCHOOLS-IN-THE-WORKPLACE; CHARTER SCHOOLS-IN-A-MUNICIPALITY.—

(c) A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment, as provided for in subsection (10); and enrolls students according to the racial/ethnic balance provisions described in subparagraph (7)(a)8. When a municipality has submitted charter applications for the establishment of a

charter school feeder pattern, consisting of elementary, middle, and senior high schools, and each individual charter application is approved by the sponsor ~~district school board~~, such schools shall then be designated as one charter school for all purposes listed pursuant to this section. Any portion of the land and facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in a ~~the~~ school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(a) Each charter school shall report its student enrollment to the sponsor as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The sponsor shall include each charter school's enrollment in the sponsor's ~~district's~~ report of student enrollment. All charter schools submitting student record information required by the Department of Education shall comply with the Department of Education's guidelines for electronic data formats for such data, and all sponsors ~~districts~~ shall accept electronic data that complies with the Department of Education's electronic format.

(b)1. The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary

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lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; and multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation, the research-based reading allocation, and the Florida digital classrooms allocation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education. For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district. Unrestricted current assets shall be used in accordance with s. 1011.62, and any unrestricted capital assets shall be used in accordance with s. 1013.62(2).

2.a. Students enrolled in a charter school sponsored by a state university or Florida College System institution pursuant to paragraph (5)(a) shall be funded as if they are in a basic program or a special program in the school district. The basis for funding these students is the sum of the total operating

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funds from the Florida Education Finance Program for the school district in which the school is located as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from each school district's current operating discretionary millage levy, divided by total funded weighted full-time equivalent students in the district, and multiplied by the full-time equivalent membership of the charter school. The Department of Education shall develop a tool that each state university or Florida College System institution sponsoring a charter school shall use for purposes of calculating the funding amount for each eligible charter school student. The total amount obtained from the calculation must be appropriated from state funds in the General Appropriations Act to the charter school.

b. Capital outlay funding for a charter school sponsored by a state university or Florida College System institution pursuant to paragraph (5)(a) is determined pursuant to s. 1013.62 and the General Appropriations Act.

(c) Pursuant to 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the

charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars; the federal Education Department General Administrative Regulations; and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

(d) Charter schools shall be included by the Department of Education and the district school board in requests for federal stimulus funds in the same manner as district school board-operated public schools, including Title I and IDEA funds and shall be entitled to receive such funds. Charter schools are eligible to participate in federal competitive grants that are available as part of the federal stimulus funds.

(e) Sponsors ~~District school boards~~ shall make timely and efficient payment and reimbursement to charter schools, including processing paperwork required to access special state and federal funding for which they may be eligible. Payments of

funds under paragraph (b) shall be made monthly or twice a month, beginning with the start of the sponsor's ~~district school board's~~ fiscal year. Each payment shall be one-twelfth, or one twenty-fourth, as applicable, of the total state and local funds described in paragraph (b) and adjusted as set forth therein. For the first 2 years of a charter school's operation, if a minimum of 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month, the sponsor ~~district school board~~ shall distribute funds to the school for the months of July through October based on the projected full-time equivalent student membership of the charter school as submitted in the approved application. If less than 75 percent of the projected enrollment is entered into the sponsor's student information system by the first day of the current month, the sponsor shall base payments on the actual number of student enrollment entered into the sponsor's student information system. Thereafter, the results of full-time equivalent student membership surveys shall be used in adjusting the amount of funds distributed monthly to the charter school for the remainder of the fiscal year. The payments shall be issued no later than 10 working days after the sponsor ~~district school board~~ receives a distribution of state or federal funds or the date the payment is due pursuant to this subsection. If a warrant for payment is not issued within 10 working days after receipt of funding by the sponsor ~~district school board~~, the sponsor ~~school district~~ shall pay to the charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the

expiration of the 10 working days until such time as the warrant is issued. The district school board may not delay payment to a charter school of any portion of the funds provided in paragraph (b) based on the timing of receipt of local funds by the district school board.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(g) To be eligible for public education capital outlay (PECO) funds, a charter school must be located in the State of Florida.

(h) A charter school that implements a schoolwide standard student attire policy pursuant to s. 1011.78 is eligible to receive incentive payments.

(18) FACILITIES.—

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the sponsor ~~school district~~ may not sell or dispose of such property without written permission of the sponsor ~~school district~~. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital

Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the National School Lunch Program, consistent with the needs of the charter school, are provided by the sponsor ~~school district~~ at the request of the charter school, that any funds due to the charter school under the National School Lunch Program be paid to the charter school as soon as the charter school begins serving food under the National School Lunch Program, and that the charter school is paid at the same time and in the same manner under the National School Lunch Program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to the sponsor's student information systems that are used by public schools in the district in which the charter school is located or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public

school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district or by schools in the sponsor's portfolio of charter schools if the sponsor is not a school district.

2. A sponsor may withhold an administrative fee for the provision of such services which shall be a percentage of the available funds defined in paragraph (17)(b) calculated based on weighted full-time equivalent students. If the charter school serves 75 percent or more exceptional education students as defined in s. 1003.01(3), the percentage shall be calculated based on unweighted full-time equivalent students. The administrative fee shall be calculated as follows:

a. Up to 5 percent for:

(I) Enrollment of up to and including 250 students in a charter school as defined in this section.

(II) Enrollment of up to and including 500 students within a charter school system which meets all of the following:

(A) Includes conversion charter schools and nonconversion charter schools.

(B) Has all of its schools located in the same county.

(C) Has a total enrollment exceeding the total enrollment of at least one school district in the state.

(D) Has the same governing board for all of its schools.

(E) Does not contract with a for-profit service provider for management of school operations.

(III) Enrollment of up to and including 250 students in a virtual charter school.

b. Up to 2 percent for enrollment of up to and including

250 students in a high-performing charter school as defined in s. 1002.331.

c. Up to 2 percent for enrollment of up to and including 250 students in an exceptional student education center that meets the requirements of the rules adopted by the State Board of Education pursuant to s. 1008.3415(3).

3. A sponsor may not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum percentage of administrative fees withheld pursuant to this paragraph.

4. A sponsor shall provide to the department by September 15 of each year the total amount of funding withheld from charter schools pursuant to this subsection for the prior fiscal year. The department must include the information in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(b) If goods and services are made available to the charter school through the contract with the sponsor ~~school district~~, they shall be provided to the charter school at a rate no greater than the sponsor's ~~district's~~ actual cost unless mutually agreed upon by the charter school and the sponsor in a contract negotiated separately from the charter. When mediation has failed to resolve disputes over contracted services or contractual matters not included in the charter, an appeal may be made to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on the dispute. The administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the

party whom the administrative law judge rules against. To maximize the use of state funds, sponsors ~~school districts~~ shall allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. 1012.45. The governing body of the charter school may provide transportation through an agreement or contract with the sponsor ~~district school board~~, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

(d) Each charter school shall annually complete and submit a survey, provided in a format specified by the Department of Education, to rate the timeliness and quality of services provided by the sponsor ~~district~~ in accordance with this section. The department shall compile the results, by sponsor ~~district~~, and include the results in the report required under sub-sub-subparagraph (5)(b)1.k.(III).

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include the standard application form, standard charter contract, standard evaluation instrument, and standard charter renewal contract, which shall include the information specified in subsection (7) and shall be

developed by consulting and negotiating with both sponsors ~~school districts~~ and charter schools before implementation. The charter and charter renewal contracts shall be used by charter school sponsors.

(b)1. The Department of Education shall report to each charter school receiving a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341 the school's student assessment data.

2. The charter school shall report the information in subparagraph 1. to each parent of a student at the charter school, the parent of a child on a waiting list for the charter school, the sponsor ~~district in which the charter school is located~~, and the governing board of the charter school. This paragraph does not abrogate the provisions of s. 1002.22, relating to student records, or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

(25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—

(a) A charter school system's governing board shall be designated a local educational agency for the purpose of receiving federal funds, the same as though the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsor ~~sponsoring district school board~~ and the Department of Education in which the governing board of the charter school system accepts the full responsibility for all local education agency requirements and the charter school system meets all of the following:

1. Has all schools located in the same county;

2. Has a total enrollment exceeding the total enrollment of at least one school district in the state; and

3. Has the same governing board.

Such designation does not apply to other provisions unless specifically provided in law.

(28) RULEMAKING.—The Department of Education, after consultation with sponsors ~~school districts~~ and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a standard charter application form, standard application form for the replication of charter schools in a high-performing charter school system, standard evaluation instrument, and standard charter and charter renewal contracts in accordance with this section.

Section 3. Paragraph (b) of subsection (3) of section 1002.331, Florida Statutes, is amended to read:

1002.331 High-performing charter schools.—

(3)

(b) A high-performing charter school may submit ~~not establish more than~~ two applications for a charter school ~~schools~~ within the state under paragraph (a) to be opened at a time determined by the high-performing charter school ~~in any year~~. A subsequent application to establish a charter school under paragraph (a) may not be submitted unless each charter school applicant commences operations or an application is

otherwise withdrawn ~~established in this manner achieves high-performing charter school status~~. However, a high-performing charter school may establish more than one charter school within the state under paragraph (a) in any year if it operates in the area of a persistently low-performing school and serves students from that school. This paragraph applies to any high-performing charter school with an existing approved application.

Section 4. Paragraph (c) of subsection (1), paragraphs (g) and (h) of subsection (6), paragraph (d) of subsection (7), and paragraph (b) of subsection (10) of section 1002.333, Florida Statutes, are amended to read:

1002.333 Persistently low-performing schools.—

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

(c) "Persistently low-performing school" means a school that has earned three grades lower than a "C," pursuant to s. 1008.34, in at least 3 of the previous 5 years that the school received a grade and has not earned a grade of "B" or higher in the most recent 2 school years, and a school that was closed pursuant to s. 1008.33(4) within 2 years after the submission of a notice of intent.

(6) STATUTORY AUTHORITY.—

(g) Each school of hope that has not been designated as a local education agency shall report its students to the school district as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The school district shall include each charter school's enrollment in the district's report of student enrollment. A school of hope designated as a local education agency may report its students to the department in accordance with the definitions in s. 1011.61 pursuant to

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procedures and timelines adopted by the department. All charter schools submitting student record information required by the department shall comply with the department's guidelines for electronic data formats for such data, and all districts shall accept electronic data that complies with the department's electronic format.

(h) A ~~school of~~ hope operator shall provide the school district with a concise, uniform, quarterly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental fund format prescribed by the Governmental Accounting Standards Board. Additionally, a ~~school of~~ hope operator shall comply with the annual audit requirement ~~for charter schools~~ in s. 218.39.

(7) FACILITIES.—

(d) No later than January ~~October~~ 1, the department ~~each school district~~ shall annually provide to school districts ~~the Department of Education~~ a list of all underused, vacant, or surplus facilities owned or operated by the school district as reported in the Florida Inventory of School Houses. A school district may provide evidence to the department that the list contains errors or omissions within 30 days after receipt of the list. By each April 1, the department shall update and publish a final list of all underused, vacant, or surplus facilities owned or operated by each school district, based upon updated information provided by each school district. A hope operator establishing a school of hope may use an educational facility identified in this paragraph at no cost or at a mutually

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agreeable cost not to exceed $600 per student. A hope operator using a facility pursuant to this paragraph may not sell or dispose of such facility without the written permission of the school district. For purposes of this paragraph, the term "underused, vacant, or surplus facility" means an entire facility or portion thereof which is not fully used or is used irregularly or intermittently by the school district for instructional or program use.

(10) SCHOOLS OF HOPE PROGRAM.—The Schools of Hope Program is created within the Department of Education.

(b) Notwithstanding s. 216.301 and pursuant to s. 216.351, funds allocated for the purpose of this subsection which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 7 ~~5~~ years after the effective date of the original appropriation.

Section 5. Paragraph (a) of subsection (1) of section 1003.493, Florida Statutes, is amended to read:

1003.493 Career and professional academies and career-themed courses.—

(1)(a) A "career and professional academy" is a research-based program that integrates a rigorous academic curriculum with an industry-specific curriculum aligned directly to priority workforce needs established by the local workforce development board or the Department of Economic Opportunity. Career and professional academies shall be offered by public schools and school districts. Career and professional academies may be offered by charter schools. The Florida Virtual School is encouraged to develop and offer rigorous career and professional courses as appropriate. Students completing career and

professional academy programs must receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the academy partners with a postsecondary institution approved to operate in the state.

Section 6. Present subsection (3) of section 1008.3415, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(3) The Commissioner of Education, upon request by a charter school that is an exceptional student education center and that has received two consecutive ratings of "maintaining" or higher pursuant to s. 1008.341(2), shall provide a letter to the charter school and to the charter school's sponsor stating that the charter school may replicate its educational program in the same manner as a high-performing charter school under s. 1002.331(3).

Section 7. Subsection (2) of section 1012.32, Florida Statutes, is amended to read:

1012.32 Qualifications of personnel.—

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable.

(b)1. Instructional and noninstructional personnel who are hired or contracted to fill positions in a ~~any~~ charter school

other than a school of hope as defined in s. 1002.333(1)(d)1., and members of the governing board of such ~~any~~ charter school, in compliance with s. 1002.33(12)(g), ~~must,~~ upon employment, engagement of services, or appointment, shall undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

2. Instructional and noninstructional personnel who are hired or contracted to fill positions in a school of hope as defined in s. 1002.333(1)(d)1., and members of the governing board of such school of hope, shall file with the school of hope a complete set of fingerprints taken by an authorized law enforcement agency, by an employee of the school of hope or school district who is trained to take fingerprints, or by any other entity recognized by the Department of Law Enforcement to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school

district who is trained to take fingerprints.

(d) Student teachers and persons participating in a field experience pursuant to s. 1004.04(5) or s. 1004.85 in any district school system, lab school, or charter school must, upon engagement to provide services, undergo background screening as required under s. 1012.56.

Required fingerprints must ~~shall~~ be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection. A district school board shall reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the Florida Department of Law Enforcement or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional

personnel.

Section 8. Paragraph (a) of subsection (1) of section 1013.62, Florida Statutes, is amended to read:

1013.62 Charter schools capital outlay funding.—

(1) For the 2020-2021 fiscal year, charter school capital outlay funding shall consist of state funds appropriated in the 2020-2021 General Appropriations Act. Beginning in fiscal year 2021-2022, charter school capital outlay funding shall consist of state funds when such funds are appropriated in the General Appropriations Act and revenue resulting from the discretionary millage authorized in s. 1011.71(2) if the amount of state funds appropriated for charter school capital outlay in any fiscal year is less than the average charter school capital outlay funds per unweighted full-time equivalent student for the 2018-2019 fiscal year, multiplied by the estimated number of charter school students for the applicable fiscal year, and adjusted by changes in the Consumer Price Index issued by the United States Department of Labor from the previous fiscal year. Nothing in this subsection prohibits a school district from distributing to charter schools funds resulting from the discretionary millage authorized in s. 1011.71(2).

(a) To be eligible to receive capital outlay funds, a charter school must:

1.a. Have been in operation for 2 or more years;

b. Be governed by a governing board established in the state for 2 or more years which operates both charter schools and conversion charter schools within the state;

c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter

school capital outlay funds;

d. Have been accredited by a regional accrediting association as defined by State Board of Education rule; ~~or~~

e. Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b); or

f. Be operated by a hope operator pursuant to s. 1002.333.

2. Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1) for the most recent fiscal year for which such audit results are available.

3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.

4. Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.

5. Serve students in facilities that are not provided by the charter school’s sponsor.

Section 9. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1028
Bill Number (if applicable)

~~479284~~
608684
Amendment Barcode (if applicable)

Topic LAB SCHOOLS - Section 1 of Bills

Name Chris Doolin

Job Title CONSULTANT TO SMALL SCHOOL DISTRICTS

Address 1018 Thomasville Rd Suite 102B Phone 508-5492
Street

Tallah — FL — 32308 Email cdoolin@doolinandassoc.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Section 1

Representing SMALL School District Council Consortium

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

1028
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Charter Schools

Name Andreina Figueroa

Job Title

Address 8460 SW 184th St
Street
Miami — Fl — 33157
City — *State* — *Zip*

Phone 786-586-7001

Email adf@adfconsulting.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Academica

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.14
Meeting Date

CS/SB 1028
Bill Number (if applicable)

608684
Amendment Barcode (if applicable)

Topic Charter Schools

Name Adam Miller

Job Title VP Policy & Advocacy

Address 4657 Salisbury Rd.
Street

City *State* *Zip*

Phone 850-766-5770

Email Adam.Miller@ideapublicschools.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing IDEA Public Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 19, 2024
Meeting Date

1028
Bill Number (if applicable)

608684 - delete all
Amendment Barcode (if applicable)

Topic 1028 / Charter Schools

Name Stuart Brown

Job Title Lobbyist for KIPP Miami

Address 317 E. Park Ave
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Tallahassee FL 32301
City *State* *Zip*

Phone 850 510-5644

Email brewser@brewserbrown.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing KIPP Miami

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr. 19
Meeting Date

CS/SB 1028
Bill Number (if applicable)

479284 ← PCS
Amendment Barcode (if applicable)

Topic Charter Schools

Name Adam Miller

Job Title V.P. Policy & Advocacy

Address 4651 Salisbury RD.
Street

City *State* *Zip*

Phone 850-766-7770

Email Adam.Miller@ IDEAPublicSchools.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing IDEA Public Schools

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2021
Meeting Date

SB 1028
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CHARTER SCHOOLS

Name CHRISTIAN CAMARA

Job Title

Address PO BOX 122
Street
TALLAHASSEE FL 32302
City *State* *Zip*

Phone 305 608 4300

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHARTER SCHOOL ALLIANCE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

1028
Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

1028
Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title VP of Education

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Phone 4078557604

Orlando FL 32809
City *State* *Zip*

Email vp.education@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1028
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ~~Natalie King~~ Kaitlyn Bailey

Job Title _____

Address 113 E College Avenue
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Tallahassee FL 32301
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Phone 8505850523

Email edward@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Pepin Academies

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1094
INTRODUCER:	Education Committee and Senator Bean
SUBJECT:	Required Health Education Instruction
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	**Fav/CS**
2.	Underhill	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1094 requires that the general health education curriculum for K-12 public schools be developmentally and age-appropriate. The curriculum must include information on the prevention of child sexual abuse, exploitation, and human trafficking.

The bill also modifies the existing health education requirement to specify that instruction on abstinence and the consequences of teen pregnancy applies only to those students in grades six through 12.

The bill does not require a state appropriation. The bill may have a fiscal impact to school districts. See section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

Required Instruction in Schools

Florida law specifies required coursework and instruction for public school students. Specifically, each district school board must provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education (SBE) adopted standards in the following subject areas: reading

and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.[1]

Instructional staff of public schools,[2] subject to the rules of the SBE and the district school board, must provide instruction in:

- The history and content of the Declaration of Independence.
- The history, meaning, significance, and effect of the provisions of the Constitution of the United States.
- The arguments in support of adopting our republican form of government.
- Flag education, including proper flag display and flag salute.
- The elements of civil government.
- The history of the Holocaust.
- The history of the United States.
- The history of African Americans.
- The elementary principles of agriculture.
- The effects of alcoholic and intoxicating liquors and beverages and narcotics.
- Kindness to animals.
- The history of the state.
- The conservation of natural resources.
- Comprehensive health education.
- The study of Hispanic contributions to the United States.
- The study of women's contributions to the United States.
- The nature and importance of free enterprise to the United States economy.
- A character-development program in kindergarten through grade 12.
- The sacrifices that veterans and Medal of Honor recipients have made serving the country.[3]

Comprehensive health education currently addresses 12 components. Eleven of the components are delivered in kindergarten through grade 12, and include: concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. Instruction related to teen dating violence and abuse must be provided in grades 7 through 12 only.[4]

Human Trafficking Instruction and Awareness in Schools

Florida law defines human trafficking as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Human trafficking is a form of modern-day slavery.[5] Victims of human trafficking are young children, teenagers, and adults; include citizens of the United States and those persons trafficked

[1] Section 1003.42(1), F.S.
[2] Instructional staff of charter schools are exempt from this section of law. Section 1002.33(16), F.S.
[3] The law encourages the SBE to adopt standards and pursue assessment relating to the required instructional content. Section 1003.42(2), F.S.
[4] Section 1003.42(2)(n), F.S.
[5] Section 787.06(1) and (2)(d), F.S.

domestically within the borders of the United States; and are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[6]

Florida is third in the nation for reported human trafficking cases.[7] In 2018, there were 767 human trafficking cases reported in Florida. Of those cases, 149 were minors. The average ages of trafficked youth are 11-13 years old.[8] In fiscal year 2019-2020, the total number of reports received by the Florida Abuse Hotline alleging human trafficking was 1,901 reports involving 1,463 children.[9]

Information on human trafficking is not currently included in required comprehensive health education instruction.[10] Additionally, SBE adopted standards do not include instruction on human trafficking, nor is there an instructional model currently available in CPALMS.[11]

In September 2019, the SBE adopted a rule addressing Child Trafficking Prevention Education, which requires school districts to annually provide instruction to students in grades K-12 related to child trafficking prevention and awareness using current health education standards. Age appropriate elements of effective and evidence-based programs, on child trafficking prevention and awareness must address the following topics:

- Recognition of signs of human trafficking;
- Awareness of resources, including national, state and local resources;
- Prevention of the abuse of and addiction to alcohol, nicotine, and drugs;
- Information of the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance; and
- Information on how social media and mobile device applications are used for human trafficking.[12]

As required by the new rule, the Florida Department of Education (FDOE) maintains resources and training for the required instruction on child trafficking prevention and awareness.[13]

---

[6] Florida law describes sexual exploitation as prostitution or the work in the sexual entertainment industry and forced labor as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. *Id.*

[7] You Can Stop HT, *Get the Facts*, http://www.youcanstopht.com/get-the-facts.html (last visited March 18, 2021).

[8] Florida Department of Education, Presentation to the State Board of Education, *Child Trafficking Prevention Education* (Sept. 20, 2019), *available at*: http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf.

[9] Florida Department of Children and Families, *Annual Human Trafficking Report* (2020), *available at* https://www.myflfamilies.com/service-programs/child-welfare/lmr/docs/2020LMRs/Human%20Trafficking%20Annual%20Report%202020.pdf.

[10] *Id*.

[11] CPALMS is the State of Florida's official source for standards information and course descriptions. It provides access to thousands of standards-aligned, free, and high-quality instructional/educational resources that have been developed specifically for the standards and vetted through a rigorous review process. CPALMS, *About CPALMS*, http://www.cpalms.org/CPALMS/about_us.aspx, (last visited March 18, 2021).

[12] Rule 6A-1.094124, F.A.C.

[13] Florida Department of Education, *Human Trafficking*, http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml (last visited March 18, 2021).

By July 1 annually, each school district must submit a report to verify completion of the instruction required under law[14] as well as instruction in Child Trafficking Prevention Education required by SBE rule.[15]

Child Abuse Instruction and Awareness in Schools

As defined by Florida law, child abuse means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.[16] Every Florida citizen, including school teachers and other school personnel are required by law to report known or suspected child abuse.[17] In 2018, the Children's Advocacy Centers in Florida served over 34,000 children who were victims of child abuse or neglect:

- Sixty percent of the victims were female and 40 percent were male.
- Thirty-six percent of the victims were between birth and age six.
- Thirty-five percent of the victims suffered from sexual abuse, of which:
  - Twenty-seven percent suffered from physical abuse; and
  - Seventeen percent suffered from neglect.[18]

Child abuse awareness is not included in the required comprehensive health education instruction.[19] The FDOE provides child abuse prevention training materials and resources on their website.[20] Teachers in grades K-12 are required to participate in continuing education on identifying and reporting child abuse and neglect provided by the Florida Department of Children and Families.[21]

III. Effect of Proposed Changes:

The bill amends s. 1003.42, F.S., to require that the general health education curriculum for K-12 public schools be developmentally and age-appropriate and must include information on the prevention of child sexual abuse, exploitation, and human trafficking. Adding such topics to the required instruction health education curriculum may help raise awareness of associated dangers and improve student health.

The bill limits the existing kindergarten through grade 12 requirement to specify that instruction on abstinence and the consequences of teen pregnancy applies only to those students in grades six through 12, providing developmentally and age-appropriate instruction for this topic. Also, the bill amends s. 1006.148, F.S., to conform a cross reference for the purpose of defining dating violence and abuse.

---

[14] Section 1003.42(2), F.S.
[15] Rule 6A-1.094124, F.A.C.
[16] Section 39.01(2), F.S.
[17] Section 39.201(1), F.S.
[18] Florida Network of Children's Advocacy Centers, Child Abuse and Neglect Statistics, https://www.fncac.org/child-abuse-and-neglect-statistics (last visited March 18, 2021).
[19] Section 1003.42(2)(n), F.S.
[20] Florida Department of Education, *Child Abuse Prevention*, http://www.fldoe.org/schools/family-community/activities-programs/child-abuse-prevention.stml (last visited March 18, 2021).
[21] Section 1012.98(12), F.S.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not require a state appropriation. However, for those school districts that do not already provide child sexual abuse prevention instruction, there may be a cost associated with including this instruction in the required health education curriculum.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.42 and 1006.148.

IX. Additional Information:

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

CS by Education on March 23, 2021:
The committee substitute modifies the existing health education requirement to specify that instruction on abstinence and the consequences of teen pregnancy applies only to those students in grades six through 12.

B. Amendments:

None.

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

By the Committee on Education; and Senator Bean

581-03258-21 20211094c1

A bill to be entitled

An act relating to required health education instruction; amending s. 1003.42, F.S.; providing additional requirements for health education; revising the grade levels when students receive certain health education instruction; requiring health education instruction to include prevention of specified harms; requiring such education to include an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; amending s. 1006.148, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(n)1. Comprehensive age-appropriate and developmentally appropriate K-12 health education that addresses concepts of community health,~~;~~ consumer health,~~;~~ environmental health, and~~;~~ family life, including:

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

581-03258-21 20211094c1

a. ~~An awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy;~~ Mental and emotional health.~~;~~

b. Injury prevention and safety.~~;~~

c. Internet safety.~~;~~

d. Nutrition.~~;~~

e. Personal health.~~;~~

f. Prevention and control of disease.~~; and~~

g. Substance use and abuse.

h. Prevention of child sexual abuse, exploitation, and human trafficking.

2. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

3. The health education curriculum for students in grades 6 through 12 shall include an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or

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

other schoolwide character building and veteran awareness initiative meets the requirements of paragraphs (s) and (t).

Section 2. Paragraph (c) of subsection (1) of section 1006.148, Florida Statutes, is amended to read:

1006.148 Dating violence and abuse prohibited.—

(1) Each district school board shall adopt and implement a dating violence and abuse policy. The policy shall:

(c) Define dating violence and abuse and provide for a teen dating violence and abuse component in the health education curriculum, according to s. 1003.42(2)(n)2. ~~s. 1003.42(2)(n)~~, with emphasis on prevention education.

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

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1108
INTRODUCER:	Appropriations Committee; Judiciary Committee; and Senator Diaz
SUBJECT:	Education
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	Sagues	Bouck	ED	**Favorable**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1108 revises several areas of education law, primarily relating to graduation requirements and statewide standardized assessments. Specifically, the bill:

- Requires every school district, alternative school, and the Department of Juvenile Justice (DJJ) to offer either the SAT or ACT to every student in the 11th grade free of charge, subject to an appropriation for that purpose;
- Amends the civic literacy requirement for post-secondary education to include both an assessment and a course, as opposed to one or the other;
- Creates a process to allow students in high school to earn the civic literacy requirement before enrolling in a public college or university in this state;
- Requires the statewide, standardized math and English learning assessments in grades 3 through 6 to be paper-based;
- Deletes obsolete language relating to prior statewide standardized assessments, and updates the assessment publication requirement in anticipation of the implementation of new state standards;
- Authorizes the Department of Education (DOE) to hold certain intellectual property rights, including the right to patent, copyright, and trademark. This authority will allow the DOE to protect certain materials, such as state authored assessments, from being sold or distributed without authorization; and
- Creates the Innovative Blended Learning and Real-Time Student Assessment Pilot Program.

The bill does not require a state appropriation. However, the DOE estimates that an appropriation of $8 million would be necessary to provide funding for the SAT or ACT to be offered to each student in the 11th grade.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Course and Testing Requirements

Florida Statewide Standardized Assessments

The Next Generation Sunshine State Standards (NGSSS) establish the core curricula, knowledge, and skills expected of K-12 students in Florida. Standards may be adopted by rule through the State Board of Education.[1] In 2014, the Legislature amended Florida's assessment program to set forth the transition process from the prior statewide, standardized assessment (FCAT and FCAT 2.0) to the Florida Standards Assessment (FSA), including new English Language Arts (ELA) and mathematics assessments.[2]

The statewide standardized assessments measure the extent to which students have mastered the NGSSS.[3] Students are required to take a standardized assessment in the following courses:

- English Language Arts (grades 3-10);
- Mathematics (grades 3-8);
- Science (grades 5 and 8); and
- EOC assessments in Algebra 1, Biology 1, Civics, Geometry, and U.S. History.[4]

The Commissioner of Education (commissioner) assists and supports districts in measuring student performance on the state standards by maintaining a statewide item bank, facilitating the sharing of developed tests or test items among school districts, and providing technical assistance in best assessment practices. The commissioner may discontinue the item bank if he or she determines that district participation is insufficient for its sustainability.[5]

High School Course Requirements

As part of the 24 credits required to graduate from high school, students must earn three credits in social studies, including:

- One credit in United States History;
- One credit in World History;
- One-half credit in economics; and
- One-half credit in the United States Government.[6]

[1] Section 1003.41(1) and (4), F.S.
[2] Chapter 2014-39, Laws of Fla.
[3] Section 1008.22(3), F.S.
[4] Section 1008.22(3)(a) and (b), F.S.
[5] Section 1008.22(6)(b), F.S.
[6] Section 1003.4282(3)(d), F.S.

Collegiate Course Requirements

Each student graduating from a Florida College System or state university must demonstrate civic literacy.[7] Currently, civic literacy may be accomplished by either passing an assessment or taking a course. Florida State University, for example, offers for students to enroll in certain courses for credit or obtain a score of 60 out of 100 on the U.S. Citizenship and Immigration Services Naturalization Test, which is offered free of charge.[8]

Intellectual Property

Under Florida Law:

> An agency created by statute does not possess any inherent powers. Rather, the agency is limited to the powers that have been granted, either expressly or by necessary implication, by the statute that created the agency.[9]

A state agency, for example, is not authorized to secure or hold a copyright, trademark, or patent absent specific statutory authority.[10] While the Department of State (DOS) has administrative authority to enforce any copyright, trademark, or patent *held* by the state,[11] the DOS does not have unilateral authority to apply for or enforce intellectual property rights outside of a specific statutory authorization. For example, the following agencies have independent statutory authority to seek and enforce a copyright, trademark, or patent:

- The Department of Lottery;[12]
- The Department of Citrus;[13]
- The Department of Transportation;[14]
- Each water management district;[15]
- The Department of Law Enforcement;[16]
- The Florida Virtual School;[17]
- Each state university;[18] and
- Each Florida College System institution Board of Trustees.[19]

[7] Section 1007.25(4), F.S.
[8] Florida State University, Civic Literacy Requirement, *Ways to Meet the Requirement*, https://liberalstudies.fsu.edu/civic-literacy.html (last visited Mar. 24 2021).
[9] *Florida Virtual Sch. v. K12, Inc.*, 148 So. 3d 97, 99–100 (Fla. 2014) (citing *St. Regis Paper Co. v. State*, 237 So. 2d 797, 799 (Fla. 1st DCA 1970)). Additionally, "[a]n agency's powers are limited to those conferred by the Legislature." *Schindelar v. Fla. Unemployment Appeals Comm'n*, 31 So. 3d 903, 905 (Fla. 1st DCA 2010).
[10] *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. 2d DCA 2004) ("Florida's Constitution and its statutes do not permit public records to be copyrighted unless the Legislature specifically states they can be.") and Op. Att'y Gen. Fla. 00-13 (2000).
[11] Sections 286.021 and 286.031, F.S.
[12] Section 24.105(10), F.S.
[13] Section 601.101, F.S.
[14] Section 334.049(1), F.S.
[15] Section 373.608, F.S.
[16] Section 943.146, F.S.
[17] Section 1002.37(2)(c), F.S.
[18] Section 1004.23, F.S.
[19] Section 1004.726, F.S.

A state agency without such authority is ineligible to use these intellectual property rights.

Blended Learning

School districts may deliver courses through blended learning courses consisting of both traditional classroom and online instructional techniques. Students in a blended learning course must be full-time students of the school. The funding, performance, and accountability requirements for blended learning courses are the same as those for traditional courses.[20]

District Innovation School of Technology Program

An innovation school of technology is a school that has, on a schoolwide basis, adopted and implemented a blended learning program. A blended learning program is an education program in which a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. Blended learning models must include major components such as differentiated instruction, data-driven placement, flexible scheduling, differentiated teaching, and self-paced learning. The school may use one of the following blended learning models:

- Flipped classroom model in which students use online instructional videos and practice concepts in the classroom with the support of the teacher;
- Flex model in which students learn primarily online and teachers act as facilitators; or
- Rotation model in which students move between different learning modalities, such as online instruction, teacher-directed instruction, seminar or group projects, and one-on-one teacher coaching. Rotation models include individual, station, and laboratory models.[21]

A school district may operate an innovation school for a period of five years upon their application being approved by the State Board of Education. An innovation school must be guided by the principles set forth in statute and is exempt from specified provisions of law in chs. 1000-1013, Florida Statutes. School districts must annually submit a report that delineates the academic performance of students enrolled in the innovation school.[22]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1001.23, F.S., to authorize the DOE to hold patents, copyrights, trademarks, and service marks. Additionally, the DOE is authorized to take any actions necessary to enforce its rights in regard to any such patent trademark, copyright, or service mark. The DOE must notify the Department of State in writing when it secures a patent, trademark, copyright, or service mark. Except for educational materials and products, any proceeds received by the DOE from the exercise of such rights must be deposited in the DOE's Operating Trust Fund.

Section 2 of the bill creates s. 1002.334, F.S., to establish the Innovative Blended Learning and Real-Time Student Assessment Pilot Program. The bill defines "innovative blended learning" as a mode of learning where in-person and remote students are combined in one classroom

[20] Section 1003.498, F.S.
[21] Section 1002.451, F.S.
[22] *Id*.

experience where students learn in part through online delivery of content and instruction with some element of student control over time, place path, or pace and in part at a supervised classroom location.

Eligible applicants include high-performing charter schools, high-performing charter school systems, and academically high-performing school districts. The application submitted to DOE must include:

- A plan for synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection, teacher professional development, and weekly progress monitoring of real-time student performance.
- A plan to reduce achievement gaps.
- A requirement that distance learning will always be at the choosing of the student or parent.
- A requirement that a participating classroom may not be fully virtual and that at least two-thirds of students are present in the classroom on any regularly scheduled day.
- A requirement that any struggling student must return to learning in person.
- A requirement that any student can switch learning modalities on any given day.
- A requirement that the applicant provide all requested student-level data.

Applicants approved by the Commissioner of Education are authorized to receive funding based upon the number of FTE students as if each student was physically present at the school. Districts and schools may not begin programs until October 1, 2021. The commissioner may remove an approved applicant if the applicant fails to meet the requirements of the pilot program, which is scheduled to sunset on July 1, 2024.

Section 3 of the bill amends s. 1003.4282, F.S., to require every student who takes the United States Government course in high school to take a civic literacy assessment, beginning with the 2021-2022 school year. Students who earn a passing score on the course assessment are exempt from the postsecondary civic literacy requirement.

Section 4 of the bill amends s. 1007.25, F.S., to require students who initially enter a Florida College Institution or state university during or after the 2021-2022 school year demonstrate civic literacy by passing an assessment *and* taking a course on civic literacy. Students in high school may complete the civic literacy requirement through an accelerated mechanism, such as dual enrollment.

The bill requires the State Board of Education and the Board of Governors to adopt rules and regulations to:

- Develop one or more new civic literacy courses that provide students, at a minimum, opportunities to engage synchronously in political discussion and civil debates with multiple points of view and master the ability to synthesize information to inform civic decision-making; and
- Approve civic literacy assessments that address competencies that include:
    - An understanding the basic principles of American democracy and how they are applied in our republican form of government;
    - An understanding of the U.S. Constitution;

- Knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance; and
- An understanding of landmark Supreme Court cases and their impact on law and society.

Section 5 of the bill amends s. 1008.212, F.S., to conform cross-references to changes made by the act.

Section 6 of the bill amends s. 1008.22, F.S., to make adjustments to student assessments. Specifically, the bill requires school districts, alternative schools, and the DJJ education programs, subject to appropriation, to provide either the SAT or ACT to all 11th grade students. The DOE estimates that such an initiative would require an $8 million appropriation per year.[23]

The bill requires the standardized English language arts and the mathematics assessments for grades 3 through 6 to be delivered in a paper-based format.

The bill requires that a student's results on the statewide, standardized science and social studies assessments be included in the mandatory report of assessment results provided to students, parents, and teachers. The mandatory report was previously required to only include the student's results on the statewide, standardized ELA and mathematics assessments.

The bill deletes the requirement that the DOE include data on students who enroll in adult education following 8th grade rather than other secondary education from the required annual report on assessments.

The bill repeals the requirement that the commissioner maintain a statewide item bank, facilitate the sharing of developed tests or test items among school districts, and provide technical assistance in best assessment practices. Additionally, the bill repeals language regarding certain statewide standardized assessments that are no longer used, which specifically includes the standardized reading assessment and the standardized writing assessment for grades 3 through 10. The bill retains the existing English Language Arts Assessments, which has replaced the assessment that the bill repeals. The bill removes the requirement for each school district to administer specified assessments no earlier than four weeks before the last day of school for the district.

Section 7 of the bill amends the test administration and security public records exemption under s. 1008.24, F.S., which currently protects tests under the student assessment program, to expressly identify the protected assessment tests. The assessment tests expressly incorporated into the exemption relate to:

- Statewide kindergarten screening;
- Assessments administered by the Department of Juvenile Justice education programs;
- English language assessments for limited English proficient students;
- Postsecondary General Education courses;
- The Florida Partnership for Minority and Underrepresented Student Achievement;

[23] E-mail from Bethany Swanson, Deputy Chief of Staff, Florida Department of Education, *RE: SB 1108* (March 2021) (on file with the Senate Committee on Judiciary). *See also* Florida Department of Education, *2021 Agency Analysis of SB 1108* (Feb. 11, 2021).

- The Student assessment programs for public schools;
- The public school student progression, student support, reporting requirements; and
- Educator certification.

Section 8 of the bill amends s. 1008.34, F.S., conforming cross-reference to changes made by this act.

Section 9 of the bill amends s. 1008.3415, F.S., conforming cross-reference to changes made by this act.

Section 10 of the bill amends s. 1009.286, F.S., to exempt the civics literacy requirement from the excess credit charges under the excess credit hour for a baccalaureate degree program at state universities. If a student at a state university achieves an excess of 120 percent of credit hours required for a baccalaureate program, the remaining hours are charged an additional 100 percent of the tuition.
The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the Florida Constitution allows the general public to "inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state[.]"[24] Generally, a public records exemption is required when a bill prevents access to public records, including when Florida law provides copyright protection.[25]

The bill gives the DOE the authority to protect certain public records, such as state authored exam questions, by allowing the Department to assert patent, copyright, and trademark protections. The bill does not specifically create a new public records exemption, and the DOE intends to use these intellectual property protections on public records that are already exempt, such as public records under to s. 1008.23, F.S., regarding testing and assessments and s. 1002.221, F.S., regarding education records.[26] Thus, a public records exemption is not required to specifically allow for copyright, trademark, or patent protections to the extent that these protections will be used on public records that are already exempt.

[24] FLA. CONST. art. I, s. 24.
[25] *See supra* note 12, and accompanying text.
[26] Conversation with Matthew Mears, General Counsel, Florida Department of Education (Mar. 15 2021). Additionally, *See supra* note 22.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1108 requires school districts, alternative schools, and the DJJ education programs to provide either the SAT or ACT to all 11th grade students, subject to an appropriation. The DOE estimates that such an initiative would require an $8 million appropriation per year.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.23, 1003.4282, 1007.25, 1008.212, 1008.22, 1008.24, 1008.34, 1008.3415, and 1009.286.

The bill creates section 1002.334 of the Florida Statutes.

[27] *See supra* note 22.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute creates s. 1002.334, F.S. to establish the Innovative Blended Learning and Real-Time Student Assessment Pilot Program. Specifically, the amendment:

- Defines "innovative blended learning" as a mode of learning where in-person and remote students are combined in one classroom experience where students learn in part through online delivery of content and instruction with some element of student control over time, place path, or pace and in part at a supervised classroom location.
- Requires an applicant to be a high-performing charter school or high-performing charter school system, or an academically high-performing school district.
- Requires an applicant to submit a DOE developed application that includes:
  - A plan for synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection, teacher professional development, and weekly progress monitoring of real-time student performance.
  - A plan to reduce achievement gaps.
  - A requirement that distance learning will always be at the choosing of the student or parent.
  - A requirement that a participating classroom may not be fully virtual and that at least two-thirds of students are present in the classroom on any regularly scheduled day.
  - A requirement that any struggling student must return to learning in person.
  - A requirement that any student can switch learning modalities on any given day.
  - A requirement that the applicant provide all requested student-level data.
- Authorizes the Commissioner of Education to pick applicants to participate in the program.
- Restricts districts and schools from beginning programs until October 1, 2021.
- Authorizes approved applicants to receive funding based upon the number of FTE students as if each student was physically present at the school.
- Authorizes the commissioner to remove an approved applicant if the applicant fails to meet the requirements of the pilot.
- Sunsets the pilot July 1, 2024.

CS by Judiciary on March 22, 2021:
The committee substitute provides that each school district administer the SAT or ACT to 11th grade students in the "Department of Juvenile Justice education programs" as opposed to "centers of the Department of Juvenile Justice."

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2021	.	
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The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment (with title amendment)

Between lines 70 and 71

insert:

Section 2. Section 1002.334, Florida Statutes, is created to read:

1002.334 Synchronous Innovative Blended Learning Pilot Program.—

(1) There is created within the Department of Education the Synchronous Innovative Blended Learning Pilot Program. The

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purpose of the program is to develop and measure a synchronous and innovative blended learning model that improves the educational progress of this state's students and helps close achievement gaps for this state's traditionally underserved students.

(2) As used in this section, the term "synchronous innovative blended learning" means:

(a) A mode of learning where in-person and remote students are combined in one classroom environment where the education, instruction, and engagement occurs at the same time with the teacher and other students physically present in the classroom; and

(b) For a given course, students learn in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a traditional supervised classroom location away from home.

(3) To be eligible to work with the program, an applicant must be:

(a) A high-performing charter school under s. 1002.331;

(b) A high-performing charter school system under s. 1002.332; or

(c) An academically high-performing school district pursuant to s. 1003.621.

(4) A program applicant must submit an application to the department in a format prescribed by the department. The application must include all of the following:

(a) A plan for the synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection and teacher professional

development, and at least weekly progress monitoring of student performance in synchronous innovative blended learning programs.

(b) A plan to reduce achievement gaps through synchronous innovative blended learning.

(c) A requirement that distance learning will always be at the choosing of the student or the student's parent or guardian and that a family will never be coerced to choose distance learning.

(d) A requirement that a participating classroom may not be fully virtual such that at least one-third of the students in a class must be present for in-person learning on any regularly scheduled school day.

(e) A requirement that any struggling student who is participating in this program and who, according to progress monitoring data, is on pace to learn less than a year's content in a year's time must return to learning in person.

(f) A requirement that any student can choose to switch learning modalities, in person or distance, on any given day, without notice and therefore a seat must always be available for every student registered to take any participating course.

(g) A requirement that the applicant provide all requested student-level data from participating schools, including, as necessary, benchmark historical data for up to the prior 3 school years, to the department upon request.

(5) Applications may be considered only for synchronous innovative blended learning programs.

(6) The Commissioner of Education shall pick applicants to participate in the program.

(7)(a) Applicants approved by the commissioner shall

732008

receive funding based upon the number of full-time equivalent students being educated under the pilot program, as if each student were being educated full time in person at his or her respective school.

(b) The commissioner may remove an approved applicant from program participation if the applicant fails to maintain the designations listed in subsection (3) or the applicant fails to meet any of the requirements listed in subsection (4).

(8) This section expires July 1, 2024.

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

And the title is amended as follows:

Between lines 13 and 14

insert:

creating s. 1002.334, F.S.; establishing the Synchronous Innovative Blended Learning Pilot Program within the department; providing the purpose of the program; defining the term "synchronous innovative blended learning"; specifying program eligibility; requiring program applicants to submit applications to the department in a format prescribed by the department; requiring program applications to include specified information; requiring applications to be considered only for synchronous innovative blended learning programs; requiring the Commissioner of Education to pick applicants to participate in the program; providing for funding; authorizing the commissioner to remove an approved applicant from the program under certain circumstances; providing for

98 future expiration;

886910

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment (with title amendment)

Between lines 70 and 71

insert:

Section 2. Section 1002.334, Florida Statutes, is created to read:

1002.334 Innovative Blended Learning and Real-Time Student Assessment Pilot Program.—

(1) There is created within the Department of Education the Innovative Blended Learning and Real-Time Student Assessment

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Pilot Program. The purpose of the program is to develop and measure innovative blended learning and real-time weekly student assessment educational models that improve the educational progress of this state's students and help close achievement gaps for this state's traditionally underserved students.

(2) As used in this section, the term "innovative blended learning" means:

(a) A mode of learning where in-person and remote students are combined in one classroom environment where the education, instruction, and engagement occurs at the same time with the teacher and other students physically present in the classroom; and

(b) For a given course, students learn in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a traditional supervised classroom location away from home.

(3) To be eligible to work with the program, an applicant must be:

(a) A high-performing charter school under s. 1002.331;

(b) A high-performing charter school system under s. 1002.332; or

(c) An academically high-performing school district pursuant to s. 1003.621.

(4) A program applicant must submit an application to the department in a format prescribed by the department. The application must include all of the following:

(a) A plan for the synchronous technological and resource design, curriculum, classroom operation, school or district management, privacy protection and teacher professional

development, and at least weekly progress monitoring of real-time student performance in innovative blended learning programs.

(b) A plan to reduce achievement gaps through innovative blended learning.

(c) A requirement that distance learning will always be at the choosing of the student or the student's parent or guardian and that a family will never be coerced to choose distance learning.

(d) A requirement that a participating classroom may not be fully virtual such that at least two-thirds of the students in a class must be present for in-person learning on any regularly scheduled school day.

(e) A requirement that any struggling student who is participating in this program and who, according to progress monitoring data, is on pace to learn less than a year's content in a year's time must return to learning in person.

(f) A requirement that any student can choose to switch learning modalities, in person or distance, on any given day, without notice and therefore a seat must always be available for every student registered to take any participating course.

(g) A requirement that the applicant provide all requested student-level data from participating schools, including, as necessary, benchmark historical data for up to the prior 3 school years, to the department upon request.

(5) Applications may be considered only for synchronous innovative blended learning programs.

(6) The Commissioner of Education shall select applicants to participate in the program.

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(7) Districts and schools may not begin approved synchronous innovative blended learning programs until October 1, 2021.

(8)(a) Applicants approved by the commissioner shall receive funding based upon the number of full-time equivalent students being educated under the pilot program, as if each student were being educated full-time in person at his or her respective school.

(b) The commissioner may remove an approved applicant from program participation if the applicant fails to maintain the designations listed in subsection (3) or the applicant fails to meet any of the requirements listed in subsection (4).

(9) This section expires July 1, 2024.

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

And the title is amended as follows:

Between lines 13 and 14

insert:

creating s. 1002.334, F.S.; establishing the Innovative Blended Learning and Real-Time Student Assessment Pilot Program within the department; providing the purpose of the program; defining the term "innovative blended learning"; specifying program eligibility; requiring program applicants to submit applications to the department in a format prescribed by the department; requiring program applications to include specified information; requiring applications to be considered only for synchronous innovative blended learning programs; requiring the Commissioner

886910

of Education to select applicants to participate in the program; providing a start date for the program; providing for funding; authorizing the commissioner to remove an approved applicant from the program under certain circumstances; providing for future expiration;

By the Committee on Judiciary; and Senator Diaz

590-03163-21 20211108c1

A bill to be entitled

An act relating to education; amending s. 1001.23, F.S.; authorizing the Department of Education to hold patents, copyrights, trademarks, and service marks; authorizing the department to take specified actions to enforce its rights under certain circumstances; requiring the department to notify the Department of State in writing when property rights by patent, copyright, trademark, or service marks are secured by the department; requiring, except for educational materials and products, any proceeds received by the department from the exercise of its rights to be deposited in the department's Operating Trust Fund; amending s. 1003.4282, F.S.; deleting obsolete language; requiring certain students to take a specified assessment relating to civic literacy; providing that such assessment meets certain postsecondary requirements under specified circumstances; conforming a cross-reference; amending s. 1007.25, F.S.; requiring certain postsecondary students to complete a civic literacy course and pass a specified assessment to demonstrate competency in civic literacy; authorizing students to meet the assessment requirements in high school; providing for rulemaking; authorizing the development of new civic literacy courses; providing requirements for such courses; amending s. 1008.212, F.S.; conforming cross-references; amending s. 1008.22, F.S.; revising the purpose of the assessment program; deleting obsolete

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

590-03163-21 20211108c1

language; requiring that certain assessments be given in a paper-based format; requiring school districts to provide the SAT or ACT to grade 11 students beginning in a specified school year; requiring school districts to choose which assessment to administer; deleting specified reporting requirements; deleting a requirement that the Commissioner of Education maintain a specified item bank; deleting specified requirements for the date of the administration of specified assessments; revising a deadline for the publication of certain assessments; conforming provisions to changes made by the act; amending s. 1008.24, F.S.; revising the tests that are included under test administration and security rules; amending ss. 1008.34 and 1008.3415, F.S.; conforming cross-references; amending s. 1009.286, F.S.; providing an additional exception to credit hours used when calculating baccalaureate degrees; providing an effective date.

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

Section 1. Subsection (5) is added to section 1001.23, Florida Statutes, to read:

1001.23 Specific powers and duties of the Department of Education.—In addition to all other duties assigned to it by law or by rule of the State Board of Education, the department shall:

(5) Notwithstanding the provisions of chapter 286, have the

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

authority to hold patents, copyrights, trademarks, and service marks. The department may take any action necessary to enforce its rights with respect to such patents, copyrights, trademarks, and service marks or enter into a transaction to sell, lease, license, or transfer such rights for monetary gain or other consideration at the discretion of the department. The department shall notify the Department of State in writing when property rights by patent, copyright, trademark, or service marks are secured by the department. Except for educational materials and products, any proceeds received by the department from the exercise of such rights shall be deposited in the department's Operating Trust Fund.

Section 2. Paragraphs (a) and (d) of subsection (3), subsection (7), and paragraph (e) of subsection (10) of section 1003.4282, Florida Statutes, are amended to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(a) *Four credits in English Language Arts (ELA).*—The four credits must be in ELA I, II, III, and IV. A student must pass the statewide, standardized grade 10 ~~Reading assessment or, when implemented, the grade 10~~ ELA assessment, or earn a concordant score, in order to earn a standard high school diploma.

(d) *Three credits in social studies.*—A student must earn one credit in United States History; one credit in World History; one-half credit in economics; and one-half credit in United States Government. The United States History EOC assessment constitutes 30 percent of the student's final course grade. Beginning with the 2021-2022 school year, students taking

the United States Government course are required to take the assessment of civic literacy identified by the State Board of Education pursuant to s. 1007.25(4). Students earning a passing score on the assessment are exempt from the postsecondary civic literacy assessment required by s. 1007.25(4).

(7) UNIFORM TRANSFER OF HIGH SCHOOL CREDITS.—Beginning with the 2012-2013 school year, if a student transfers to a Florida public high school from out of country, out of state, a private school, or a home education program and the student's transcript shows a credit in Algebra I, the student must pass the statewide, standardized Algebra I EOC assessment in order to earn a standard high school diploma unless the student earned a comparative score, passed a statewide assessment in Algebra I administered by the transferring entity, or passed the statewide mathematics assessment the transferring entity uses to satisfy the requirements of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA), 20 U.S.C. ss. 6301 et seq. If a student's transcript shows a credit in high school reading or English Language Arts II or III, in order to earn a standard high school diploma, the student must take and pass the statewide, standardized grade 10 ~~Reading assessment or, when implemented, the grade 10~~ ELA assessment, or earn a concordant score. If a transfer student's transcript shows a final course grade and course credit in Algebra I, Geometry, Biology I, or United States History, the transferring course final grade and credit shall be honored without the student taking the requisite statewide, standardized EOC assessment and without the assessment results constituting 30 percent of the student's final course grade.

(10) STUDENTS WITH DISABILITIES.—Beginning with students entering grade 9 in the 2014-2015 school year, this subsection applies to a student with a disability.

(e) Any waiver of the statewide, standardized assessment requirements by the individual education plan team, pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(c)~~, must be approved by the parent and is subject to verification for appropriateness by an independent reviewer selected by the parent as provided for in s. 1003.572.

The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to implement this subsection, including rules that establish the minimum requirements for students described in this subsection to earn a standard high school diploma. The State Board of Education shall adopt emergency rules pursuant to ss. 120.536(1) and 120.54.

Section 3. Subsection (4) of section 1007.25, Florida Statutes, is amended to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(4)(a) Beginning with students initially entering a Florida College System institution or state university in the 2018-2019 school year and thereafter, each student must demonstrate competency in civic literacy. Students must have the option to demonstrate competency either through successful completion of a civic literacy course or by achieving a passing score on an assessment. The State Board of Education must adopt in rule and the Board of Governors must adopt in regulation at least one existing assessment that measures competencies consistent with

the required course competencies outlined in subparagraph (b)2 ~~paragraph (b)~~.

(b) Beginning with students initially entering a Florida College System institution or state university in the 2021-2022 school year and thereafter, each student must demonstrate competency in civic literacy by achieving a passing score on an assessment and by successfully completing a civic literacy course. Credits earned for such courses via articulated acceleration mechanisms in s. 1007.27 will count toward the civic literacy competency requirement. The State Board of Education and the Board of Governors shall adopt by rule and regulation, respectively, approved assessments that address the competencies in subparagraph 2. and courses that meet the requirements in subparagraph 1. The chair of the State Board of Education and the chair of the Board of Governors, or their respective designees, shall jointly appoint a faculty committee to:

1.~~(a)~~ Develop one or more ~~a~~ new courses ~~course~~ in civic literacy or revise an existing general education core course in American History or American Government to include, at a minimum, opportunities to engage synchronously in political discussions and civil debates with multiple points of view and to master the ability to synthesize information that informs civic decisionmaking ~~civic literacy~~.

2.~~(b)~~ Establish course competencies and identify outcomes that include, at a minimum, an understanding of the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how

they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society.

Section 4. Paragraph (a) of subsection (1) and subsection (2) of section 1008.212, Florida Statutes, are amended to read:

1008.212 Students with disabilities; extraordinary exemption.—

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

(a) "Circumstance" means a situation in which accommodations allowable for use on the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(c)~~ are not offered to a student during the current year's assessment administration due to technological limitations in the testing administration program which lead to results that reflect the student's impaired sensory, manual, or speaking skills rather than the student's achievement of the benchmarks assessed by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment.

(2) A student with a disability for whom the individual education plan (IEP) team determines is prevented by a circumstance or condition from physically demonstrating the mastery of skills that have been acquired and are measured by the statewide standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(c)~~ shall be granted an extraordinary exemption from the administration of the assessment. A learning, emotional, behavioral, or significant

cognitive disability, or the receipt of services through the homebound or hospitalized program in accordance with rule 6A-6.03020, Florida Administrative Code, is not, in and of itself, an adequate criterion for the granting of an extraordinary exemption.

Section 5. Paragraph (c) of subsection (3) of section 1008.22, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, and paragraph (a) of subsection (1), paragraphs (a), (b), (d), and (g) of subsection (3), subsection (6), paragraphs (a), (b), (c), and (h) of subsection (7), subsections (8) and (9), and paragraph (e) of subsection (12) of that section are amended, to read:

1008.22 Student assessment program for public schools.—

(1) PURPOSE.—The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, teachers, school administrators, and school district staff. This data is to be used by districts to improve instruction; by students, parents, and teachers to guide learning objectives; by education researchers to assess national and international education comparison data; and by the public to assess the cost benefit of the expenditure of taxpayer dollars. The program must be designed to:

(a) Assess the achievement level and ~~annual~~ learning gains of each student in English Language Arts and mathematics and the achievement level in all other subjects assessed.

(3) STATEWIDE, STANDARDIZED ASSESSMENT PROGRAM.—The Commissioner of Education shall design and implement a statewide, standardized assessment program aligned to the core

curricular content established in the Next Generation Sunshine State Standards. The commissioner also must develop or select and implement a common battery of assessment tools that will be used in all juvenile justice education programs in the state. These tools must accurately measure the core curricular content established in the Next Generation Sunshine State Standards. Participation in the assessment program is mandatory for all school districts and all students attending public schools, including adult students seeking a standard high school diploma under s. 1003.4282 and students in Department of Juvenile Justice education programs, except as otherwise provided by law. If a student does not participate in the assessment program, the school district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation. The statewide, standardized assessment program shall be designed and implemented as follows:

(a) *Statewide, standardized comprehensive assessments.*—The statewide, standardized ~~Reading assessment shall be administered annually in grades 3 through 10. The statewide, standardized Writing assessment shall be administered annually at least once at the elementary, middle, and high school levels. When the Reading and Writing assessments are replaced by~~ English Language Arts (ELA) assessments~~, ELA assessments~~ shall be administered to students in grades 3 through 10. Retake opportunities for the ~~grade 10 Reading assessment or, upon implementation, the~~ grade 10 ELA assessment must be provided. ~~Students taking the ELA assessments shall not take the statewide, standardized assessments in Reading or Writing.~~ Reading passages and writing prompts for ELA assessments shall incorporate grade-level core

curricula content from social studies. The statewide, standardized Mathematics assessments shall be administered annually in grades 3 through 8. ~~Students taking a revised Mathematics assessment shall not take the discontinued assessment.~~ The statewide, standardized Science assessment shall be administered annually at least once at the elementary and middle grades levels. In order to earn a standard high school diploma, a student who has not earned a passing score on the grade 10 ~~Reading assessment or, upon implementation, the grade 10~~ ELA assessment must earn a passing score on the assessment retake or earn a concordant score as authorized under subsection (9). Statewide, standardized ELA and Mathematics assessments in grades 3 through 6 must be delivered in a paper-based format.

(b) *End-of-course (EOC) assessments.*—EOC assessments must be statewide, standardized, and developed or approved by the Department of Education as follows:

1. EOC assessments for Algebra I, Geometry, Biology I, United States History, and Civics shall be administered to students enrolled in such courses as specified in the course code directory.

2. Students enrolled in a course, as specified in the course code directory, with an associated statewide, standardized EOC assessment must take the EOC assessment for such course and may not take the corresponding subject or grade-level statewide, standardized assessment pursuant to paragraph (a). Sections 1003.4156 and 1003.4282 govern the use of statewide, standardized EOC assessment results for students.

3. The commissioner may select one or more nationally developed comprehensive examinations, which may include

examinations for a College Board Advanced Placement course, International Baccalaureate course, or Advanced International Certificate of Education course, or industry-approved examinations to earn national industry certifications identified in the CAPE Industry Certification Funding List, for use as EOC assessments under this paragraph if the commissioner determines that the content knowledge and skills assessed by the examinations meet or exceed the grade-level expectations for the core curricular content established for the course in the Next Generation Sunshine State Standards. Use of any such examination as an EOC assessment must be approved by the state board in rule.

4. Contingent upon funding provided in the General Appropriations Act, including the appropriation of funds received through federal grants, the commissioner may establish an implementation schedule for the development and administration of additional statewide, standardized EOC assessments that must be approved by the state board in rule. If approved by the state board, student performance on such assessments constitutes 30 percent of a student's final course grade.

5. All statewide, standardized EOC assessments must be administered online except as otherwise provided in paragraph (d) ~~(c)~~.

6. A student enrolled in an Advanced Placement (AP), International Baccalaureate (IB), or Advanced International Certificate of Education (AICE) course who takes the respective AP, IB, or AICE assessment and earns the minimum score necessary to earn college credit, as identified in s. 1007.27(2), meets

the requirements of this paragraph and does not have to take the EOC assessment for the corresponding course.

(c) *Nationally recognized high school assessments.*—Each school district shall, by the 2021-2022 school year and subject to appropriation, select either the SAT or ACT for districtwide administration to each public school student in grade 11, including students attending public high schools, alternative schools, and Department of Juvenile Justice education programs.

~~(d) *Implementation schedule.*—~~

~~1. The Commissioner of Education shall establish and publish on the department's website an implementation schedule to transition from the statewide, standardized Reading and Writing assessments to the ELA assessments and to the revised Mathematics assessments, including the Algebra I and Geometry EOC assessments. The schedule must take into consideration funding, sufficient field and baseline data, access to assessments, instructional alignment, and school district readiness to administer the assessments online. All such assessments must be delivered through computer-based testing, however, the following assessments must be delivered in a computer-based format, as follows: the grade 3 Mathematics assessment beginning in the 2016-2017 school year; the grade 4 ELA assessment, beginning in the 2015-2016 school year; and the grade 4 Mathematics assessment, beginning in the 2016-2017 school year. Notwithstanding the requirements of this subparagraph, statewide, standardized ELA and mathematics assessments in grades 3 through 6 must be delivered only in a paper-based format, beginning with the 2017-2018 school year, and all such assessments must be paper-based no later than the~~

~~2018-2019 school year.~~

~~2. The Department of Education shall publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and broadband capacity to facilitate school district compliance with the requirements of this section.~~

(g) *Contracts for assessments.*—

~~1.~~ The commissioner shall provide for the assessments to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary educational institutions, or school districts. The commissioner may enter into contracts for the continued administration of the assessments authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next fiscal year and may be paid from the appropriations of either or both fiscal years. The commissioner may negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law.

~~2. A student's performance results on statewide, standardized assessments, EOC assessments, and Florida Alternative Assessments administered pursuant to this subsection must be provided to the student's teachers and parents by the end of the school year, unless the commissioner determines that extenuating circumstances exist and reports the extenuating circumstances to the State Board of Education. This subparagraph does not apply to existing contracts for such assessments, but shall apply to new contracts and any renewal of existing contracts for such assessments.~~

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~~3. If liquidated damages are applicable, the department shall collect liquidated damages that are due in response to the administration of the spring 2015 computer-based assessments of the department's Florida Standards Assessment contract with American Institutes for Research, and expend the funds to reimburse parties that incurred damages.~~

(6) LOCAL ASSESSMENT OF STUDENT PERFORMANCE ON STATE STANDARDS.—

~~(a)~~ Measurement of student performance is the responsibility of school districts except in those subjects and grade levels measured under the statewide, standardized assessment program described in this section. When available, instructional personnel must be provided with information on student achievement of standards and benchmarks in order to improve instruction.

~~(b) The Commissioner of Education shall assist and support districts in measuring student performance on the state standards by maintaining a statewide item bank, facilitating the sharing of developed tests or test items among school districts, and providing technical assistance in best assessment practices. The commissioner may discontinue the item bank if he or she determines that district participation is insufficient for its sustainability.~~

(7) ASSESSMENT SCHEDULES AND REPORTING OF RESULTS.—

(a) The Commissioner of Education shall establish schedules for the administration of statewide, standardized assessments and the reporting of student assessment results. The commissioner shall consider the observance of religious and school holidays when developing the schedules. The assessment

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and reporting schedules must provide the earliest possible reporting of student assessment results to the school districts~~, consistent with the requirements of paragraph (3)(g)~~. Assessment results for the statewide, standardized ELA and mathematics assessments and all statewide, standardized EOC assessments must be made available no later than June 30, except for results for the grade 3 statewide, standardized ELA assessment, which must be made available no later than May 31. School districts shall administer statewide, standardized assessments in accordance with the schedule established by the commissioner.

(b) By January of each year, ~~beginning in 2018,~~ the commissioner shall publish on the department's website a uniform calendar that includes the assessment and reporting schedules for, at a minimum, the next 2 school years. The uniform calendar must be provided to school districts in an electronic format that allows each school district and public school to populate the calendar with, at minimum, the following information for reporting the district assessment schedules under paragraph (d):

1. Whether the assessment is a district-required assessment or a state-required assessment.

2. The specific date or dates that each assessment will be administered.

3. The time allotted to administer each assessment.

4. Whether the assessment is a computer-based assessment or a paper-based assessment.

5. The grade level or subject area associated with the assessment.

6. The date that the assessment results are expected to be available to teachers and parents.

7. The type of assessment, the purpose of the assessment, and the use of the assessment results.

8. A glossary of assessment terminology.

9. Estimates of average time for administering state-required and district-required assessments, by grade level.

(c) ~~Beginning with the 2018-2019 school year,~~ The spring administration of the statewide, standardized assessments in paragraphs (3)(a) and (b), excluding assessment retakes, must be in accordance with the following schedule:

1. The grade 3 statewide, standardized ELA assessment and the writing portion of the statewide, standardized ELA assessment ~~for grades 4 through 10~~ must be administered no earlier than April 1 each year within an assessment window not to exceed 2 weeks.

2. With the exception of assessments identified in subparagraph 1., any statewide, standardized assessment that is delivered in a paper-based format must be administered no earlier than May 1 each year within an assessment window not to exceed 2 weeks.

3. With the exception of assessments identified in subparagraphs 1. and 2., any statewide, standardized assessment must be administered within a 4-week assessment window that opens no earlier than May 1 each year.

~~Each school district shall administer the assessments identified under subparagraphs 2. and 3. no earlier than 4 weeks before the last day of school for the district.~~

(h) The results of statewide, standardized assessment in ELA and mathematics, science, and social studies ~~assessments~~,

including assessment retakes, shall be reported in an easy-to-read and understandable format and delivered in time to provide useful, actionable information to students, parents, and each student's current teacher of record and teacher of record for the subsequent school year; however, in any case, the district shall provide the results pursuant to this paragraph within 1 week after receiving the results from the department. A report of student assessment results must, at a minimum, contain:

1. A clear explanation of the student's performance on the applicable statewide, standardized assessments.

2. Information identifying the student's areas of strength and areas in need of improvement.

3. Specific actions that may be taken, and the available resources that may be used, by the student's parent to assist his or her child based on the student's areas of strength and areas in need of improvement.

4. Longitudinal information, if available, on the student's progress in each subject area based on previous statewide, standardized assessment data.

5. Comparative information showing the student's score compared to other students in the school district, in the state, or, if available, in other states.

6. Predictive information, if available, showing the linkage between the scores attained by the student on the statewide, standardized assessments and the scores he or she may potentially attain on nationally recognized college entrance examinations.

(8) PUBLICATION OF ASSESSMENTS.—To promote transparency in the statewide assessment program, in any procurement for the

statewide, standardized assessment in ELA, ~~assessment in grades 3 through 10 and the~~ mathematics, science, and social studies ~~assessment in grades 3 through 8~~, the Department of Education shall solicit cost proposals for publication of the state assessments on its website in accordance with this subsection.

(a) The department shall publish each assessment administered under paragraph (3)(a) and subparagraph (3)(b)1., excluding assessment retakes, at least once on a triennial basis pursuant to a schedule determined by the Commissioner of Education. Each assessment, when published, must have been administered during the most recent school year and be in a format that facilitates the sharing of assessment items.

(b) The initial publication of assessments must occur no later than June 30, 2024 ~~June 30, 2021~~, subject to appropriation, and must include, at a minimum, the grade 3 ELA and mathematics assessments, the grade 10 ELA assessment, and the Algebra I EOC assessment.

(c) The department must provide materials on its website to help the public interpret assessment information published pursuant to this subsection.

(9) CONCORDANT SCORES.—The Commissioner of Education must identify scores on the SAT and ACT that if achieved satisfy the graduation requirement that a student pass the grade 10 ~~statewide, standardized Reading assessment or, upon implementation, the grade 10~~ ELA assessment. The commissioner may identify concordant scores on assessments other than the SAT and ACT. If the content or scoring procedures change for the grade 10 ~~Reading assessment or, upon implementation, the grade 10~~ ELA assessment, new concordant scores must be determined. If

new concordant scores are not timely adopted, the last-adopted concordant scores remain in effect until such time as new scores are adopted. The state board shall adopt concordant scores in rule.

(12) REPORTS.—The Department of Education shall annually provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which shall include the following:

~~(c) The number of students who after 8th grade enroll in adult education rather than other secondary education, which is defined as grades 9 through 12.~~

Section 6. Subsection (1) of section 1008.24, Florida Statutes, is amended to read:

1008.24 Test administration and security; public records exemption.—

(1) A person may not knowingly and willfully violate test security rules adopted by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to ss. 1002.69, 1003.52, 1003.56, 1007.25, 1007.35, 1008.22, 1008.25, and 1012.56 ~~s. 1008.22~~, or, with respect to any such test, knowingly and willfully to:

(a) Give examinees access to test questions prior to testing;

(b) Copy, reproduce, or use in any manner inconsistent with test security rules all or any portion of any secure test booklet;

(c) Coach examinees during testing or alter or interfere

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with examinees' responses in any way;

(d) Make answer keys available to examinees;

(e) Fail to follow security rules for distribution and return of secure test as directed, or fail to account for all secure test materials before, during, and after testing;

(f) Fail to follow test administration directions specified in the test administration manuals; or

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibited in this section.

Section 7. Paragraph (a) of subsection (1) of section 1008.34, Florida Statutes, is amended to read:

1008.34 School grading system; school report cards; district grade.—

(1) DEFINITIONS.—For purposes of the statewide, standardized assessment program and school grading system, the following terms are defined:

(a) "Achievement level," "student achievement," or "achievement" describes the level of content mastery a student has acquired in a particular subject as measured by a statewide, standardized assessment administered pursuant to s. 1008.22(3)(a) and (b). There are five achievement levels. Level 1 is the lowest achievement level, level 5 is the highest achievement level, and level 3 indicates satisfactory performance. A student passes an assessment if the student achieves a level 3, level 4, or level 5. For purposes of the Florida Alternate Assessment administered pursuant to s. 1008.22(3)(d) ~~s. 1008.22(3)(c)~~, the state board shall provide, in rule, the number of achievement levels and identify the achievement levels that are considered passing.

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Section 8. Subsection (2) of section 1008.3415, Florida Statutes, is amended to read:

1008.3415 School grade or school improvement rating for exceptional student education centers.—

(2) Notwithstanding s. 1008.34, the achievement levels and Learning Gains of a student with a disability who attends an exceptional student education center and has not been enrolled in or attended a public school other than an exceptional student education center for grades K-12 within the school district shall not be included in the calculation of the home school's grade if the student is identified as an emergent student on the alternate assessment described in s. 1008.22(3)(d) ~~s. 1008.22(3)(c)~~.

Section 9. Paragraph (i) is added to subsection (4) of section 1009.286, Florida Statutes, to read:

1009.286 Additional student payment for hours exceeding baccalaureate degree program completion requirements at state universities.—

(4) For purposes of this section, credit hours earned under the following circumstances are not calculated as hours required to earn a baccalaureate degree:

(i) Credit hours earned to meet the requirements of s. 1007.25(4).

Section 10. This act shall take effect July 1, 2021.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

1108
Bill Number (if applicable)

886910
Amendment Barcode (if applicable)

Topic Education

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4-19-21
Meeting Date

1108
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Robert Holladay

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Email wingbiddlebaumjr@gmail.co

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Myself and other interested professors of American History and American Gover

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1132
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Bean
SUBJECT:	Personal Care Attendants
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.	Cox	Cox	CF	**Favorable**
3.	McKnight	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1132 allows a nursing home to employ personal care attendants (PCA), as defined in the bill, participating in the PCA training program. The bill:

- Authorizes the Agency for Health Care Administration (AHCA) in consultation with the Board of Nursing, to develop a program for PCAs;
- Provides for PCA program requirements, including 16 hours of education in the content areas specified in the program curriculum developed by the AHCA;
- Requires a PCA to complete the required training before having any direct contact with a resident;
- Prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment;
- Clarifies that a PCA must work exclusively for one nursing facility before becoming a certified nursing assistant (CNA);
- Requires the AHCA to adopt rules necessary to implement the PCA program. If the COVID-19 State of Emergency is terminated prior to the AHCA adopting rules, the AHCA is authorized to continue the PCA program until such rules are adopted; and
- Allows a PCA to work as a nursing assistant and count as a CNA for the purposes of staffing requirements for a single consecutive period of four months.

The bill has no fiscal impact on state revenues or expenditures. *See* Section V of this analysis.

The bill takes effect upon becoming a law.

II. Present Situation:

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the Agency for Health Care Administration (AHCA) to adopt rules[1] providing minimum staffing requirements for nursing home facilities. The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants (CNA) and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by CNA staff. A facility may not staff at a ratio of less than one CNA per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.
- Nursing assistants employed under s. 400.211(2), F.S., may be included in computing the staffing ratio for CNAs if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

COVID-19 Personal Care Attendant Training Program

To help address a shortage of skilled nursing services during the COVID-19 pandemic, the AHCA temporarily approved the creation of the personal care attendant (PCA) training program to assist with resident care procedures usually delivered by CNAs. The program has been extended to correspond with the COVID-19 State of Emergency, or until the AHCA determines it is no longer necessary.[2]

The PCA program training must be taught by a registered nurse and consists of a total of eight hours of preservice course work, including five hours of classroom training and three hours of supervised simulation. Upon completion of instruction, PCA candidates must simulate and demonstrate competency in all required care procedures and continue to work under the direct

[1] Rule 59A-4.108(4), F.A.C., requires that "in accordance with the requirements outlined in subsection 400.23(3)(a), F.S., the nursing home licensee must have sufficient nursing staff, on a 24-hour basis to provide nursing and related services to residents in order to maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care."

[2] Florida Health Care Association, *Temporary COVID-19 Personal Care Attendant Program*, *available at* https://www.fhca.org/facility_operations/pcaprogram (last visited Apr. 13, 2021).

supervision of the nursing staff and in collaboration with the CNAs providing activities of daily life services to residents.[3]

The PCA training program requires a PCA candidate to receive training and demonstrate competency in the following required areas:

- Resident Rights, the Health Insurance Portability and Accountability Act (HIPPA), and abuse and neglect;
- Infection control including how infection is spread, hand hygiene, standard precautions and personal protective equipment, handling of clean and soiled linens, and disinfection of common use articles, equipment, high tough objects, and areas;
- Emergency procedures including the Heimlich Maneuver and assisting a resident who is fallen;
- Activities of daily living, including:
  - Initial steps to responding to a call light;
  - Obtaining a resident's temperature and appropriate documentation;
  - Making an occupied bed, an unoccupied bed, and handling of linens;
  - Turning and repositioning a resident while in bed;
  - Transferring a resident from bed to a chair, wheelchair, bath or partial bath, and the use of a gait belt;
  - Assisting a resident with dressing or undressing;
  - Incontinence, perineal care, and assisting a resident to the toilet;
  - Oral care;
  - Using and storing devices, such as hearing aids, eyeglasses, and dentures; and
  - Final steps and observations to report to the supervising nurse.
- Skin care and pressure prevention including observations to report to the supervising nurse;
- Oxygen use and safety including observing liter flow;
- Nutrition and hydration including retrieving trays, passing ice water, and opening packages for residents who can consume meals independently;
- Dementia care including the stages of dementia, tips on communicating with cognitively impaired residents, and when to seek additional staff assistance;
- Mental health and challenging behaviors including when to seek additional staff assistance and reporting a challenging behavior to the supervising nurse; and
- Review of Resident Rights, abuse and neglect reporting, and reporting to the nurse.[4]

Federal Requirements for Nurse Aide Training

Federal regulations establish requirements that must be met by states and state agencies for nurse aide training programs and competency evaluations, including:

- Specifying that the state cannot approve training programs in certain nursing homes that are operating under specified waivers of federal requirements or that have had certain penalties assessed against them.[5]

[3] Memorandum from the Agency for Health Care Administration to the Florida Health Care Association and Florida Leading Age (Mar. 28, 2020), *available at* https://www.fhca.org/images/uploads/pdf/Personal_Care_Attendent.pdf (last visited Apr. 13, 2021).
[4] *Id.*
[5] 42 CFR 483.151.

- Establishing specific requirements for such training programs including at least 75 clock hours of training, the inclusion of specific subjects, at least 16 hours of supervised practical training, supervision requirements, and 16 hours of training prior to direct contact with a resident.[6]
- Establishing requirements for competency evaluations including written and oral exams and demonstrations of skills.[7]

Florida Requirements for Certification as a Nursing Assistant

The Board of Nursing (BON) is required to issue a certificate to practice as a CNA to any person who demonstrates the minimum competency to read and write, successfully passes the required background screening, and has met either of the following requirements[8]:

- Has successfully completed an approved training program[9] and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion approved by the BON and administered at a site and by personnel approved by the department;
- Has achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department and:
  - Has a high school diploma, or its equivalent; or
  - Is at least 18 years of age.
- Is currently certified in another state or territory of the United States or in the District of Columbia; is listed on that jurisdiction's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that jurisdiction; or
- Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department.

If the applicant fails to pass the certification examination in three attempts the applicant is not eligible to take the exam again until he or she completes an approved training course.

III. Effect of Proposed Changes:

This bill amends s. 400.141, F.S., to allow a nursing home to employ personal care attendants (PCA) participating in the PCA program developed by the Agency for Health Care

[6] 42 CFR 483.152.
[7] 42 CFR 483.154.
[8] Section 464.203, F.S.
[9] Curriculum requirements for certified nursing assistants training programs are established in Rule 64B9-15.006, F.A.C., and include 80 hours of classroom training and 40 hours of clinical instruction. Additionally the rule requires 16 hours of classroom instruction on specified topics prior to any direct contact with a resident.

Administration (AHCA), in consultation with the Board of Nursing (BON) and in accordance with federal regulations.[10]

The bill requires the PCA program to consist of a minimum of 16 hours of education and at a minimum, include training in all of the following content areas:

- Residents' rights.
- Confidentiality of residents' personal information and medical records.
- Control of contagious and infectious diseases.
- Emergency response measures.
- Assistance with activities of daily living.[11]
- Measuring vital signs.
- Skin care and pressure sores prevention.
- Portable oxygen use and safety.
- Nutrition and hydration.
- Dementia care.

The bill also:

- Requires a PCA to complete the 16 hours of required education before having any direct contact with a resident.
- Prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment.
- Requires a PCA to work exclusively for one nursing facility before becoming a certified nursing assistant (CNA).
- Authorizes the AHCA to adopt rules necessary to implement the PCA program. If the COVID-19 State of Emergency is terminated prior to the AHCA adopting rules, the AHCA is authorized to continue the PCA program until such rules are adopted.
- Allows a nursing home to hire a PCA, who has completed the program as detailed above, to work as a nursing assistant and count as a CNA for the purposes of staffing requirements for a single consecutive period of up to four months.
- Defines a PCA as a person who meets the above training requirements and who provides care to residents and assists residents with tasks related to the activities of daily living.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[10] 42 CFR 483.151-483.154. These sections establish requirements for state training programs for nurse aides. (Under Florida law, nurse aides are certified as nursing assistants.)

[11] Although not defined in nursing home statutes, activities of daily living are defined in other health care and facility statutes. For example, for assisted living facilities activities of daily living are defined as "the functions and tasks for self-care, including eating bathing grooming, dressing, ambulating, and other similar tasks. *See* s. 429.65(1), F.S., and for home health care activities of daily living are included in the definition of personal care and include bathing, dressing, eating, personal hygiene, assistance in physical transfer, ambulation, and in administering medications permitted by rule. *See* s. 400.462(23), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on nursing homes that utilize the personal care attendants (PCA) program created under the bill. The bill may have a positive fiscal impact on individuals who are employed as PCAs under the program.

C. Government Sector Impact:

The bill has no fiscal impact on state revenues or expenditures. The Florida Department of Health[12] and the Agency for Health Care Administration[13] report no fiscal impacts under the bill's requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.141 and 400.211.

[12] Department of Health, *House Bill 485 Bill Analysis* (Jan. 11, 2021) (on file with Senate Committee on Appropriations).
[13] Agency for Health Care Administration, *House Bill 485 Bill Analysis* (Jan. 28, 2021) (on file with Senate Committee on Appropriations).

IX. Additional Information:

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

CS/cs by Appropriations on April 19, 2021:
The committee substitute:

- Provides that a personal care attendant (PCA) must complete 16 hours of required education before having any direct contact with a resident;
- Clarifies that an individual must work exclusively for one nursing facility before becoming a certified nursing assistant;
- Clarifies the AHCA is authorized to continue the PCA program until rules are adopted to implement the PCA program, should the COVID-19 State of Emergency terminate prior to the AHCA adopting program rules;
- Provides that a PCA working as a certified nursing assistant (CNA) and counted as a CNA for the purposes of staffing requirements is authorized to do so for a single consecutive period of four months, as opposed to just a period of four months; and
- Makes technical changes.

CS by Health Policy on March 17, 2021:
The CS expands the hours of training required to work as a PCA from 8 to 16 and ties the PCA training program to federal requirements for nurse aide training in 42 C.F.R. ss. 483.151-483.154. The CS prohibits PCAs from performing tasks that require clinical assessment, interpretation, or judgment; specifies that a PCA must work exclusively for one nursing home; and prohibits a PCA from working as a PCA for more than one nursing home before being certified as a CNA.

The CS also specifies that the current PCA program will continue until the AHCA adopts rules to implement the PCA training program established by the bill regardless of whether Emergency Order 20-52 or its extension expires or is terminated. The bill requires the AHCA to notify the Division of Law Revision of the date that the rules take effect. These requirements expire on the effective date of the AHCA's rules.

B. Amendments:

None.

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

834122

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 36 - 78
and insert:
1. The personal care attendant program must consist of a minimum of 16 hours of education and must include all of the topics and lessons specified in the program curriculum.
2. The program curriculum must include, but need not be limited to, training in all of the following content areas:
a. Residents' rights.

834122

b. Confidentiality of residents' personal information and medical records.

c. Control of contagious and infectious diseases.

d. Emergency response measures.

e. Assistance with activities of daily living.

f. Measuring vital signs.

g. Skin care and pressure sores prevention.

h. Portable oxygen use and safety.

i. Nutrition and hydration.

j. Dementia care.

3. A personal care attendant must complete the 16 hours of required education before having any direct contact with a resident.

4. A personal care attendant may not perform any task that requires clinical assessment, interpretation, or judgment.

5. An individual employed as a personal care attendant under s. 400.211(2)(d) must work exclusively for one nursing facility before becoming a certified nursing assistant.

The agency shall adopt rules necessary to implement this paragraph. If the state of emergency declared by the Governor pursuant to Executive Order No. 20-52 is terminated before the agency adopts rules to implement this paragraph, the agency shall authorize the continuation of the personal care attendant program until the agency adopts such rules.

Section 2. Subsection (2) of section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

834122

(2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a single consecutive period of 4 months:

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

And the title is amended as follows:

Delete lines 10 - 16

and insert:

practice; requiring the agency to adopt rules; requiring the agency to authorize the continuation of certain personal care attendant programs under certain circumstances; amending s. 400.211, F.S.; authorizing certain

816546

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Gibson) recommended the following:

Senate Amendment

Delete lines 37 - 61
and insert:
consist of a minimum of 16 hours of classroom education and a minimum of 40 hours of clinical experience under the direct supervision of a program instructor. Students must complete at least 16 hours of classroom education before they have contact with nursing home residents. The program must include training in all of the topics and lessons specified in the program

816546

curriculum.

2. The program curriculum for the personal care attendant training program must include, but need not be limited to, all of the following content areas:

a. Residents' rights.

b. Confidentiality of residents' personal information and medical records.

c. Control of contagious and infectious diseases.

d. Emergency response measures, including, but not limited to, cardiopulmonary resuscitation, emergency first aid, the Heimlich maneuver, and other related emergency procedures.

e. Assistance with activities of daily living.

f. Measuring vital signs.

g. Skin care and pressure sore prevention.

h. Portable oxygen use and safety.

i. Nutrition and hydration.

j. Dementia care.

3. A personal care attendant may not perform any task that requires clinical assessment, interpretation, or judgment.

4. A personal care attendant must work exclusively for one nursing home facility and may not work as a personal care attendant for more than one nursing home facility before becoming a certified nursing assistant.

5. Personal care attendants must be identified and treated as students and not as nursing staff of nursing home facilities during the classroom hours or during any hours designated as clinical training hours.

6. The agency may adopt rules to implement this paragraph.

7. If the Governor's Emergency Order 20-52 or an extension

By the Committee on Health Policy; and Senator Bean

588-02981-21 20211132c1

A bill to be entitled

An act relating to personal care attendants; amending s. 400.141, F.S.; authorizing nursing home facilities to employ personal care attendants if they are participating in a certain training program developed by the Agency for Health Care Administration, in consultation with the Board of Nursing; providing minimum requirements for such program; providing limitations on such personal care attendants' practice; authorizing the agency to adopt rules; authorizing certain personal care attendant programs to continue operating during the agency's rulemaking process under certain circumstances; requiring the agency to notify the Division of Law Revision of the date certain rules take effect; providing for future repeal; amending s. 400.211, F.S.; authorizing certain persons to be employed by a nursing home facility as personal care attendants for a specified period if a certain training requirement is met; defining the term "personal care attendants"; providing an effective date.

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

Section 1. Paragraph (w) is added to subsection (1) of section 400.141, Florida Statutes, to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all

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

588-02981-21 20211132c1

applicable standards and rules of the agency and shall:

(w) Be allowed to employ personal care attendants as defined in s. 400.211(2)(d), if such personal care attendants are participating in the personal care attendant training program developed by the agency, in accordance with 42 C.F.R. ss. 483.151-483.154, in consultation with the Board of Nursing.

1. The personal care attendant training program must consist of a minimum of 16 hours of education and must include training in all of the topics and lessons specified in the program curriculum.

2. The program curriculum for the personal care attendant training program must include, but need not be limited to, all of the following content areas:

a. Residents' rights.

b. Confidentiality of residents' personal information and medical records.

c. Control of contagious and infectious diseases.

d. Emergency response measures.

e. Assistance with activities of daily living.

f. Measuring vital signs.

g. Skin care and pressure sore prevention.

h. Portable oxygen use and safety.

i. Nutrition and hydration.

j. Dementia care.

3. A personal care attendant may not perform any task that requires clinical assessment, interpretation, or judgment.

4. A personal care attendant must work exclusively for one nursing home facility and may not work as a personal care attendant for more than one nursing home facility before

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

becoming a certified nursing assistant.

5. The agency may adopt rules to implement this paragraph.

6. If the Governor's Emergency Order 20-52 or an extension thereof expires or is terminated before the completion of the agency's rulemaking process to implement this paragraph, any personal care attendant program that is operating pursuant to agency approval that was issued during the time in which the executive order was effective may continue to operate as authorized until the agency's rulemaking process is completed, at which time the program must comply with agency rule. The agency shall notify the Division of Law Revision of the date such rules take effect. This subparagraph expires on the effective date of such rules.

Section 2. Subsection (2) of section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

(2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a period of 4 months:

(a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program.~~;~~

(b) Persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state.~~; or~~

(c) Persons who have preliminarily passed the state's certification exam.

(d) Persons who are employed as personal care attendants and who have completed the personal care attendant training

program developed pursuant to s. 400.141(1)(w). As used in this paragraph, the term "personal care attendants" means persons who meet the training requirement in s. 400.141(1)(w) and provide care to and assist residents with tasks related to the activities of daily living.

The certification requirement must be met within 4 months after initial employment as a nursing assistant in a licensed nursing facility.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 22, 2021

I respectfully request that **Senate Bill #1132**, relating to Personal Care Attendants, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2021
Meeting Date

1132
Bill Number (if applicable)

Topic Personal Care Attendants

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Associate Director of Government Affairs

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Street

Phone 850-224-3907

Tallahassee FL 32301
City *State* *Zip*

Email marnold@fhca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1132
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Personal Care Attendants

Name Brewster Bevis

Job Title Senior Vice President

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Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04/19/1921
Meeting Date

1132
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Personal Care Attendants

Name Lynn Hearn

Job Title Legal Advocate

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Street

Phone (850)414-2054

Tallahassee FL 32399
City *State* *Zip*

Email hearnl@elderaffairs.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Long-Term Care Ombudsman Program

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1132
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Personal Care Attendant

Name Ken Kniepmann (Ka-neep-man)

Job Title Associate

Address 201 W Park
Street

Tallahassee
City *State* *Zip*

Phone 850-510-0552

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1242 (246400)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Book
SUBJECT:	Program of All-Inclusive Care for the Elderly
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	McKnight	Kidd	AHS	**Recommend: Fav/CS**
3.	McKnight	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1242 codifies the Program of All-Inclusive Care for the Elderly (PACE) in section 430.84, Florida Statutes. The bill:

- Establishes a statutory process for the review, approval, and oversight of future and current PACE organizations.
- Authorizes the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA), to approve entities that have submitted the required application and data to the federal Centers for Medicare and Medicaid Services (CMS) as PACE organizations pursuant to federal regulations.
- Requires all PACE organizations to meet specific quality and performance standards established by the federal CMS and the AHCA.
- Requires the AHCA to provide oversight and monitoring of Florida's PACE program and organizations.
- Exempts all PACE organizations from the requirements of ch. 641, F.S., which regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

The bill has no fiscal impact on state revenues or expenditures. *See* Section V of this analysis.

The bill takes effect on July 1, 2021.

II. Present Situation:

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

To qualify for nursing home care under Medicaid, both an individual's income and assets are reviewed. Additionally, a personal needs allowance is applied as part of the eligibility determination process.[1] The current standard income limit in Florida for institutional care or services under the home and community based services waiver is $2,382 for an individual and $4,764 for a couple. There is also an asset limit for either category of $2,000 for an individual or $3,000 for a couple.[2]

In Florida, the Medicaid program is administered by the Agency for Health Care Administration (AHCA). The AHCA, however, delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the Department of Elder Affairs (DOEA). The AHCA has overall responsibility for the program and qualifies providers, sets payment levels, and pays for services.

The DOEA assesses Medicaid recipients to determine if they require nursing home level of care. Specifically, the DOEA determines whether an individual requires or is at imminent risk of nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires:

- Medically complex care to be performed on a daily basis under the direct supervision of a health professional because of mental or physical incapacitation;
- Care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.[3]

Floridians who need nursing home care, but do not qualify for Medicaid, must pay from their own funds or through insurance.

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[1] The personal needs allowance (PNA) of an individual is defined as that portion of an individual's income that is protected to meet the individual's personal needs while in an institution. *See* Department of Children and Families (DCF), *Glossary (Chapter 4600) "Personal Needs Allowance," p. 19, available at* http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/4600.pdf (last visited Mar. 16, 2021).

[2] DCF, *SSI-Related Program-Financial Eligibility Standards: Apr. 1, 2021, available at* https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a_09.pdf (last visited Mar. 16, 2021).

[3] Section 409.985, F.S.

Long-Term Care Managed Care

In 2011, Statewide Medicaid Managed Care (SMMC) was established,[4] requiring both Medicaid Long-Term Care (LTC) services and Managed Medical Assistance (MMA) services to be provided through managed care plans.

Long-Term Care Managed Care plans participating in SMMC are required to provide minimum benefits that include nursing home care as well as home and community based services. The minimum benefits include:

- Nursing home care;
- Services provided in assisted living facilities;
- Hospice;
- Adult day care;
- Medical equipment and supplies, including incontinence supplies;
- Personal care;
- Home accessibility adaptation;
- Behavior management;
- Home delivered meals;
- Case management;
- Therapies, including physical, respiratory, speech, and occupational;
- Intermittent and skilled nursing;
- Medication administration;
- Medication management;
- Nutritional assessment and risk reduction;
- Caregiver training;
- Respite care;
- Transportation; and
- Personal emergency response system.

Program of All-Inclusive Care for the Elderly

The Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 (BBA)[5] that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing mechanism. The model was developed to address the needs of long-term care clients, providers, and payers.

The PACE operates as a three-way agreement between the federal government, the state administering agency, and a PACE organization. In Florida, the PACE is a Florida Medicaid LTC managed care plan option providing comprehensive long-term and acute care services which support Medicaid and Medicare enrollees who would otherwise qualify for Medicaid nursing facility services.[6]

[4] Chapter 2011-134, Laws of Fla.
[5] Specifically, services under the PACE are authorized under Section 1905(a)(26) of the Social Security Act.
[6] Department of Elder Affairs (DOEA) and Agency for Health Care Administration (AHCA), *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014),

The BBA established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver.

The federal government established the PACE organization requirements and application process; however, the state is responsible for oversight of the application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE organization can be authorized to serve participants. An approved PACE organization must sign a contract with the federal CMS and the state Medicaid agency, the AHCA.

The PACE is administered by the DOEA in consultation with the AHCA. The DOEA oversees the contracted PACE organizations but is not a party to the contract between the federal CMS, the AHCA, and the PACE organizations.[7] The DOEA, the AHCA, and the federal CMS must approve any applications for new PACE organizations if expansion is authorized by the Legislature through the necessary appropriation of the state matching funds.

PACE Organizations

A PACE organization is a private not-for-profit 501(c)(3) organization, for-profit private or public entity that is primarily engaged in providing PACE services and must also:

- Have a governing board that includes participant representation;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have a physical site and staff to provide primary care, social services, restorative therapies, personal care and supportive services, nutritional counseling, recreational therapy, and meals;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have demonstrated fiscal soundness;
- Have a formal participant bill of rights; and
- Have a process to address grievances and appeals.[8]

Eligibility and Benefits

To be eligible for PACE, an individual must:

- Be 55 years of age or older;
- Live within the defined service area of the PACE Center;
- Meet medical eligibility requirements as determined by a Comprehensive Assessment and Review of Long-Term Care Services (CARES);[9]

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available at https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Mar. 31, 2021).

[7] *Id.*

[8] HHS, Centers for Medicare and Medicaid Services, *CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual* (issued June 9, 2011), *available at* https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf (last visited Mar. 31, 2021).

[9] Comprehensive Assessment and Review for Long-Term Care Services (CARES) is Florida's federally mandated pre-admission screening program for nursing home applicants. Federal law mandates that the CARES Program perform an assessment or review of each individual who requests Medicaid reimbursement for nursing facility placement, or who seeks

- Be able to live safely in the community; and
- Be dually eligible for Medicaid and Medicare, or Medicaid only. There is also a private pay option with PACE, however this is not regulated by the State.[10]

By federal law, the first three contract years for a PACE organization are considered a trial period, and the PACE organization is subject to annual reviews to ensure compliance.[11] Review of the PACE organization may continue after the trial period by the Secretary or the administering state agency as appropriate, depending upon the PACE organization's performance and compliance with requirements and regulations.

No deductibles, copayments, coinsurance, or other cost-sharing can be charged by a PACE organization. No other limits relating to amount, duration, or scope of services that might otherwise apply in Medicaid are permitted.[12] The PACE enrollee must accept the PACE center physician as his or her new Medicare primary care physician, if enrolled in Medicare.[13]

Quality of Care Requirements

Each PACE organization is required to develop, implement, maintain, and evaluate an effective data-driven Quality Assurance and Performance Improvement (QAPI) program. The program must incorporate all aspects of the PACE organization's operations, which allows for the identification of areas that need performance improvement. The organization's written QAPI plan must be reviewed by the PACE organization's governing body at least annually. At a minimum, the plan should address the following areas:

- Utilization of services in the PACE organization, especially in key services;
- Participant and caregiver satisfaction with services;
- Data collected during patient assessments to determine if individual and organizational-level outcomes were achieved within a specified time period;
- Effectiveness and safety of direct and contracted services delivered to participants; and
- Outcomes in the organization's non-clinical areas.[14]

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to receive home and community-based services through Medicaid waivers like Familial Dysautonomia Waiver, and Statewide Medicaid Managed Care Long-Term Care Program. Any person or family member can initiate a CARES assessment by applying for the Medicaid Institutional Care Program (ICP). Assessments are completed at no cost to the clients and are performed by a registered nurse and/or assessor. DOEA, *Comprehensive Assessment and Review for Long-Term Care Services (CARES), available at* http://elderaffairs.state.fl.us/doea/cares.php (last visited Mar. 31, 2021).

[10] DOEA, *Program of All-Inclusive Care for the Elderly (PACE), available at* http://elderaffairs.state.fl.us/doea/pace.php (last visited Mar. 31. 2021).

[11] *See* 42 U.S.C. s. 1395eee(e)(4)(A) (2020).

[12] HHS, Centers for Medicare and Medicaid Services, *CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual* (issued June 9, 2011), *available at* https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf (last visited Mar. 31, 2021).

[13] DOEA and AHCA, *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014), *available at* https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Mar. 31, 2021).

[14] *Id.*

Florida PACE

The original Florida PACE project was authorized in 1998,[15] under the administration of the DOEA operating in consultation with the AHCA.[16] Florida's first PACE organization, located in Miami-Dade County, began serving enrollees in February 2003 with a total of 150 slots. Since then, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law.

In 2011, administrative responsibility for the PACE was moved from the DOEA to the AHCA as part of the expansion of Medicaid managed care into the SMMC program.[17] Participation by the PACE in the SMMC program is not subject to the procurement requirements or regional plan number limits normally applicable to SMMC plans. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.[18]

The current approval process for a new PACE project authorized by the Legislature requires any entity interested in becoming a PACE organization to submit a comprehensive PACE application to the AHCA, which sets forth details about the adult day care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. The application is similar in detail to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. PACE providers operating in the same geographic region must establish that there is adequate demand for services so that each provider will be viable. The application requires that documentation be submitted demonstrating that PACE providers in the same geographic region are not competing for the same potential enrollees.

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the PACE center, staffing for key positions, and signed provider network contracts, the AHCA certifies to the federal CMS that the PACE site is ready. At that time, the federal CMS reviews the application and readiness certification and, if all requirements are satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund the slots.

Enrollment and Organizational Slots

Slots are authorized by the Legislature for a specific PACE area; however, slots may not always be fully funded in the same year the program is authorized. Some PACE providers need additional time to complete the application process, obtain necessary licensures, or to finalize operations.

[15] Chapter 98-327, Laws of Fla.
[16] Chapter 2011-135, s. 24, Laws of Fla., repealed s. 430.707, F.S., effective October 1, 2013, as part of the expansion of Medicaid managed care.
[17] Chapter 2011-134, Laws of Fla.
[18] Section 409.981(4), F.S.

Funding and Rates

Each year since the PACE's inception, the Legislature has appropriated funds for PACE organizations through proviso language in the GAA or through one of the GAA's accompanying implementing or conforming bills.[19] These directives provide specific slot increases or decreases by county or authorization for implementation of a new program.

PACE organizations receive a capitated Medicaid payment for each enrolled Medicaid long-term care recipient and an enhanced Medicare payment for Medicare enrollees for acute care services from the federal government. The payment amount is established in the GAA and is based on estimates that have been forecast by the Social Services Estimating Conference for the PACE.

The Fiscal Year 2020-2021 GAA provided just over $73 million in PACE program funding to PACE organizations around the state.[20] The following table includes allocation and enrollment information outlined in the Fiscal Year 2020-2021 GAA:

Current PACE Programs[21]				
PACE Organization		**Enrollment**		
Service Area	**Organization**	**Authorized Slots**	**Funded Slots**	**Enrollment (Feb. 2021)[22]**
Broward	Florida PACE	150	125	99
Charlotte	Hope Select PACE	150	150	89
Clay, Duval	Northeast PACE Partners	300	150	57
Collier	Hope Select PACE	120	120	63
Lake, Orange, Osceola, Seminole, Sumter	InnovAge PACE	300	150	0
Lee	Hope Select PACE	380	380	260
Martin	Florida PACE	150	125	0
Miami-Dade	Florida PACE	828	828	816
Palm Beach	Morse PACE	706	706	649
Pinellas	Empath PACE	325	325	314
Total		**3,409**	**3,059**	**2,347**

III. Effect of Proposed Changes:

Section 1 creates s. 430.84, F.S., and codifies the Program of All-Inclusive Care for the Elderly (PACE) within the Florida Statutes. Currently, the program does not have an implementing statute and has been operationalized through annual appropriations, proviso, or bills designed to implement the state budget or conform statute to provisions of the state budget. In addition, the bill:

[19] Chapter 2013-40, Laws of Fla.
[20] Chapter 2020-111, Laws of Fla.
[21] Email from the DOEA, (March 9, 2021) (on file with the Senate Appropriations Subcommittee on Health and Human Services).
[22] AHCA, *Florida Statewide Medicaid Monthly Enrollment Report* (February 28, 2021), *available at* https://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Mar. 31, 2021).

- Authorizes the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA), to approve entities that have submitted the required application and data to the federal Centers for Medicare and Medicaid Services (CMS) as PACE organizations pursuant to 42 U.S.C. s. 1395eee. Applications, as required by the federal CMS, will be reviewed by the AHCA on an ongoing basis, in consultation with the DOEA for initial approval as PACE organizations. Notice of applications must be published in the Florida Administrative Register.
- Requires a prospective PACE organization to submit an application to the AHCA before submitting a request for program funding. An applicant must meet the following requirements:
  - Provide evidence that the applicant can meet all of the federal regulations and requirements established by the federal CMS by the proposed implementation date;
  - Provide market studies which include an estimate of the potential number of participants and which show the geographic area the applicant proposes to serve; and
  - Develop and provide a business plan of operation, including pro forma financial statement and projections based on the planned implementation date.
- Requires each applicant to serve a unique and defined geographic service area without duplication of services or target populations. No more than one PACE organization may be authorized to provide services within any unique and defined geographic area.
- Authorizes a PACE organization that has received funding for slots in a given geographic area to use the funding and slots to provide services in an authorized contiguous geographic area, upon approval from the AHCA.
- Requires an existing PACE organization seeking authority to serve an additional geographic service area not previously authorized by the AHCA to show evidence of regulatory compliance and meet market study requirements.
- Requires any prospective PACE organization that is granted initial state approval by the AHCA, in consultation with the DOEA, to submit its complete federal PACE application to the AHCA and the federal CMS within 12 months after date of initial state approval. If the organization fails to timely meet this requirement, the state approval of the application is void.
- Requires all PACE organizations to meet specific quality and performance standards established by the federal CMS and the state administering agency (the AHCA). The AHCA has the responsibility to oversee and monitor Florida's PACE and the contracted organizations through the data and reports submitted periodically to the AHCA and the federal CMS.
- Exempts all PACE organizations from the requirements of chapter 641, the chapter of Florida law that regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional private sector providers that meet the criteria to be a Program of All-Inclusive Care for the Elderly (PACE) organization and achieve eligibility confirmation status could be approved as PACE sites. Expansion of PACE sites would also mean additional individuals in the community would have access to the PACE model for medical care and long-term care.

C. Government Sector Impact:

PCS/CS/SB 1242 poses a minor operational impact to the AHCA, however, the workload can be absorbed using existing agency resources. Although the bill does not direct the AHCA to initiate rulemaking in conjunction with the new statutory language, the AHCA would need to utilize existing statutory authority to promulgate an administrative rule to clearly outline the AHCA's standard business operation. This can also be completed using existing agency resources.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[23] AHCA, *House Bill 905 Fiscal Analysis* (Feb. 12, 2021) (on file with Senate Committee on Health Policy).

VIII. Statutes Affected:

This bill creates section 430.84 of the Florida Statutes.

IX. Additional Information:

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

PCS 246400 by Appropriations (Recommended by Appropriations Subcommittee on Health and Human Services):
The proposed committee substitute authorizes a Program of All-Inclusive Care for the Elderly (PACE) organization that has received funding for slots in a given geographic area to use the funding and slots to provide services in an authorized contiguous geographic area, upon approval from the Agency for Health Care Administration (AHCA).

CS by Health Policy on March 24, 2021:
The CS requires all PACE organizations to meet specific quality performance standards established by the federal CMS and the state administering agency (the AHCA), rather than just the federal CMS.

B. Amendments:

None.

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

246400

576-03900-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the Program of All-Inclusive Care for the Elderly; creating s. 430.84, F.S.; defining terms; authorizing the Agency for Health Care Administration, in consultation with the Department of Elderly Affairs, to approve entities applying to deliver PACE services in the state; requiring applications to be reviewed and considered on a continuous basis; requiring notice of applications to be published in the Florida Administrative Register; providing specified application requirements for such prospective PACE organizations; requiring existing PACE organizations to meet specified requirements under certain circumstances; requiring prospective PACE organizations to submit a complete application to the agency and the Centers for Medicare and Medicaid Services within a specified period; requiring that PACE organizations meet certain federal and state quality and performance standards; requiring the agency to oversee and monitor the PACE program and organizations; providing that a PACE organization is exempt from certain requirements; providing an effective date.

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

Section 1. Section 430.84, Florida Statutes, is created to

246400

576-03900-21

read:

430.84 Program of All-Inclusive Care for the Elderly.—

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

(a) "Agency" means the Agency for Health Care Administration.

(b) "Applicant" means an entity that has filed an application with the agency for consideration as a Program of All-Inclusive Care for the Elderly (PACE) organization.

(c) "CMS" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.

(d) "Department" means the Department of Elderly Affairs.

(e) "PACE organization" means an entity under contract with the agency to deliver PACE services.

(f) "Participant" means an individual receiving services from a PACE organization who has been determined by the department to need the level of care required under the state Medicaid plan for coverage of nursing facility services.

(2) PROGRAM CREATION.—The agency, in consultation with the department, may approve entities that have submitted applications required by the CMS to the agency for review and consideration which contain the data and information required in subsection (3) to provide benefits pursuant to the PACE program as established in 42 U.S.C. s. 1395eee and in accordance with the requirements set forth in this section.

(3) PACE ORGANIZATION SELECTION.—The agency, in consultation with the department, shall, on a continuous basis, review and consider applications required by the CMS for PACE that have been submitted to the agency by entities seeking

246400

576-03900-21

initial, state approval to become PACE organizations. Notice of such applications shall be published in the Florida Administrative Register.

(a) A prospective PACE organization shall submit application documents to the agency before requesting program funding. Application documents submitted to and reviewed by the agency, in consultation with the department, must include all of the following:

1. Evidence that the applicant has the ability to meet all of the applicable federal regulations and requirements, established by the CMS, for participation as a PACE organization by the proposed implementation date.

2. Market studies, including an estimate of the number of potential participants and the geographic service area in which the applicant proposes to serve.

3. A business plan of operation, including pro forma financial statements and projections, based on the proposed implementation date.

(b) Each applicant must propose to serve a unique and defined geographic service area without duplication of services or target populations. No more than one PACE organization may be authorized to provide services within any unique and defined geographic service area.

(c) Upon agency approval, a PACE organization that is authorized to provide and has received funding for PACE slots in a given geographic area may use such slots and funding to serve the needs of participants in a contiguous geographic area if such PACE organization is authorized to provide PACE services in that area.

246400

576-03900-21

(d) An existing PACE organization seeking authority to serve an additional geographic service area not previously authorized by the agency or Legislature shall meet the requirements set forth in paragraphs (a) and (b).

(e) Any prospective PACE organization that is granted initial state approval by the agency, in consultation with the department, shall submit its complete federal PACE application, in accordance with the application process and guidelines established by the CMS, to the agency and the CMS within 12 months after the date of initial state approval, or such approval is void.

(4) ACCOUNTABILITY.—All PACE organizations must meet specific quality and performance standards established by the CMS and the state administering agency for the PACE program. The agency shall oversee and monitor the PACE program and organizations based upon data and reports periodically submitted by PACE organizations to the agency and the CMS. A PACE organization is exempt from the requirements of chapter 641.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1242
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Book
SUBJECT:	Program of All-Inclusive Care for the Elderly
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	McKnight	Kidd	AHS	**Recommend: Fav/CS**
3.	McKnight	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1242 codifies the Program of All-Inclusive Care for the Elderly (PACE) in section 430.84, Florida Statutes. The bill:

- Establishes a statutory process for the review, approval, and oversight of future and current PACE organizations.
- Authorizes the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA), to approve entities that have submitted the required application and data to the federal Centers for Medicare and Medicaid Services (CMS) as PACE organizations pursuant to federal regulations.
- Requires all PACE organizations to meet specific quality and performance standards established by the federal CMS and the AHCA.
- Requires the AHCA to provide oversight and monitoring of Florida's PACE program and organizations.
- Exempts all PACE organizations from the requirements of ch. 641, F.S., which regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

The bill has no fiscal impact on state revenues or expenditures. *See* Section V of this analysis.

The bill takes effect on July 1, 2021.

II. Present Situation:

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

To qualify for nursing home care under Medicaid, both an individual's income and assets are reviewed. Additionally, a personal needs allowance is applied as part of the eligibility determination process.[1] The current standard income limit in Florida for institutional care or services under the home and community based services waiver is $2,382 for an individual and $4,764 for a couple. There is also an asset limit for either category of $2,000 for an individual or $3,000 for a couple.[2]

In Florida, the Medicaid program is administered by the Agency for Health Care Administration (AHCA). The AHCA, however, delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the Department of Elder Affairs (DOEA). The AHCA has overall responsibility for the program and qualifies providers, sets payment levels, and pays for services.

The DOEA assesses Medicaid recipients to determine if they require nursing home level of care. Specifically, the DOEA determines whether an individual requires or is at imminent risk of nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires:

- Medically complex care to be performed on a daily basis under the direct supervision of a health professional because of mental or physical incapacitation;
- Care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.[3]

Floridians who need nursing home care, but do not qualify for Medicaid, must pay from their own funds or through insurance.

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[1] The personal needs allowance (PNA) of an individual is defined as that portion of an individual's income that is protected to meet the individual's personal needs while in an institution. *See* Department of Children and Families (DCF), *Glossary (Chapter 4600) "Personal Needs Allowance," p. 19, available at* http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/4600.pdf (last visited Mar. 16, 2021).

[2] DCF, *SSI-Related Program-Financial Eligibility Standards: Apr. 1, 2021, available at* https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a_09.pdf (last visited Mar. 16, 2021).

[3] Section 409.985, F.S.

Long-Term Care Managed Care

In 2011, Statewide Medicaid Managed Care (SMMC) was established,[4] requiring both Medicaid Long-Term Care (LTC) services and Managed Medical Assistance (MMA) services to be provided through managed care plans.

Long-Term Care Managed Care plans participating in SMMC are required to provide minimum benefits that include nursing home care as well as home and community based services. The minimum benefits include:

- Nursing home care;
- Services provided in assisted living facilities;
- Hospice;
- Adult day care;
- Medical equipment and supplies, including incontinence supplies;
- Personal care;
- Home accessibility adaptation;
- Behavior management;
- Home delivered meals;
- Case management;
- Therapies, including physical, respiratory, speech, and occupational;
- Intermittent and skilled nursing;
- Medication administration;
- Medication management;
- Nutritional assessment and risk reduction;
- Caregiver training;
- Respite care;
- Transportation; and
- Personal emergency response system.

Program of All-Inclusive Care for the Elderly

The Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 (BBA)[5] that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing mechanism. The model was developed to address the needs of long-term care clients, providers, and payers.

The PACE operates as a three-way agreement between the federal government, the state administering agency, and a PACE organization. In Florida, the PACE is a Florida Medicaid LTC managed care plan option providing comprehensive long-term and acute care services which support Medicaid and Medicare enrollees who would otherwise qualify for Medicaid nursing facility services.[6]

[4] Chapter 2011-134, Laws of Fla.
[5] Specifically, services under the PACE are authorized under Section 1905(a)(26) of the Social Security Act.
[6] Department of Elder Affairs (DOEA) and Agency for Health Care Administration (AHCA), *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014),

The BBA established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver.

The federal government established the PACE organization requirements and application process; however, the state is responsible for oversight of the application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE organization can be authorized to serve participants. An approved PACE organization must sign a contract with the federal CMS and the state Medicaid agency, the AHCA.

The PACE is administered by the DOEA in consultation with the AHCA. The DOEA oversees the contracted PACE organizations but is not a party to the contract between the federal CMS, the AHCA, and the PACE organizations.[7] The DOEA, the AHCA, and the federal CMS must approve any applications for new PACE organizations if expansion is authorized by the Legislature through the necessary appropriation of the state matching funds.

PACE Organizations

A PACE organization is a private not-for-profit 501(c)(3) organization, for-profit private or public entity that is primarily engaged in providing PACE services and must also:

- Have a governing board that includes participant representation;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have a physical site and staff to provide primary care, social services, restorative therapies, personal care and supportive services, nutritional counseling, recreational therapy, and meals;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have demonstrated fiscal soundness;
- Have a formal participant bill of rights; and
- Have a process to address grievances and appeals.[8]

Eligibility and Benefits

To be eligible for PACE, an individual must:

- Be 55 years of age or older;
- Live within the defined service area of the PACE Center;
- Meet medical eligibility requirements as determined by a Comprehensive Assessment and Review of Long-Term Care Services (CARES);[9]

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available at https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Mar. 31, 2021).

[7] *Id.*

[8] HHS, Centers for Medicare and Medicaid Services, *CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual* (issued June 9, 2011), *available at* https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf (last visited Mar. 31, 2021).

[9] Comprehensive Assessment and Review for Long-Term Care Services (CARES) is Florida's federally mandated pre-admission screening program for nursing home applicants. Federal law mandates that the CARES Program perform an assessment or review of each individual who requests Medicaid reimbursement for nursing facility placement, or who seeks

- Be able to live safely in the community; and
- Be dually eligible for Medicaid and Medicare, or Medicaid only. There is also a private pay option with PACE, however this is not regulated by the State.[10]

By federal law, the first three contract years for a PACE organization are considered a trial period, and the PACE organization is subject to annual reviews to ensure compliance.[11] Review of the PACE organization may continue after the trial period by the Secretary or the administering state agency as appropriate, depending upon the PACE organization's performance and compliance with requirements and regulations.

No deductibles, copayments, coinsurance, or other cost-sharing can be charged by a PACE organization. No other limits relating to amount, duration, or scope of services that might otherwise apply in Medicaid are permitted.[12] The PACE enrollee must accept the PACE center physician as his or her new Medicare primary care physician, if enrolled in Medicare.[13]

Quality of Care Requirements

Each PACE organization is required to develop, implement, maintain, and evaluate an effective data-driven Quality Assurance and Performance Improvement (QAPI) program. The program must incorporate all aspects of the PACE organization's operations, which allows for the identification of areas that need performance improvement. The organization's written QAPI plan must be reviewed by the PACE organization's governing body at least annually. At a minimum, the plan should address the following areas:

- Utilization of services in the PACE organization, especially in key services;
- Participant and caregiver satisfaction with services;
- Data collected during patient assessments to determine if individual and organizational-level outcomes were achieved within a specified time period;
- Effectiveness and safety of direct and contracted services delivered to participants; and
- Outcomes in the organization's non-clinical areas.[14]

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to receive home and community-based services through Medicaid waivers like Familial Dysautonomia Waiver, and Statewide Medicaid Managed Care Long-Term Care Program. Any person or family member can initiate a CARES assessment by applying for the Medicaid Institutional Care Program (ICP). Assessments are completed at no cost to the clients and are performed by a registered nurse and/or assessor. DOEA, *Comprehensive Assessment and Review for Long-Term Care Services (CARES), available at* http://elderaffairs.state.fl.us/doea/cares.php (last visited Mar. 31, 2021).

[10] DOEA, *Program of All-Inclusive Care for the Elderly (PACE), available at* http://elderaffairs.state.fl.us/doea/pace.php (last visited Mar. 31. 2021).

[11] *See* 42 U.S.C. s. 1395eee(e)(4)(A) (2020).

[12] HHS, Centers for Medicare and Medicaid Services, *CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual* (issued June 9, 2011), *available at* https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c01.pdf (last visited Mar. 31, 2021).

[13] DOEA and AHCA, *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014), *available at* https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Mar. 31, 2021).

[14] *Id.*

Florida PACE

The original Florida PACE project was authorized in 1998,[15] under the administration of the DOEA operating in consultation with the AHCA.[16] Florida's first PACE organization, located in Miami-Dade County, began serving enrollees in February 2003 with a total of 150 slots. Since then, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law.

In 2011, administrative responsibility for the PACE was moved from the DOEA to the AHCA as part of the expansion of Medicaid managed care into the SMMC program.[17] Participation by the PACE in the SMMC program is not subject to the procurement requirements or regional plan number limits normally applicable to SMMC plans. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.[18]

The current approval process for a new PACE project authorized by the Legislature requires any entity interested in becoming a PACE organization to submit a comprehensive PACE application to the AHCA, which sets forth details about the adult day care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. The application is similar in detail to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. PACE providers operating in the same geographic region must establish that there is adequate demand for services so that each provider will be viable. The application requires that documentation be submitted demonstrating that PACE providers in the same geographic region are not competing for the same potential enrollees.

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the PACE center, staffing for key positions, and signed provider network contracts, the AHCA certifies to the federal CMS that the PACE site is ready. At that time, the federal CMS reviews the application and readiness certification and, if all requirements are satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund the slots.

Enrollment and Organizational Slots

Slots are authorized by the Legislature for a specific PACE area; however, slots may not always be fully funded in the same year the program is authorized. Some PACE providers need additional time to complete the application process, obtain necessary licensures, or to finalize operations.

[15] Chapter 98-327, Laws of Fla.
[16] Chapter 2011-135, s. 24, Laws of Fla., repealed s. 430.707, F.S., effective October 1, 2013, as part of the expansion of Medicaid managed care.
[17] Chapter 2011-134, Laws of Fla.
[18] Section 409.981(4), F.S.

Funding and Rates

Each year since the PACE's inception, the Legislature has appropriated funds for PACE organizations through proviso language in the GAA or through one of the GAA's accompanying implementing or conforming bills.[19] These directives provide specific slot increases or decreases by county or authorization for implementation of a new program.

PACE organizations receive a capitated Medicaid payment for each enrolled Medicaid long-term care recipient and an enhanced Medicare payment for Medicare enrollees for acute care services from the federal government. The payment amount is established in the GAA and is based on estimates that have been forecast by the Social Services Estimating Conference for the PACE.

The Fiscal Year 2020-2021 GAA provided just over $73 million in PACE program funding to PACE organizations around the state.[20] The following table includes allocation and enrollment information outlined in the Fiscal Year 2020-2021 GAA:

Current PACE Programs[21]				
PACE Organization		**Enrollment**		
Service Area	**Organization**	**Authorized Slots**	**Funded Slots**	**Enrollment (Feb. 2021)[22]**
Broward	Florida PACE	150	125	99
Charlotte	Hope Select PACE	150	150	89
Clay, Duval	Northeast PACE Partners	300	150	57
Collier	Hope Select PACE	120	120	63
Lake, Orange, Osceola, Seminole, Sumter	InnovAge PACE	300	150	0
Lee	Hope Select PACE	380	380	260
Martin	Florida PACE	150	125	0
Miami-Dade	Florida PACE	828	828	816
Palm Beach	Morse PACE	706	706	649
Pinellas	Empath PACE	325	325	314
Total		**3,409**	**3,059**	**2,347**

III. Effect of Proposed Changes:

Section 1 creates s. 430.84, F.S., and codifies the Program of All-Inclusive Care for the Elderly (PACE) within the Florida Statutes. Currently, the program does not have an implementing statute and has been operationalized through annual appropriations, proviso, or bills designed to implement the state budget or conform statute to provisions of the state budget. In addition, the bill:

[19] Chapter 2013-40, Laws of Fla.
[20] Chapter 2020-111, Laws of Fla.
[21] Email from the DOEA, (March 9, 2021) (on file with the Senate Appropriations Subcommittee on Health and Human Services).
[22] AHCA, *Florida Statewide Medicaid Monthly Enrollment Report* (February 28, 2021), *available at* https://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Mar. 31, 2021).

- Authorizes the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA), to approve entities that have submitted the required application and data to the federal Centers for Medicare and Medicaid Services (CMS) as PACE organizations pursuant to 42 U.S.C. s. 1395eee. Applications, as required by the federal CMS, will be reviewed by the AHCA on an ongoing basis, in consultation with the DOEA for initial approval as PACE organizations. Notice of applications must be published in the Florida Administrative Register.
- Requires a prospective PACE organization to submit an application to the AHCA before submitting a request for program funding. An applicant must meet the following requirements:
  - Provide evidence that the applicant can meet all of the federal regulations and requirements established by the federal CMS by the proposed implementation date;
  - Provide market studies which include an estimate of the potential number of participants and which show the geographic area the applicant proposes to serve; and
  - Develop and provide a business plan of operation, including pro forma financial statement and projections based on the planned implementation date.
- Requires each applicant to serve a unique and defined geographic service area without duplication of services or target populations. No more than one PACE organization may be authorized to provide services within any unique and defined geographic area.
- Authorizes a PACE organization that has received funding for slots in a given geographic area to use the funding and slots to provide services in an authorized contiguous geographic area, upon approval from the AHCA.
- Requires an existing PACE organization seeking authority to serve an additional geographic service area not previously authorized by the AHCA to show evidence of regulatory compliance and meet market study requirements.
- Requires any prospective PACE organization that is granted initial state approval by the AHCA, in consultation with the DOEA, to submit its complete federal PACE application to the AHCA and the federal CMS within 12 months after date of initial state approval. If the organization fails to timely meet this requirement, the state approval of the application is void.
- Requires all PACE organizations to meet specific quality and performance standards established by the federal CMS and the state administering agency (the AHCA). The AHCA has the responsibility to oversee and monitor Florida's PACE and the contracted organizations through the data and reports submitted periodically to the AHCA and the federal CMS.
- Exempts all PACE organizations from the requirements of chapter 641, the chapter of Florida law that regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional private sector providers that meet the criteria to be a Program of All-Inclusive Care for the Elderly (PACE) organization and achieve eligibility confirmation status could be approved as PACE sites. Expansion of PACE sites would also mean additional individuals in the community would have access to the PACE model for medical care and long-term care.

C. Government Sector Impact:

CS/CS/SB 1242 poses a minor operational impact to the AHCA, however, the workload can be absorbed using existing agency resources. Although the bill does not direct the AHCA to initiate rulemaking in conjunction with the new statutory language, the AHCA would need to utilize existing statutory authority to promulgate an administrative rule to clearly outline the AHCA's standard business operation. This can also be completed using existing agency resources.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[23] AHCA, *House Bill 905 Fiscal Analysis* (Feb. 12, 2021) (on file with Senate Committee on Health Policy).

VIII. Statutes Affected:

This bill creates section 430.84 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute authorizes a Program of All-Inclusive Care for the Elderly (PACE) organization that has received funding for slots in a given geographic area to use the funding and slots to provide services in an authorized contiguous geographic area, upon approval from the Agency for Health Care Administration (AHCA).

CS by Health Policy on March 24, 2021:
The CS requires all PACE organizations to meet specific quality performance standards established by the federal CMS and the state administering agency (the AHCA), rather than just the federal CMS.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Book

588-03330-21 20211242c1

A bill to be entitled

An act relating to the Program of All-Inclusive Care for the Elderly; creating s. 430.84, F.S.; defining terms; authorizing the Agency for Health Care Administration, in consultation with the Department of Elderly Affairs, to approve entities applying to deliver PACE services in the state; requiring applications to be reviewed and considered on a continuous basis; requiring notice of applications to be published in the Florida Administrative Register; providing specified application requirements for such prospective PACE organizations; requiring existing PACE organizations to meet specified requirements under certain circumstances; requiring prospective PACE organizations to submit a complete application to the agency and the Centers for Medicare and Medicaid Services within a specified period; requiring that PACE organizations meet certain federal and state quality and performance standards; requiring the agency to oversee and monitor the PACE program and organizations; providing that a PACE organization is exempt from certain requirements; providing an effective date.

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

Section 1. Section 430.84, Florida Statutes, is created to read:

430.84 Program of All-Inclusive Care for the Elderly.—

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

588-03330-21 20211242c1

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

(a) "Agency" means the Agency for Health Care Administration.

(b) "Applicant" means an entity that has filed an application with the agency for consideration as a Program of All-Inclusive Care for the Elderly (PACE) organization.

(c) "CMS" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.

(d) "Department" means the Department of Elderly Affairs.

(e) "PACE organization" means an entity under contract with the agency to deliver PACE services.

(f) "Participant" means an individual receiving services from a PACE organization who has been determined by the department to need the level of care required under the state Medicaid plan for coverage of nursing facility services.

(2) PROGRAM CREATION.—The agency, in consultation with the department, may approve entities that have submitted applications required by the CMS to the agency for review and consideration which contain the data and information required in subsection (3) to provide benefits pursuant to the PACE program as established in 42 U.S.C. s. 1395eee and in accordance with the requirements set forth in this section.

(3) PACE ORGANIZATION SELECTION.—The agency, in consultation with the department, shall, on a continuous basis, review and consider applications required by the CMS for PACE that have been submitted to the agency by entities seeking initial, state approval to become PACE organizations. Notice of such applications shall be published in the Florida

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

Administrative Register.

(a) A prospective PACE organization shall submit application documents to the agency before requesting program funding. Application documents submitted to and reviewed by the agency, in consultation with the department, must include all of the following:

1. Evidence that the applicant has the ability to meet all of the applicable federal regulations and requirements, established by the CMS, for participation as a PACE organization by the proposed implementation date.

2. Market studies, including an estimate of the number of potential participants and the geographic service area in which the applicant proposes to serve.

3. A business plan of operation, including pro forma financial statements and projections, based on the proposed implementation date.

(b) Each applicant must propose to serve a unique and defined geographic service area without duplication of services or target populations. No more than one PACE organization may be authorized to provide services within any unique and defined geographic service area.

(c) An existing PACE organization seeking authority to serve an additional geographic service area not previously authorized by the agency or Legislature shall meet the requirements set forth in paragraphs (a) and (b).

(d) Any prospective PACE organization that is granted initial state approval by the agency, in consultation with the department, shall submit its complete federal PACE application, in accordance with the application process and guidelines

established by the CMS, to the agency and the CMS within 12 months after the date of initial state approval, or such approval is void.

(4) ACCOUNTABILITY.—All PACE organizations must meet specific quality and performance standards established by the CMS and the state administering agency for the PACE program. The agency shall oversee and monitor the PACE program and organizations based upon data and reports periodically submitted by PACE organizations to the agency and the CMS. A PACE organization is exempt from the requirements of chapter 641.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill 1242**, relating to Program of All-Inclusive Care for the Elderly, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

THE FLORIDA SENATE

APPEARANCE RECORD

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

~~SB 1242~~ 4/19/21
Meeting Date

1242
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PACE

Name Kelly Mallette

Job Title

Address 104 W. Jefferson Street
Street
Tallahassee FL 32301
City State Zip

Phone (850)224 3427

Email kelly@rlbookpa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Miami Jewish Health System

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1292
INTRODUCER:	Health Policy Committee and Senator Bean
SUBJECT:	Medicaid
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	McKnight	Kidd	AHS	**Recommend: Favorable**
3.	McKnight	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1292 updates or repeals outdated or obsolete language relating to:

- Reimbursement of prescribed drugs based on average wholesale price;
- Implementation of, including increases and decreases to, a variable pharmacy dispensing fee;
- Review of certain drugs by the Medicaid Pharmaceutical and Therapeutics Committee;
- Duties of the Department of Children and Families regarding Medicaid Fair Hearings;
- Providing prior "authorizations" rather than "consultations" for pharmacy services;
- Expansion of mail order delivery of pharmacy products;
- Medicaid reimbursement of drugs prescribed to treat erectile dysfunction;
- The definition of "medical necessity;" and
- The Organ Transplant Advisory Council.

The bill also eliminates requirements that the Agency for Health Care Administration (AHCA) submit reports to the Legislature that are obsolete or outdated related to the Pharmaceutical Expense Assistance Program, the Medicaid Reform 1115 Waiver, and Fee-for-Service Pharmaceutical spending.

The bill does not have a fiscal impact on the Florida Medicaid program. *See* Section V of this analysis.

The bill takes effect on July 1, 2021.

II. Present Situation:

Due to the diverse range of issues within the bill, additional background information is provided within the effect of proposed changes section of this analysis for the reader's convenience.

The Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) is the chief health policy and planning entity for the state and is responsible for, among other things, the administration of the Florida Medicaid program, and health facility licensure, inspection, and regulatory enforcement. It licenses or certifies and regulates 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies, and licenses, certifies, regulates or provides exemptions for more than 48,000 providers.[1]

Florida Medicaid Program

The Medicaid program is a partnership between the federal and state governments that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults and persons with disabilities.[2] The federal Centers for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians and is administered by the AHCA, and financed through state and federal funds.[3]

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.[4]

Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services

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[1] *See* Agency for Health Care Administration (AHCA), Division of Health Quality Assurance *available at* http://ahca.myflorida.com/MCHQ/index.shtml (last visited Mar. 31, 2021).
[2] Medicaid.gov, *Medicaid*, *available at* https://www.medicaid.gov/medicaid/index.html (last visited Mar. 3, 2021).
[3] Section 20.42, F.S.
[4] Medicaid.gov, *Medicaid State Plan Amendments, available at* https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html (last visited Mar. 3, 2021).

for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.[5] The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care program. Florida's SMMC offers a health care package covering both acute and long-term care.[6] The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014, and the current contracts expire in 2024.[7]

III. Effect of Proposed Changes:

Pharmaceutical Expense Assistance Program Report

The Pharmaceutical Expense Assistance Program was established within the AHCA in 2006 to provide pharmaceutical expense assistance to individuals diagnosed with cancer or individuals who have received organ transplants who were medically needy recipients prior to January 1, 2006, and who are eligible for Medicare.[8] Using Medicaid payment policies, the AHCA pays Medicare Part B prescription drug coinsurance and deductibles for Medicare Part B medications that treat eligible cancer and organ transplant patients.[9]

The initial program was funded with $3.7 million and approximately 650 people were identified as potentially eligible for the program. Only those unique individuals identified as eligible at the time of the program's passage are eligible and, as a result, program size and expenditures have reduced significantly. The program currently pays pharmacy expenses for approximately 20 individuals who meet that criterion, requiring a total expenditure of $4,457 during Fiscal Year 2019-2020.[10]

The AHCA is currently required to submit an annual report to the Legislature on the operation of the program. The annual report must include information on the number of individuals served, use rates, and expenditures under the program.

Section 1 of the bill amends s. 402.81, F.S., to eliminate the requirement that the AHCA submit a report to the Legislature by January 1 of each year on the operation of the Pharmaceutical Expense Assistance Program.

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[5] Medicaid.gov, *Medicaid State Plan Amendments, available at* https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html (last visited Mar. 3, 2021).
[6] *Id.*
[7] Chapter 2020-156, s. 44, Laws of Fla.
[8] Chapter 2006-28, s. 20, Laws of Fla.; Section 402.81(1) and (2), F.S.
[9] Section 402.81(3), F.S.
[10] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

Drug Pricing Formula

The AHCA is required to reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in agency rule.[11] Florida law specifies that a provider of prescribed drugs must be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the AHCA, plus a dispensing fee.[12]

On February 1, 2016, the federal CMS published a final rule, effective April 1, 2017, that requires states to update reimbursement methodologies for covered outpatient drugs in the Medicaid program.[13] The requirements of this rule include a revised federal regulation requiring states to reimburse at an aggregate upper limit based on actual acquisition cost plus a professional dispensing fee established by the state Medicaid agency.[14]

While states retained the flexibility to establish reimbursement methodologies consistent with the requirements of this final rule, Florida's statutory reimbursement methodology does not align with the new federal requirements. In response, the AHCA amended its reimbursement methodology for covered outpatient drugs.[15] Changes in the bill would update the statutory reimbursement methodologies so they are in line with the federal rules and with the AHCA's current practice.[16]

Section 3 of the bill amends s. 409.908(14), F.S., and **Section 5** of the bill amends s. 409.912(5)(a), F.S., to make changes to provisions setting reimbursement rates for providers of prescribed drugs. Currently, a provider of prescribed drugs must be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee. The Medicaid maximum allowable fee for ingredient cost must be based on the lowest of: the average wholesale price minus 16.4 percent, the wholesaler acquisition cost plus 1.5 percent, the federal upper limit, the state maximum allowable cost, or the usual and customary charge billed by the provider. Under the bill, a provider of prescribed drugs will be reimbursed in an amount not to exceed the lesser of the actual acquisition cost based on the federal CMS National Average Drug Acquisition Cost pricing files plus a professional dispensing fee, the wholesale acquisition cost plus a professional dispensing fee, the state maximum allowable cost plus a professional dispensing fee, or the usual and customary charge billed by the provider.

Section 4 of the bill reenacts s. 409.91195(4), F.S., to incorporate the changes made to s. 409.912(5)(a), F.S.

[11] Section 409.908, F.S.
[12] Sections 409.908(14) and 409.912(5)(a), F.S.
[13] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).
[14] 42 CFR s. 447.512(b)
[15] Fla. Admin. Code R. 59G-4.251 (2020).
[16] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

Variable Dispensing Fee

In addition to reimbursement for a prescription drug's cost, Medicaid pays pharmacies a professional dispensing fee for filling the prescription.

The AHCA is currently required to implement a variable dispensing fee for prescribed drugs. The AHCA is authorized to increase the dispensing fee by $0.50 for the dispensing of a drug on the Medicaid preferred drug list and to reduce the dispensing fee by $0.50 for drugs not on the preferred drug list.[17]

Effective April 1, 2017, federal CMS implemented the use of the term "professional dispensing fee" and mandated that certain criteria be met in setting the dispensing fee.[18] In response, the AHCA updated the Medicaid state plan with a new professional dispensing fee that does not conform to s. 409.908(14)(b) and (c), F.S. **Section 3** of the bill deletes these obsolete paragraphs.

Medicaid Preferred Drug List and Patient Safety

Established in 2000, the Medicaid Pharmaceutical and Therapeutics Committee (Committee) is composed of four allopathic physicians, one osteopathic physician, five pharmacists, and a consumer representative, each appointed by the Governor.[19] The Committee must meet at least quarterly and is responsible for developing, implementing, updating, and providing the AHCA with the Medicaid Preferred Drug List.[20]

Section 4 of the bill amends s. 409.91195(9), F.S., to remove language requiring the AHCA to ensure that any therapeutic class of drugs, including drugs that have been removed from distribution to the public by their manufacturer or the federal Food and Drug Administration (FDA) or have been required to carry a black box warning label by the federal FDA because of safety concerns, is reviewed by the Committee at the "next regularly scheduled meeting." Under current law, after such review, the Committee must recommend whether to retain the therapeutic class of drugs or subcategories of drugs within a therapeutic class on the Medicaid preferred drug list and whether to institute prior authorization requirements necessary to ensure patient safety.

If drugs covered by Florida Medicaid are removed from distribution for safety reasons or because of an FDA-mandated black box warning, the AHCA does not wait for the quarterly committee meetings or for its recommendations because the safety of enrollees could be at stake.[21]

Medicaid Fair Hearings

Individuals who have been turned down for a Medicaid service, or who were receiving a Medicaid service that has been was reduced or stopped, should receive a letter explaining why

[17] Section 409.908(14), F.S.
[18] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).
[19] AHCA, *Medicaid Pharmaceutical & Therapeutics Committee*, *available at* https://ahca.myflorida.com/medicaid/prescribed_drug/pharm_thera/ (last visited Mar. 22, 2021). *See* s. 409.91195, F.S.
[20] *Id*.
[21] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

Medicaid will not pay for or cover the service.[22] In these cases, the individual has the right to challenge that determination in a Medicaid fair hearing.[23] Medicaid fair hearing responsibilities were moved from the Department of Children and Families (DCF) to the AHCA in 2016.[24]

Section 4 of the bill amends s. 409.91195(10), F.S., to reflect that the AHCA is responsible for Medicaid fair hearings in which preferred drug formulary decisions are appealed, rather than the DCF.

Prior Consultation and Prior Authorization

The AHCA is required to establish procedures ensuring that there is a response to a request for prior consultation by telephone or other communication device within 24 hours after receipt of a request for prior consultation.[25] Prior authorization means a process by which a health care provider must qualify for payment coverage by obtaining advance approval from a health plan before a specific service is delivered to the patient.[26]

Section 5 of the bill amends that provision to change prior "consultation" to prior "authorization." The AHCA does not provide pharmacy consultations, as that responsibility lies with the pharmacist.[27]

Home Delivery of Pharmacy Products

Since 2011, the AHCA has been required to "expand" home delivery of pharmaceuticals.[28] This provision predates the implementation of the SMMC program and the current Medicaid Pharmacy services rule.[29] The AHCA reports that this language is no longer needed because Medicaid FFS and managed care plans already provide for mail order delivery of drugs.

Section 5 deletes the outdated provisions requiring the AHCA to expand home delivery of pharmacy products.

Erectile Dysfunction Drugs

In 2005, federal law was amended to prohibit Medicaid federal financial participation for drugs used for the treatment of sexual or erectile dysfunction, unless such drugs were approved by the federal Food and Drug Administration to treat a different condition.[30] The Florida Medicaid

[22] AHCA, *Medicaid Fair Hearings, available at* https://ahca.myflorida.com/medicaid/complaints/fair_hrng.shtml (last visited Mar. 22, 2021).
[23] *Id.*
[24] Chapter 2016-65, Laws of Fla.
[25] Section 409.912(5)(a), F.S
[26] Riley, Hannah, Gistia Healthcare, *Making Sense of Prior Authorization, What is it?* (Apr. 21, 2020) *available at* https://www.gistia.com/insights/what-is-prior-authorization (last visited Mar. 22, 2021).
[27] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).
[28] Section 409.912(5)(a), F.S.
[29] *Id.*
[30] *Id.*

program is currently authorized to reimburse any drug prescribed to treat erectile dysfunction, limited to one dose per month.[31] This authorization predates the federal prohibition.

Section 5 deletes the provision limiting the doses of sexual or erectile dysfunction drugs, as Florida Medicaid does not cover such drugs based on the 2005 prohibition.

Medicaid Fee-for-Service Pharmaceutical Quarterly Report

The AHCA is currently required to submit quarterly reports to the Legislature on the implementation of a Medicaid prescribed-drug spending-control program for the FFS delivery system.[32] The reporting requirement has been in place since 2010 and pre-dates the implementation of the SMMC program and therefore, the cost controls described are no longer applicable to most Medicaid recipients in Florida. Fee-for-service Medicaid recipients are typically not enrolled in managed care due to specific health needs, the presence of other insurance, or because they are living in a facility that provides their prescription drugs. The results of the report do not generally reflect the Medicaid population.

Section 5 eliminates the requirement that the AHCA report quarterly to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress made on implementing s. 409.912(5), F.S., relating to Medicaid prescribed drug spending and its effect on expenditures.

Medicaid Reform 1115 Waiver Report

The AHCA is required to submit to the Legislature quarterly progress reports and annual reports that are submitted to the federal CMS for the 1115 Managed Medical Assistance waiver which is tied to the original 2006 Medicaid Reform waiver authority. The Medicaid Reform pilot program ended in 2014 with the full implementation of the SMMC program. These reports are now obsolete. All federal CMS-mandated reports regarding the SMMC waiver are posted on the AHCA's website to ensure transparency about the waiver.[33]

Section 6 of the bill repeals s. 409.91213, F.S., to eliminate the requirement that the AHCA submit a quarterly progress report and an annual report relating to the 1115 Managed Medical Assistance waiver to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability.

[31] Section 409.912(5)(a), F.S.
[32] Section 409.912 (5)(c), F.S.
[33] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

Medical Necessity

Federal law specifies that state Medicaid programs do not have to cover services that are not medically necessary.[34] Each state has adopted its own definition of "medical necessity."[35] Section 409.913(1)(d), F.S., specifies that the AHCA is the final arbiter of medical necessity for purposes of medical reimbursement. Further, that paragraph requires determinations of medical necessity to be made by a licensed physician employed by or under contract with the AHCA, based upon information available *at the time the goods or services are provided*.

Pursuant to Rule 59G-1.010 of the Florida Administrative Code, care, goods, and services are medically necessary if they are:

- Necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
- Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
- Consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
- Reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
- Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

Section 7 of the bill amends s. 409.913, F.S., to create an exception to the requirement that determinations of medical necessity must be made by a licensed physician employed by or under contract with the AHCA. The exception enables doctoral-level, board-certified behavior analysts to make determinations of medical necessity for behavior analysis services in addition to licensed physicians. The bill also requires a determination of medical necessity to be based on information available at the time the goods or services are requested, rather than when they are provided. This change will bring Florida law into line with federal regulations.[36]

Organ Transplant Advisory Council

Section 765.53, F.S., establishes the Organ Transplant Advisory Council (OTAC) to consist of 12 physician members who are appointed to represent the interests of the public and the clients of the Department of Health or the AHCA. All members are appointed by the Secretary of Health Care Administration for two-year terms. The OTAC is responsible for recommending indications for adult and pediatric organ transplants to the AHCA and formulating guidelines and standards for organ transplants and for the development of End Stage Organ Disease and Tissue/Organ Transplant programs. The OTAC's recommendations, guidelines, and standards are limited in applicability to only those health programs funded through the AHCA.

[34] 42 U.S.C. s. 1395y.
[35] Dickey, Elizabeth, NOLO, Getting Approval for Medicaid Services: Medical Necessity *available at* https://www.nolo.com/legal-encyclopedia/getting-approval-medicaid-services-medical-necessity.html (last viewed Mar. 22, 2021).
[36] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

The OTAC met 22 times with its first meeting held on August 27, 2007, and its last meeting held on April 14, 2015.[37]

Most actions of the OTAC revolved around approving guidelines for organ transplantations and reviewing and approving hospital transplant program applications for recommendation to the AHCA, which have been adopted into rule and into the Medicaid State Plan.[38] The AHCA indicates that the duties and responsibilities of the OTAC have become redundant because of federal CMS oversight, the Organ Procurement and Transplantation Network, the federal Health Resources and Services Administration, the United Network for Organ Sharing, Organ Procurement Organizations, the Foundation for the Accreditation of Cellular Therapy, and the Joint Commission.[39] The non-statutory function of the OTAC (recommending approval of transplant programs to the Secretary of Health Care Administration for Medicaid-designation) could be undertaken by staff of the AHCA.[40]

Section 8 of the bill repeals s. 765.53, F.S., to dissolve the OTAC by eliminating its statutory authority. **Section 2** of the bill amends s. 409.815, F.S., to delete a reference to the OTAC which would be dissolved under such repeal.

Section 9 of the bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[37] AHCA, *Organ Transplant Advisory Council Meeting Information*, *available at* https://ahca.myflorida.com/medicaid/organ_transplant/meetings.shtml (last viewed Mar. 19, 2021).
[38] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).
[39] *Id.*
[40] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The AHCA reports that the bill will not have a fiscal impact on the Medicaid program, nor have any impact on recipients or providers.[41]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.81, 409.815, 409.908, 409.91195, 409.912, and 409.913.

This bill repeals the following sections of the Florida Statutes: 409.91213 and 765.53.

IX. Additional Information:

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

CS by Health Policy on March 24, 2021:
The CS reinstates the current requirement in s. 409.908(2)(b), F.S., for the AHCA to submit an annual report related to nursing home direct and indirect care costs to the Legislature.

The CS also reinstates the current requirement in s. 409.913(d), F.S., that a determination of medical necessity must be made by a licensed physician, but also creates an exception for behavior analysis services by authorizing a doctoral-level, board-certified behavior analyst to make a determination of medical necessity, in addition to a licensed physician. The CS also reinstates and revises the current requirement for a determination of medical necessity to be based upon information available at the time the goods and services are "requested," rather than when they are "provided."

[41] AHCA, *Senate Bill 1292 Fiscal Analysis* (Feb. 19, 2021) (on file with the Senate Committee on Health Policy).

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Bean

588-03321-21 20211292c1

A bill to be entitled

An act relating to Medicaid; amending s. 402.81, F.S.; deleting a requirement for the Agency for Health Care Administration to submit an annual report to the Legislature on the operation of the pharmaceutical expense assistance program; amending s. 409.815, F.S.; conforming a provision to changes made by the act; amending s. 409.908, F.S.; revising the method for determining prescribed drug provider reimbursements; deleting a requirement for the agency to implement certain fees for prescribed medicines; deleting authorization for the agency to increase certain dispensing fees by certain amounts; reenacting and amending s. 409.91195, F.S., relating to the Medicaid Pharmaceutical and Therapeutics Committee; deleting a requirement for the agency to ensure that the committee reviews certain drugs under certain circumstances; designating the agency, rather than the Department of Children and Families, as the administrator for certain hearings; amending s. 409.912, F.S.; requiring the agency to establish certain procedures related to prior authorization requests rather than prior consultation requests; revising the method for determining prescribed drug provider reimbursements; deleting a requirement for the agency to expand home delivery of pharmacy products; deleting a dosage limitation on certain drugs; deleting a requirement for the agency to submit certain quarterly reports to the Governor and the

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

588-03321-21 20211292c1

Legislature; repealing s. 409.91213, F.S., relating to quarterly progress reports and annual reports; amending s. 409.913, F.S.; revising the definitions of the terms "medical necessity" and "medically necessary" to provide an exception for behavior analysis services determinations; requiring that determinations be based on information available at the time goods or services are requested, rather than at the time such goods or services are provided; repealing s. 765.53, F.S., relating to the Organ Transplant Advisory Council; providing an effective date.

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

Section 1. Subsection (4) of section 402.81, Florida Statutes, is amended to read:

402.81 Pharmaceutical expense assistance.—

(4) ADMINISTRATION.—The agency shall administer the pharmaceutical expense assistance program ~~shall be administered by the agency,~~ in collaboration with the Department of Elderly Affairs and the Department of Children and Families. ~~By January 1 of each year, the agency shall report to the Legislature on the operation of the program. The report shall include information on the number of individuals served, use rates, and expenditures under the program.~~

Section 2. Paragraph (e) of subsection (2) of section 409.815, Florida Statutes, is amended to read:

409.815 Health benefits coverage; limitations.—

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

(2) BENCHMARK BENEFITS.—In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.821, the health benefits coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(e) *Organ transplantation services.*—Covered services include pretransplant, transplant, and postdischarge services and treatment of complications after transplantation for transplants deemed necessary and appropriate within the guidelines set by the ~~Organ Transplant Advisory Council under s. 765.53 or the~~ Bone Marrow Transplant Advisory Panel under s. 627.4236.

Section 3. Subsection (14) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected

retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(14) A provider of prescribed drugs shall be reimbursed in an amount not to exceed the lesser of the actual acquisition cost based on the Centers for Medicare and Medicaid Services National Average Drug Acquisition Cost pricing files plus a professional dispensing fee, the wholesale acquisition cost plus a professional dispensing fee, the state maximum allowable cost plus a professional dispensing fee, or the usual and customary charge billed by the provider ~~the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee. The Medicaid maximum allowable fee for ingredient cost must be based on the lowest of: the average wholesale price (AWP) minus 16.4 percent, the wholesaler acquisition cost (WAC) plus 1.5 percent, the federal upper limit (FUL), the state maximum allowable cost (SMAC), or the usual and customary (UAC) charge billed by the provider~~.

(a) Medicaid providers must dispense generic drugs if available at lower cost and the agency has not determined that the branded product is more cost-effective, unless the prescriber has requested and received approval to require the branded product.

(b) ~~The agency shall implement a variable dispensing fee for prescribed medicines while ensuring continued access for Medicaid recipients. The variable dispensing fee may be based upon, but not limited to, either or both the volume of prescriptions dispensed by a specific pharmacy provider, the volume of prescriptions dispensed to an individual recipient, and dispensing of preferred drug list products.~~

~~(c) The agency may increase the pharmacy dispensing fee authorized by statute and in the General Appropriations Act by $0.50 for the dispensing of a Medicaid preferred-drug-list product and reduce the pharmacy dispensing fee by $0.50 for the dispensing of a Medicaid product that is not included on the preferred drug list.~~

~~(d)~~ The agency may establish a supplemental pharmaceutical dispensing fee to be paid to providers returning unused unit-dose packaged medications to stock and crediting the Medicaid program for the ingredient cost of those medications if the ingredient costs to be credited exceed the value of the supplemental dispensing fee.

(c) ~~(e)~~ The agency may limit reimbursement for prescribed medicine in order to comply with any limitations or directions provided in the General Appropriations Act, which may include implementing a prospective or concurrent utilization review program.

Section 4. Subsections (9) and (11) of section 409.91195, Florida Statutes, are amended, and subsection (4) of that section is reenacted for the purpose of incorporating the amendment made by this act to section 409.912, Florida Statutes, in a reference thereto, to read:

409.91195 Medicaid Pharmaceutical and Therapeutics Committee.—There is created a Medicaid Pharmaceutical and Therapeutics Committee within the agency for the purpose of developing a Medicaid preferred drug list.

(4) Upon recommendation of the committee, the agency shall adopt a preferred drug list as described in s. 409.912(5). To the extent feasible, the committee shall review all drug classes included on the preferred drug list every 12 months, and may recommend additions to and deletions from the preferred drug list, such that the preferred drug list provides for medically appropriate drug therapies for Medicaid patients which achieve cost savings contained in the General Appropriations Act.

~~(9) Upon timely notice, the agency shall ensure that any therapeutic class of drugs which includes a drug that has been removed from distribution to the public by its manufacturer or the United States Food and Drug Administration or has been required to carry a black box warning label by the United States Food and Drug Administration because of safety concerns is reviewed by the committee at the next regularly scheduled meeting. After such review, the committee must recommend whether to retain the therapeutic class of drugs or subcategories of drugs within a therapeutic class on the preferred drug list and whether to institute prior authorization requirements necessary to ensure patient safety.~~

(10)~~(11)~~ Medicaid recipients may appeal agency preferred drug formulary decisions using the Medicaid fair hearing process administered by the Agency for Health Care Administration ~~Department of Children and Families~~.

Section 5. Paragraphs (a) and (c) of subsection (5) of section 409.912, Florida Statutes, are amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a

provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records,

clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(5)(a) The agency shall implement a Medicaid prescribed-drug spending-control program that includes the following components:

1. A Medicaid preferred drug list, which shall be a listing of cost-effective therapeutic options recommended by the Medicaid Pharmacy and Therapeutics Committee established pursuant to s. 409.91195 and adopted by the agency for each therapeutic class on the preferred drug list. At the discretion of the committee, and when feasible, the preferred drug list should include at least two products in a therapeutic class. The agency may post the preferred drug list and updates to the list on an Internet website without following the rulemaking procedures of chapter 120. Antiretroviral agents are excluded from the preferred drug list. The agency shall also limit the amount of a prescribed drug dispensed to no more than a 34-day supply unless the drug products' smallest marketed package is greater than a 34-day supply, or the drug is determined by the agency to be a maintenance drug in which case a 100-day maximum supply may be authorized. The agency may seek any federal

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waivers necessary to implement these cost-control programs and to continue participation in the federal Medicaid rebate program, or alternatively to negotiate state-only manufacturer rebates. The agency may adopt rules to administer this subparagraph. The agency shall continue to provide unlimited contraceptive drugs and items. The agency must establish procedures to ensure that:

a. There is a response to a request for prior authorization ~~consultation~~ by telephone or other telecommunication device within 24 hours after receipt of a request for prior authorization ~~consultation~~; and

b. A 72-hour supply of the drug prescribed is provided in an emergency or when the agency does not provide a response within 24 hours as required by sub-subparagraph a.

2. A provider of prescribed drugs is reimbursed in an amount not to exceed the lesser of the actual acquisition cost based on the Centers for Medicare and Medicaid Services National Average Drug Acquisition Cost pricing files plus a professional dispensing fee, the wholesale acquisition cost plus a professional dispensing fee, the state maximum allowable cost plus a professional dispensing fee, or the usual and customary charge billed by the provider ~~Reimbursement to pharmacies for Medicaid prescribed drugs shall be set at the lowest of: the average wholesale price (AWP) minus 16.4 percent, the wholesaler acquisition cost (WAC) plus 1.5 percent, the federal upper limit (FUL), the state maximum allowable cost (SMAC), or the usual and customary (UAC) charge billed by the provider~~.

3. The agency shall develop and implement a process for managing the drug therapies of Medicaid recipients who are using

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significant numbers of prescribed drugs each month. The management process may include, but is not limited to, comprehensive, physician-directed medical-record reviews, claims analyses, and case evaluations to determine the medical necessity and appropriateness of a patient's treatment plan and drug therapies. The agency may contract with a private organization to provide drug-program-management services. The Medicaid drug benefit management program shall include initiatives to manage drug therapies for HIV/AIDS patients, patients using 20 or more unique prescriptions in a 180-day period, and the top 1,000 patients in annual spending. The agency shall enroll any Medicaid recipient in the drug benefit management program if he or she meets the specifications of this provision and is not enrolled in a Medicaid health maintenance organization.

4. The agency may limit the size of its pharmacy network based on need, competitive bidding, price negotiations, credentialing, or similar criteria. The agency shall give special consideration to rural areas in determining the size and location of pharmacies included in the Medicaid pharmacy network. A pharmacy credentialing process may include criteria such as a pharmacy's full-service status, location, size, patient educational programs, patient consultation, disease management services, and other characteristics. The agency may impose a moratorium on Medicaid pharmacy enrollment if it is determined that it has a sufficient number of Medicaid-participating providers. The agency must allow dispensing practitioners to participate as a part of the Medicaid pharmacy network regardless of the practitioner's proximity to any other

entity that is dispensing prescription drugs under the Medicaid program. A dispensing practitioner must meet all credentialing requirements applicable to his or her practice, as determined by the agency.

5. The agency shall develop and implement a program that requires Medicaid practitioners who issue written prescriptions for medicinal drugs to use a counterfeit-proof prescription pad for Medicaid prescriptions. The agency shall require the use of standardized counterfeit-proof prescription pads by prescribers who issue written prescriptions for Medicaid recipients. The agency may implement the program in targeted geographic areas or statewide.

6. The agency may enter into arrangements that require manufacturers of generic drugs prescribed to Medicaid recipients to provide rebates of at least 15.1 percent of the average manufacturer price for the manufacturer's generic products. These arrangements shall require that if a generic-drug manufacturer pays federal rebates for Medicaid-reimbursed drugs at a level below 15.1 percent, the manufacturer must provide a supplemental rebate to the state in an amount necessary to achieve a 15.1-percent rebate level.

7. The agency may establish a preferred drug list as described in this subsection, and, pursuant to the establishment of such preferred drug list, negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the Social Security Act and at no less than 14 percent of the average manufacturer price as defined in 42 U.S.C. s. 1936 on the last day of a quarter unless the federal or supplemental rebate, or both, equals or exceeds 29 percent. There is no upper

limit on the supplemental rebates the agency may negotiate. The agency may determine that specific products, brand-name or generic, are competitive at lower rebate percentages. Agreement to pay the minimum supplemental rebate percentage guarantees a manufacturer that the Medicaid Pharmaceutical and Therapeutics Committee will consider a product for inclusion on the preferred drug list. However, a pharmaceutical manufacturer is not guaranteed placement on the preferred drug list by simply paying the minimum supplemental rebate. Agency decisions will be made on the clinical efficacy of a drug and recommendations of the Medicaid Pharmaceutical and Therapeutics Committee, as well as the price of competing products minus federal and state rebates. The agency may contract with an outside agency or contractor to conduct negotiations for supplemental rebates. For the purposes of this section, the term "supplemental rebates" means cash rebates. Value-added programs as a substitution for supplemental rebates are prohibited. The agency may seek any federal waivers to implement this initiative.

8.a. ~~The agency shall expand home delivery of pharmacy products. The agency may amend the state plan and issue a procurement, as necessary, in order to implement this program. The procurements must include agreements with a pharmacy or pharmacies located in the state to provide mail order delivery services at no cost to the recipients who elect to receive home delivery of pharmacy products. The procurement must focus on serving recipients with chronic diseases for which pharmacy expenditures represent a significant portion of Medicaid pharmacy expenditures or which impact a significant portion of the Medicaid population. The agency may seek and implement any~~

~~federal waivers necessary to implement this subparagraph.~~

~~9. The agency shall limit to one dose per month any drug prescribed to treat erectile dysfunction.~~

~~10.a.~~ The agency may implement a Medicaid behavioral drug management system. The agency may contract with a vendor that has experience in operating behavioral drug management systems to implement this program. The agency may seek federal waivers to implement this program.

b. The agency, in conjunction with the Department of Children and Families, may implement the Medicaid behavioral drug management system that is designed to improve the quality of care and behavioral health prescribing practices based on best practice guidelines, improve patient adherence to medication plans, reduce clinical risk, and lower prescribed drug costs and the rate of inappropriate spending on Medicaid behavioral drugs. The program may include the following elements:

(I) Provide for the development and adoption of best practice guidelines for behavioral health-related drugs such as antipsychotics, antidepressants, and medications for treating bipolar disorders and other behavioral conditions; translate them into practice; review behavioral health prescribers and compare their prescribing patterns to a number of indicators that are based on national standards; and determine deviations from best practice guidelines.

(II) Implement processes for providing feedback to and educating prescribers using best practice educational materials and peer-to-peer consultation.

(III) Assess Medicaid beneficiaries who are outliers in

their use of behavioral health drugs with regard to the numbers and types of drugs taken, drug dosages, combination drug therapies, and other indicators of improper use of behavioral health drugs.

(IV) Alert prescribers to patients who fail to refill prescriptions in a timely fashion, are prescribed multiple same-class behavioral health drugs, and may have other potential medication problems.

(V) Track spending trends for behavioral health drugs and deviation from best practice guidelines.

(VI) Use educational and technological approaches to promote best practices, educate consumers, and train prescribers in the use of practice guidelines.

(VII) Disseminate electronic and published materials.

(VIII) Hold statewide and regional conferences.

(IX) Implement a disease management program with a model quality-based medication component for severely mentally ill individuals and emotionally disturbed children who are high users of care.

9.~~11.~~ The agency shall implement a Medicaid prescription drug management system.

a. The agency may contract with a vendor that has experience in operating prescription drug management systems in order to implement this system. Any management system that is implemented in accordance with this subparagraph must rely on cooperation between physicians and pharmacists to determine appropriate practice patterns and clinical guidelines to improve the prescribing, dispensing, and use of drugs in the Medicaid program. The agency may seek federal waivers to implement this

program.

b. The drug management system must be designed to improve the quality of care and prescribing practices based on best practice guidelines, improve patient adherence to medication plans, reduce clinical risk, and lower prescribed drug costs and the rate of inappropriate spending on Medicaid prescription drugs. The program must:

(I) Provide for the adoption of best practice guidelines for the prescribing and use of drugs in the Medicaid program, including translating best practice guidelines into practice; reviewing prescriber patterns and comparing them to indicators that are based on national standards and practice patterns of clinical peers in their community, statewide, and nationally; and determine deviations from best practice guidelines.

(II) Implement processes for providing feedback to and educating prescribers using best practice educational materials and peer-to-peer consultation.

(III) Assess Medicaid recipients who are outliers in their use of a single or multiple prescription drugs with regard to the numbers and types of drugs taken, drug dosages, combination drug therapies, and other indicators of improper use of prescription drugs.

(IV) Alert prescribers to recipients who fail to refill prescriptions in a timely fashion, are prescribed multiple drugs that may be redundant or contraindicated, or may have other potential medication problems.

10.~~12.~~ The agency may contract for drug rebate administration, including, but not limited to, calculating rebate amounts, invoicing manufacturers, negotiating disputes

with manufacturers, and maintaining a database of rebate collections.

11.~~13.~~ The agency may specify the preferred daily dosing form or strength for the purpose of promoting best practices with regard to the prescribing of certain drugs as specified in the General Appropriations Act and ensuring cost-effective prescribing practices.

12.~~14.~~ The agency may require prior authorization for Medicaid-covered prescribed drugs. The agency may prior-authorize the use of a product:

a. For an indication not approved in labeling;

b. To comply with certain clinical guidelines; or

c. If the product has the potential for overuse, misuse, or abuse.

The agency may require the prescribing professional to provide information about the rationale and supporting medical evidence for the use of a drug. The agency shall post prior authorization, step-edit criteria and protocol, and updates to the list of drugs that are subject to prior authorization on the agency's Internet website within 21 days after the prior authorization and step-edit criteria and protocol and updates are approved by the agency. For purposes of this subparagraph, the term "step-edit" means an automatic electronic review of certain medications subject to prior authorization.

13.~~15.~~ The agency, in conjunction with the Pharmaceutical and Therapeutics Committee, may require age-related prior authorizations for certain prescribed drugs. The agency may preauthorize the use of a drug for a recipient who may not meet

the age requirement or may exceed the length of therapy for use of this product as recommended by the manufacturer and approved by the Food and Drug Administration. Prior authorization may require the prescribing professional to provide information about the rationale and supporting medical evidence for the use of a drug.

14.~~16.~~ The agency shall implement a step-therapy prior authorization approval process for medications excluded from the preferred drug list. Medications listed on the preferred drug list must be used within the previous 12 months before the alternative medications that are not listed. The step-therapy prior authorization may require the prescriber to use the medications of a similar drug class or for a similar medical indication unless contraindicated in the Food and Drug Administration labeling. The trial period between the specified steps may vary according to the medical indication. The step-therapy approval process shall be developed in accordance with the committee as stated in s. 409.91195(7) and (8). A drug product may be approved without meeting the step-therapy prior authorization criteria if the prescribing physician provides the agency with additional written medical or clinical documentation that the product is medically necessary because:

a. There is not a drug on the preferred drug list to treat the disease or medical condition which is an acceptable clinical alternative;

b. The alternatives have been ineffective in the treatment of the beneficiary's disease; or

c. Based on historic evidence and known characteristics of the patient and the drug, the drug is likely to be ineffective,

or the number of doses have been ineffective.

The agency shall work with the physician to determine the best alternative for the patient. The agency may adopt rules waiving the requirements for written clinical documentation for specific drugs in limited clinical situations.

15.~~17.~~ The agency shall implement a return and reuse program for drugs dispensed by pharmacies to institutional recipients, which includes payment of a $5 restocking fee for the implementation and operation of the program. The return and reuse program shall be implemented electronically and in a manner that promotes efficiency. The program must permit a pharmacy to exclude drugs from the program if it is not practical or cost-effective for the drug to be included and must provide for the return to inventory of drugs that cannot be credited or returned in a cost-effective manner. The agency shall determine if the program has reduced the amount of Medicaid prescription drugs which are destroyed on an annual basis and if there are additional ways to ensure more prescription drugs are not destroyed which could safely be reused.

~~(c) The agency shall submit quarterly reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include, but need not be limited to, the progress made in implementing this subsection and its effect on Medicaid prescribed-drug expenditures.~~

Section 6. Section 409.91213, Florida Statutes, is repealed.

Section 7. Paragraph (d) of subsection (1) of section

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

409.913, Florida Statutes, is amended to read:

409.913 Oversight of the integrity of the Medicaid program.—The agency shall operate a program to oversee the activities of Florida Medicaid recipients, and providers and their representatives, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. Each January 15, the agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs shall submit a report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year. The report must describe the number of cases opened and investigated each year; the sources of the cases opened; the disposition of the cases closed each year; the amount of overpayments alleged in preliminary and final audit letters; the number and amount of fines or penalties imposed; any reductions in overpayment amounts negotiated in settlement agreements or by other means; the amount of final agency determinations of overpayments; the amount deducted from federal claiming as a result of overpayments; the amount of overpayments recovered each year; the amount of cost of investigation recovered each year; the average length of time to collect from the time the case was opened until the overpayment is paid in full; the amount determined as uncollectible and the portion of the uncollectible amount subsequently reclaimed from the Federal Government; the number of providers, by type, that are terminated from participation in the Medicaid program as a result of fraud and abuse; and all costs associated with

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discovering and prosecuting cases of Medicaid overpayments and making recoveries in such cases. The report must also document actions taken to prevent overpayments and the number of providers prevented from enrolling in or reenrolling in the Medicaid program as a result of documented Medicaid fraud and abuse and must include policy recommendations necessary to prevent or recover overpayments and changes necessary to prevent and detect Medicaid fraud. All policy recommendations in the report must include a detailed fiscal analysis, including, but not limited to, implementation costs, estimated savings to the Medicaid program, and the return on investment. The agency must submit the policy recommendations and fiscal analyses in the report to the appropriate estimating conference, pursuant to s. 216.137, by February 15 of each year. The agency and the Medicaid Fraud Control Unit of the Department of Legal Affairs each must include detailed unit-specific performance standards, benchmarks, and metrics in the report, including projected cost savings to the state Medicaid program during the following fiscal year.

(1) For the purposes of this section, the term:

(d) "Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice. For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of

medical necessity must be made by a licensed physician employed by or under contract with the agency, except for behavior analysis services, which may be determined by a licensed physician or a doctoral-level board-certified behavior analyst. Determinations ~~and~~ must be based upon information available at the time the goods or services are requested ~~provided~~.

Section 8. Section 765.53, Florida Statutes, is repealed.

Section 9. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #1292**, relating to Medicaid, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1344
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senator Burgess
SUBJECT:	Protection of Elderly Persons and Disabled Adults
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Favorable**
2.	Siples	Jones	CJ	**Fav/CS**
3.	Dale	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1344 expands the jurisdiction of the Office of Statewide Prosecution (OSP) within the Florida Office of the Attorney General (OAG) to include specified authority over crimes against elderly persons and disabled adults as outlined in ch. 825, F.S.

The bill also provides additional methods of proving abuse and exploitation of an elderly person or disabled adult by criminalizing the intentional isolation of vulnerable adults from family members for a length of time which could reasonably lead to physical or psychological injury to the elderly person, or with the intent to effect, conceal, or disguise criminal activity involving the elderly person or disabled adult or their property.

The bill criminalizes the previously uncharged conduct of an exploiter who fraudulently creates or changes the terms of the will or trust of a vulnerable adult in order to benefit the exploiter or a co-conspirator. The bill forfeits inheritances under a will, through a trust, through joint tenancy or contractual arrangements for a person convicted of abuse, neglect, exploitation, or aggravated manslaughter. In the absence of a conviction, the bill affects disinheritance if a court finds, by the greater weight of the evidence that an individual caused or contributed to the death of the decedent. The bill also expands who may file an injunction for protection for exploitation of a vulnerable adult and extends the time of a temporary injunction to up to 45 days.

The OAG anticipates that the bill will have a positive fiscal impact on state government by consolidating the investigation and prosecution of multi-circuit criminal activity related to crimes

of elder abuse and exploitation, alleviating some of the burden on local law enforcement and prosecution. The Office of Economic and Demographic Research preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Elder Population

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016[1] to 77 million by 2034.[2] Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.[3] In 2019, individuals age 65 and older represented approximately 20.9 percent of Florida's total population.[4] By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and it is estimated that individuals age 65 and older will account for approximately 47.9 percent of the state's population growth between 2010 and 2030.[5]

Vulnerable Adults and Elderly Residents

In 2016, 35.2 percent of individuals nationwide 65 years of age or older were reported to have a disability.[6] Moreover, 19 percent of Florida elders surveyed in a 2016 study conducted by the

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[1] Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing, Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, available at https://www.census.gov/newsroom/press-releases/2017/cb17-100.html (last visited April 20, 2021).
[2] Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised October 8, 2019), available at https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html (last visited April 20, 2021).
[3] Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/ (last visited April 20, 2021).
[4] U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age*, June 25, 2020, available at https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html (last visited April 20, 2021).
[5] The Office of Economic & Demographic Research (EDR), *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, available at http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf; and the EDR, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf (all sites last visited April 20, 2021).
[6] University of New Hampshire Institute on Disability/UCED, *2017 Disability Statistics Annual Report*, p. 2, available at https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf (last visited April 20, 2021).

Department of Elder Affairs (DOEA) indicated that they required assistance with activities of daily living, such as walking, bathing, and dressing.[7]

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.[8] In Florida, almost 1.3 million senior citizens live in medically underserved areas and 1.4 million suffer from one or more disabilities.[9] According to the U.S. Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in 1 out of every 24 cases.[10] Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.[11] Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.[12]

Elder abuse occurs in community settings, such as private homes, as well as in institutional settings like nursing homes and other long-term care facilities. Prevalent forms of abuse are financial exploitation, neglect, emotional or psychological abuse, and physical abuse; however, an elder abuse victim will often experience multiple forms of abuse at the same time.[13] The most common perpetrators of elder abuse are relatives, such as adult children or a spouse, followed by friends and neighbors, and then home care aides.[14] Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.[15] Elder abuse deaths are more likely to go undetected because an elder death is expected to occur, given age or infirmity, more so than other deaths due to abuse such as a child death or a death

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[7] Florida Department of Elder Affairs, *2016 Report Assessing the Needs of Elder Floridians*, p.1, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/2016_Assessing_the_Needs_of_Elder_Floridians.pdf (last visited April 20, 2021).

[8] National Center on Elder Abuse, *What are the Risk Factors?*, available at https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#risk; and U.S. Department of Justice, *Elder Justice Initiative, Older Adults, Families, and Caregivers*, available at https://www.justice.gov/elderjustice/victims-families-caregivers (all sites last visited April 20, 2021).

[9] The Department of Elder Affairs, *2018 Profile of Older Floridians*, p. 6, available at http://elderaffairs.state.fl.us/doea/pubs/stats/County_2018/Counties/Florida.pdf (last visitedApril 20, 2021).

[10] U.S. Department of Justice, *Elder Justice Initiative*, available at https://www.justice.gov/elderjustice; and National Center on Elder Abuse, *What is Known about the Incidence and Prevalence of Elder Abuse in the Community Setting?*, available at https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#prevalence; *see also*, Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 Am. J. Pub. Health, at 292-297 (February 2010), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/ (all sites last visitedApril 20, 2021).

[11] U.S. Department of Justice, *Elder Justice Initiative*: *About Elder Abuse*, available at https://www.justice.gov/elderjustice/about-elder-abuse; *see also*, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 JAMA at 428-432 (1998), available at https://jamanetwork.com/journals/jama/fullarticle/187817 (all sites last visitedApril 20, 2021).

[12] XinQi Dong, et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173(10), JAMA Intern Med. At 911-917 (2013), available at https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1675876 (last visited April 202021).

[13] National Center on Elder Abuse, *Challenges in Elder Abuse Research*, available at https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#challenges (last visitedApril 20, 2021).

[14] National Center on Elder Abuse, *Who are the Perpetrators?*, available at https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#perpetrators (last visitedApril 20, 2021).

[15] Center for Disease Control and Prevention, *Understanding Elder Abuse*, *Fact Sheet 2016*, available at https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf (last visitedApril 20, 2021).

involving domestic violence.[16] Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.[17]

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly vulnerable to financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.[18] Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed to pay a bill for care, after reasonable and appropriate notice for residence at the facility.[19] Assisted living facilities and adult family care homes can relocate or terminate the residency of a vulnerable adult with 45 days' notice or 30 days' notice, respectively.[20]

Adult Protective Services Act

In 1977, the Legislature enacted the "Adult Protective Services Act" (APSA), ch. 415, F.S., authorizing the Department of Children and Families (DCF) to investigate reports of abuse, neglect, or exploitation of a vulnerable adult. An assessment of an individual's need for protective services is initiated upon a report of alleged abuse, neglect, or exploitation.[21]

The APSA defines a "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, brain damage, or the infirmities of aging.[22] Under the APSA, abuse, neglect, or exploitation constitutes the following conduct:

- **Abuse**: Any willful act or threatened act by a relative, caregiver,[23] or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health.[24]
- **Neglect**: The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. "Neglect" also means the failure of a caregiver or

[16] *See* U.S. Department of Justice, National Institute of Justice, *Elder Justice Roundtable Report: Medical Forensic Issues Concerning Abuse and Neglect*, October 18, 2000, pp. 8-9, available at https://www.ncjrs.gov/pdffiles1/nij/242221.pdf (last visitedApril 20, 2021).
[17] *Id.* at pp. 7-10.
[18] The Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, June 19, 2014, available at http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/ (last visitedApril 20, 2021).
[19] Section 400.022(1)(p), F.S.; 42 U.S.C. s. 1396r.
[20] Sections 429.28(1)(k) and 429.85(1)(l), F.S.
[21] Section 415.104, F.S.
[22] Section 415.102(28), F.S.
[23] Section 415.102(5), F.S. defines "caregiver" to mean "a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists." "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities.
[24] Section 415.102(1), F.S.

vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.[25]

- **Exploitation**: Knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.[26]

Criminal Penalties under ch. 825, F.S.

Current law provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.[27] Under s. 825.103, F.S., a person is guilty of the "exploitation of an elderly person or disabled adult" when he or she:

- Stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;[28]
- Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;[29]
- Breaches a fiduciary duty to the elderly person or disabled adult while acting as the person's guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;[30]
- Misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer;[31] or
- Intentionally or negligently fails to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance

[25] Section 415.102(16), F.S.
[26] Section 415.102(8), F.S.
[27] Sections 825.101-825.106, F.S.
[28] Section 825.103(1)(a), F.S.
[29] Section 825.103(1)(b), F.S.
[30] Section 825.103(1)(c), F.S.
[31] Section 825.103(1)(d), F.S.

while acting as a caregiver or standing in a position of trust and confidence with the elderly person or disabled adult.[32]

The term "lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.[33]

An offender commits a first-degree felony[34] if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $50,000 or more.[35] An offender commits a second-degree felony[36] if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued between $10,000 and $50,000.[37] An offender commits a third-degree felony[38] if the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than $10,000.[39]

The court is required to hold an evidentiary hearing when a person is charged with financial exploitation of an elderly person or disabled adult involving the taking of or loss of property valued at more than $5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant. The court then determines, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property. The court may order it returned to the victim for restitution purposes before trial if the court finds that the property was unlawfully obtained.[40]

Fiduciary Relationships, and Kickbacks, Improper Benefits

Current law does not address instances where the fiduciary is either employed by, or has some pecuniary relationship with, a third party involved in the care or provision of services to the elderly person or disabled adult.[41] A relationship between the fiduciary and third-party provider may not always lead to an identifiable financial loss by an elderly person or disabled adult; however, this relationship creates a conflict of interest and breach of fiduciary duty.[42]

Current law also does not specifically address cases where a perpetrator seeks a designation as a specified fiduciary with the intent to benefit someone other than the elderly person or disabled

[32] Section 825.103(1)(e), F.S.
[33] Section 825.101(8), F.S.
[34] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[35] Section 825.103(3)(a), F.S.
[36] A second degree felony is punishable by up to 15 years imprisonment and up to a $10,000 fine. Sections 775.082 and 775.083, F.S.
[37] Section 825.103(3)(b), F.S.
[38] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[39] Section 825.103(3)(c), F.S.
[40] Section 825.103(4), F.S.
[41] The Florida Office of Attorney General (OAG), *White Paper Related to SB 1344*, at p. 2, March 4, 2021 (on file with the Senate Committee on Criminal Justice) (hereinafter cited as "The OAG White Paper").
[42] The OAG White Paper at pp. 2-3.

adult.[43] The absence of a specific prohibition on such conduct creates a potential gap for prosecution and enforcement when a perpetrator seeks out appointment as a guardian, trustee, or agent under power of attorney with the intention and design of obtaining control over the victim's assets and person for the benefit of the perpetrator or a third party.[44] Current law also criminalizes conduct which results in a taking or other specified harm while the elderly person or disabled adult victim is alive, but does not specifically prohibit conduct by a perpetrator who intentionally alters a victim's will, trust, or other testamentary devise.[45]

Isolation

The Florida Office of Attorney General (OAG) states that in many instances of abuse, neglect, and exploitation, the perpetrator will first isolate the elderly person or disabled adult victim from family and friends who might otherwise intervene or object to the perpetrator's involvement on the victim's behalf.[46] Isolation is particularly problematic with victims who either lack the mental capacity to fully comprehend or react to the isolation, or with victims who depend upon the perpetrator for their physical care and wellbeing.[47] The perpetrator is often a family member or other individual trusted by the victim in such cases, and will use social isolation to achieve their efforts and exert a level of control and influence over the victim unrelated to, or disproportionally related to, effective caregiving, with the intent of concealing underlying criminal conduct, which may include, but is not limited to; abuse, neglect, or exploitation.[48]

In cases beginning with intentional social isolation, the resulting injury or harm to the victim often could have been avoided with earlier intervention by law enforcement.[49] If ch. 825, F.S., specifically prohibited acts of unreasonable isolation of an elderly or disabled adult from family, irreversible harm to the victim may be avoided.[50]

Effect of the Bill

Definitions

The bill amends s. 825.101, F.S., adding definitions for the terms, 'improper benefit' and 'kickback.' These terms will apply to ch. 825, F.S.

The bill defines "improper benefit" to mean "any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods." The bill defines "kickback" to have the same meaning as s. 456.054(1), F.S., which means "a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense."

[43] The OAG White Paper at p. 3.
[44] *Id.*
[45] *Id*.
[46] The OAG White Paper at p. 2.
[47] *Id.*
[48] *Id*.
[49] *Id*.
[50] *Id*.

Abuse of an Elderly Person or Disabled Adult

The bill amends s. 825.102, F.S., expanding the definition of "abuse of an elderly person or disabled adult" to include "intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult." The effect of this provision is that a person who commits abuse of an elderly person or disabled adult in the newly defined manner will be subject to the criminal penalties mentioned above.

The bill adds that a reasonable cause to believe that a defendant's action was necessary to protect the elderly person or disabled adult from danger constitutes a valid defense to a potential abuse violation under s. 825.102, F.S.

Exploitation of an Elderly Person or Disabled Adult

The bill amends s. 825.103, F.S., adding to the current definition of "exploitation of an elderly person or disabled adult." Specifically, the bill provides that a breach of a fiduciary duty to an elderly person or disabled adult by their guardian, trustee, or agent under power of attorney that results in a "kickback" or "receipt of improper benefits" constitutes the offense of exploitation (in addition to prohibited breaches of fiduciary duty under current law, which include actions resulting in an unauthorized appropriation, sale, or transfer of property). Where the fiduciary owing a duty to an elderly person or disabled adult is also an agent of such a person appointed under ch. 709, F.S.[51] or a guardian or trustee appointed under chs. 736 and 744, F.S., respectively, the bill adds that obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary is considered an unauthorized appropriation and therefore constitutes the offense of exploitation.

The bill also adds financial exploitation of an elderly person or disabled adult to the current definition. Any person who knowingly obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use the funds, assets, property, or the estate of an elderly person or disabled adult through the intentional modification, alteration, or fraudulent creation of a planned distribution or disbursement in a will, trust, or other testamentary document commits exploitation under the bill unless they have first obtained any of the following:

- A court order authorizing the modification;
- A written instrument authored by the elderly person or disabled adult, sworn to by the elderly person or disabled adult with two witnesses, authorizing the change; or
- The action of an agent under a valid power of attorney authorized by the elderly person or disabled adult permitting the change.

Florida Office of the Attorney General

The Florida Attorney General (AG) is recognized as the chief legal officer of the state and, absent express legislative restriction, may exercise such power and authority as the public

[51] Chapter 709, F.S., relates to power of attorney and similar instruments.

interest may require.[52] As chief legal officer of the state, the AG must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.[53]

The Office of Statewide Prosecution

The Florida Constitution gives the Office of Statewide Prosecution (OSP) concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws that occur in two or more judicial circuits, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law.[54] The Statewide Prosecutor is appointed by the AG and serves a term of four years.[55] The OSP is authorized to investigate and prosecute a number of statutorily enumerated offenses.[56]

Effect of the Bill

The bill amends s. 16.56, F.S., broadening the investigative and prosecutorial authority of the OSP to cover criminal offenses enumerated in ch. 825, F.S. Specifically, this change would result in the following offenses being under the OSP:

- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult;
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, including;
  - Lewd or lascivious battery upon an elderly or disabled person;
  - Lewd or lascivious molestation of an elderly or disabled person; and
  - Lewd or lascivious exhibition in the presence of an elderly or disabled person;
- Exploitation of an elderly person or disabled adult; and
- Violation of an injunction for protection against exploitation of a vulnerable adult.

The other jurisdictional requirements must be met for OSP to investigate or prosecute one of these offenses.

Elder Exploitation Injunctions

In 2018, the Legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult.[57] Section 825.1035, F.S., specifies who may file for an injunction, including:

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

[52] The Florida Office of the Attorney General (OAG), *The Role and Function of the Attorney General*, available at https://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F (last visitedApril 20, 2021).
[53] *See e.g.*, s. 736.0110, F.S., relating to charitable trusts.
[54] Fla. Const. art. IV, s. 4(b); The OAG, *The Office of Statewide Prosecution*, available at https://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693 (last visitedApril 20, 2021).
[55] Section 16.56(2), F.S.
[56] *See* s. 16.56(1)(a), F.S., for a list of criminal offenses investigated and prosecuted by the OSP.
[57] Chapter 2018-100, L.O.F.; codified in s. 825.1035, F.S.

- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.[58]

Current law also:
- Identifies proper venue and details procedural framework for the parties and court;
- Requires the clerk of the circuit court to perform specific duties and limits the amount of the fee for filing a petition;
- Provides a sworn petition form for parties filing an injunction;
- Allows the court to grant a temporary injunction under certain circumstances;
- Provides direction for effecting service of process;
- Lists standards for the court to follow when issuing an injunction;
- Identifies forms of relief the court may grant to a vulnerable adult in issuing an injunction, including temporary and exclusive use of a shared residence and freezing the assets and credit lines of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult;
- Permits the court to order payment of specified living expenses when the vulnerable adult's assets are frozen;
- Requires the sheriff or a law enforcement agency to assist the court and clerks of court with specific tasks in issuing and executing an injunction;
- Provides criminal penalties for violating an injunction and authorizes law enforcement to arrest an individual who has violated the terms of an injunction; and
- Limits the liability of financial institutions for freezing assets or credit lines.[59]

The court may issue a temporary injunction ex parte, prior to the hearing on the petition, which grants relief as the court deems proper if the court finds:
- An immediate and present danger of exploitation of the vulnerable adult exists;
- There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent;
- Granting a temporary injunction will not disserve the public interest; and
- Such injunction provides for the vulnerable adult's physical or financial safety.[60]

The relief granted by the court may include, but is not limited to:
- Restraining the respondent from committing any acts of exploitation against the vulnerable adult;
- Awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling shared by the vulnerable adult and the respondent, or barring the respondent from the residence of the vulnerable adult; and
- Freezing any assets of the vulnerable adult in any depository or financial institution whether titled solely in the vulnerable adult's name, solely in the respondent's name, jointly with the respondent, in guardianship, in trust, or in a Totten trust under certain circumstances.[61]

[58] Section 825.1035(2)(a)1.-4., F.S.
[59] *See* s. 825.1035, F.S.
[60] Section 825.1035(5)(a), F.S.
[61] *Id*.

An ex parte temporary injunction may not exceed 15 days, and a hearing on the petition for the injunction must be set for a date no later than the last day the temporary injunction is effective.[62] The court may grant a continuance for the hearing, for good cause shown. However, the ex parte injunction is not be extended beyond the initial 15 days as a result of the continuance.[63]

Petition for Injunction for the Protection of a Vulnerable Adult

A sworn petition must be filed alleging exploitation, or imminent exploitation, of a vulnerable adult, containing the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation;
- The petitioner's knowledge of reasons why the adult depends on the respondent for care, any alternative provisions for care not involving the respondent, resources allowing the adult to access such provisions, and the willingness of the adult to access such provisions;
- Financial institutions where the petitioner knows the adult maintains assets, accounts, or lines of credit;
- Whether the estimated value of the adult's assets is below $1500, between $1500 and $5000, or greater than $5000;
- Attestation that the petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent; and
- Remedies sought through the injunction, which may include:
    - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
    - Immediately restraining the respondent from committing any acts of exploitation;
    - Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
    - Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.[64]

Effect of the Bill

The bill amends s. 825.1035, F.S., adding authorized agents acting under a durable power of attorney to the list of individuals authorized to petition for an injunction for protection against exploitation of a vulnerable adult.

[62] Section 825.1035(5)(d), F.S.
[63] *Id*.
[64] Section 825.1035(3)(a)1.-14., F.S.

The bill also specifies new informational fields for the petition for protective injunction against exploitation of a vulnerable adult. Specifically, the bill requires the following to be included in a petition for injunction under s. 825.1035, F.S.:

- The petitioner's name;
- The petitioner's address;
- The petitioner's relationship to the vulnerable adult;
- The length of time the petitioner has known the vulnerable adult;
- The vulnerable adult's name and aliases;
- The vulnerable adult's date of birth; and
- Any known impairments affecting either the vulnerable adult's normal activities of daily living or ability to provide for their own care or protection, specifically any of the following:
  - Long-term physical disabilities;
  - Sensory disabilities, such as hearing or vision impairments;
  - Cognitive disabilities;
  - Mental or emotional disabilities;
  - Developmental disabilities;
  - Infirmities of aging; or
  - Any other known impairments.

The bill also allows courts to extend an ex parte temporary injunction from a maximum of 15 days to up to 30 days beyond the initial injunction period (for a total of 45 days) if good cause for an extension is shown. Only one such extension is permitted under the bill. The bill also repeals the authority of the court to grant a continuance of the hearing on the petition for injunction against exploitation of a vulnerable adult.

Probate Process in Florida

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.[65] Probate proceedings are governed by The Florida Probate Code, found in chs. 731–735, F.S., and the Florida Probate Rules of court.[66] The probate process ensures that the decedent's debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.[67]

Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.[68] The following are examples to illustrate common probate and non-probate assets:

[65] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, available at https://www.floridabar.org/public/consumer/pamphlet026/ (last visitedApril 20, 2021) (hereinafter cited as "Consumer Pamphlet 1").
[66] The Florida Bar, *The Florida Probate Rules*, available at https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf (last visitedApril 20, 2021).
[67] Consumer Pamphlet 1.
[68] Consumer Pamphlet 1.

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.[69]

Qualified Personal Representatives in Probate Cases

A personal representative is a person or business entity appointed by a circuit court to administer a decedent's estate.[70] If an individual serves as a personal representative, he or she must be at least 18 years old, have full capacity, and be a resident of Florida[71] at the time of the death of the person whose estate he or she is administering.[72] A person is not qualified to serve as a personal representative if he or she is under 18 years of age, has been convicted of a felony, or is mentally or physically unable to perform the duties of a personal representative.[73]

Slayer Statutes

All states have enacted "slayer rules" which effectively bar a person who causes a killing from inheriting property from their victims.[74] While the specific criteria and applicability of slayer statutes vary by jurisdiction, these laws are uniformly predicated on the idea that those responsible for a killing should not benefit from their wrongful acts.[75]

Eight states have expanded their slayer rules to include disqualification of persons from inheriting if they have engaged in the abuse or financial exploitation of a decedent.[76] Six of the eight states with such laws require a criminal conviction in order to disinherit an individual responsible for abuse or exploitation.[77] Moreover, three of the eight states provide for

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[69] *Id*.
[70] *Id*.
[71] A non-resident of the state may qualify if he or she is a legally adopted child or adoptive parent of the decedent, related by lineal consanguinity, one of certain enumerated relatives of the decedent, or the spouse of a person otherwise qualified to be the personal representative. Section 733.304, F.S.
[72] Section 733.302, F.S.
[73] Section 733.303, F.S.
[74] Jennifer Piel, Journal of the American Academy of Psychiatry and the Law Online, *Expanding Slayer Statutes to Elder Abuse*, September 2015, available at http://jaapl.org/content/43/3/369 (last visited April 20, 2021).
[75] *Id*.
[76] *Id*.
[77] Travis Hunt, *Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code s. 259 and Using It as a Model*, 2014 BYU L. Rev. 445 at p. 446 (2014), available at https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2922&context=lawreview (last visited April 20, 2021).

disinheritance only when financial elder abuse occurs.[78] California's slayer rule does not require a criminal conviction to effect disinheritance, and it covers physical abuse, neglect, false imprisonment, or financial abuse of an elder or a dependent adult.[79]

Florida's Slayer Rule - Probate

Current law provides that a surviving person who unlawfully and intentionally kills or participates in procuring the death of a decedent is not entitled to any benefits under a will or through intestacy under the Florida Probate Code.[80] In such instances, the estate of the decedent passes as if the killer had predeceased the decedent.[81] A joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship.[82] This also applies to tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.[83]

A named beneficiary of a bond, life insurance policy, or other contractual arrangements who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond or policy becomes payable as though the killer had predeceased the decedent.[84] A final judgment of conviction of murder of any degree is conclusive.[85] In the absence of a conviction of murder, the court may determine by the greater weight of the evidence whether the killing of the decedent was unlawful and intentional.[86]

Effect of the Bill

The bill amends s. 733.303, F.S., prohibiting an individual convicted in any state or other jurisdiction of abuse, neglect, or exploitation of an elderly person or disabled adult from serving as a personal representative in probate matters.

The bill creates s. 732.8031, F.S., which expands Florida's slayer rule under the Florida Probate Code by prohibiting the following persons convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult from inheriting assets from a decedent, or other person whose death was necessary for passage of the perpetrator's interest, who was the victim of the disqualifying offense:

- A surviving person whose beneficiary interest depends on the death of the victim.
- A joint tenant with a right of survivorship and a tenant by the entirety in real and personal property, a joint and multiple-party accountholder in a bank, savings and loan association,

[78] *Id*.
[79] Cal. Prob. Code s. 259.
[80] *See* s. 732.802, F.S.; the Florida Probate Code is contained in chs. 731-735, F.S.
[81] Section 732.802(1), F.S.
[82] Section 732.802(2), F.S.
[83] *Id*.
[84] Section 732.802(3), F.S.
[85] Section 732.802(5), F.S.
[86] *Id*.

credit union, and any other financial institution, and any other form of coownership with survivorship interests whose survivorship interest depends on the death of the victim.
- A named beneficiary of a bond, life insurance policy, or other contractual arrangement where the victim is the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued.

Under the bill, assets in the will of the decedent which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that disinheritance will apply where there is a final judgment of conviction for any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the probate assets to the perpetrator.

The bill provides that the rights of any person who, before rights under this section of the bill are adjudicated, purchases from the abuser, neglector, exploiter, or killer for value and without notice property that the perpetrator would have acquired except for this section of the bill. The perpetrator is held liable for the amount of the proceeds or the value of the property owed to such a purchaser.

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable unless, more than 2 business days before payment, it receives at its home office or principal address written notice of a claim under this section of the bill.

Any property or interest acquired by the abuser, neglector, exploiter, or killer, as a result of their respective offense against the decedent must be returned to the victim under the bill.

This section of the bill does not apply if it can be proven by clear and convincing evidence that after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, executes a written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the person so convicted of abuse, neglect, or exploitation to retain his or her inheritance, survivorship rights, or any other right that would otherwise be removed.

The Florida Trust Code

The revocable, or "living," trust is often promoted as a means of avoiding probate and saving taxes at death and is governed by ch. 736, F.S.,[87] referred to as the "Florida Trust Code" (Code). The term "terms of a trust" is defined to mean the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.[88] Under the Code, "settlor" is defined as a

[87] The Florida Bar, *Consumer Pamphlet: The Revocable Trust in Florida*, available at https://www.floridabar.org/public/consumer/pamphlet028/#WHAT%20IS%20A%20REVOCABLE%20TRUST%3F (last visited April 20, 2021) (hereinafter cited as, "Consumer Pamphlet 2").
[88] Section 736.0103(21), F.S.

person who creates or contributes property to a trust.[89] A "beneficiary" of the trust is a person who has a present or future beneficial interest in the trust.[90] The person responsible for the management of the trust assets is the "trustee."[91]

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests any beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S. In all, the Code currently provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.[92]

Florida's Slayer Rule - Trusts

Under s. 736.1104, F.S., a beneficiary who unlawfully and intentionally kills or participates in procuring the death of the settlor or another person on whose death such beneficiary's interest depends is precluded from taking that interest. Instead, the interest devolves as if the slayer predeceased the victim. This rule is triggered by a civil evidentiary standard (the greater weight of the evidence) although a final judgment of murder in any degree is conclusive.[93]

Effect of the Bill

The bill amends s. 736.1104, F.S., similarly expanding Florida's slayer rule under the Florida Trust Code by prohibiting a beneficiary of a trust convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation, or aggravated manslaughter of an elderly person or disabled adult, from receiving trust benefits when the victim is the settlor of a trust, or another person on whose death such beneficiary's interest depends from inheriting trust interests, including a homestead dependent on the victim's death.

Under the bill, trust interests which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that the trust interest is extinguished where there is a final judgment of conviction against the individual holding the interest for any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the trust interest to the perpetrator.

This section of the bill does not apply if can be proven by clear and convincing evidence that after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, executes a written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the person so convicted of abuse, neglect, or exploitation to retain a trust interest.

[89] Section 736.0103(18), F.S.
[90] Section 736.0103(4), F.S.
[91] Consumer Pamphlet 2.
[92] *See* s. 736.0105(2)(a)-(w), F.S.
[93] Section 736.1104(2), F.S.

Effective Date

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The OAG estimates that expanding the OSP's authority in s. 16.56, F.S., to investigate and prosecute qualifying cases under ch. 825, F.S., would alleviate some of the financial burden on local law enforcement and prosecution, while consolidating the prosecution of multi-circuit criminal activity related to such crimes into comprehensive statewide prosecution cases.[94]

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's

[94] The OAG White Paper, at p. 5.

Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[95]

The EDR provides that the bill's expansion of the definition of "abuse of an elderly person or disabled adult" in s. 825.102, F.S., would impact the multiple felonies listed under the statute. The bill adds the definitions of "improper benefit" and "kickback" in s. 825.101, F.S., and the following (new language in bold): "Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, **kickback, or receipt of an improper benefit**," to s. 825.103, F.S. It also adds "obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary" to the list of acts resulting in unauthorized appropriations. It also adds the act of "knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification or alteration of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult." This expands the definition for exploitation of an elderly person or disabled adult, impacting the multiple felonies listed under this statute. Finally, this bill amends s. 825.1035, F.S., adding "an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney" to those who may file an injunction for protection against exploitation of a vulnerable adult, and extends the time for a temporary injunction from 15 days to up to 45 days. This would impact the Level 1, 3rd degree felony under s. 825.1036, F.S., for "a person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim."[96]

The EDR advises that per DOC, in FY 18-19, there were 35 new commitments to prison for felonies listed under these statutes (14 for abuse, 21 for exploitation), and 29 new commitments in FY 19-20 (11 for abuse, 18 for exploitation). It is not known how this new language will impact prison beds, but commitments are low under current language.[97]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[95] The EDR estimate is on file with the Senate Committee on Criminal Justice.
[96] *Id*.
[97] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 733.303, 736.1104, 825.101, 825.102, 825.103, and 825.1035.

This bill creates section 732.8031 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Clarifies that the probate and trust disinheritance provisions apply to individuals convicted of specified offenses in any state or foreign jurisdiction, rather than any state or other jurisdiction.
- Specifies that any property or interest acquired as a result of abuse, neglect, or exploitation of an elder or disabled adult is to be returned to its rightful owner.
- Absolves an insurance company, bank, or other obligor from liability under the trust provision of the bill unless it receives notice of a claim more than 2 business days before payment.
- Clarifies that a convicted person may inherit from an estate, trust, or other beneficiary asset if it can be shown by clear and convincing evidence that the capacitated victim reinstated the person as a beneficiary.
- Makes technical changes to improve clarity and readability.

CS by Criminal Justice on March 23, 2021:
The committee substitute:

- Prohibits a person convicted of abuse, neglect, or exploitation of an elderly person or disabled adult, in any state or other jurisdiction, rather than only Florida, from serving as a personal representative in probate matters.
- Forfeits the inheritance under a will or life insurance policy or through a trust, joint tenancy, or other contractual arrangement for a person convicted of abuse, neglect, exploitation, or manslaughter in any state or other jurisdiction, rather than only Florida.
- Clarifies that the terms “elderly person” and “disabled adult” used in this section are defined in s. 825.101, F.S.
- Specifies the sections of laws that describe the conduct the judge must weigh when determining if sufficient evidence exists that the actions of the abuser, neglector, exploiter, or killer caused or contributed to the decedent’s death.
- Adds fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or testamentary devise of an elderly person or disabled adult to the definition of “exploitation of an elderly person or disabled adult.”

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 102 - 223

and insert:

(b) Has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101.

(c) ~~(b)~~ Is mentally or physically unable to perform the duties.

(d) ~~(c)~~ Is under the age of 18 years.

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Section 3. Section 732.8031, Florida Statutes, is created to read:

732.8031 Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult.—

(1) A surviving person who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the decedent or another person on whose death such beneficiary's interest depends is not entitled to any benefits under the will of the decedent or the Florida Probate Code, and the estate of the decedent passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the abuser, neglector, exploiter, or killer passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(2) A joint tenant who is convicted in any state or foreign

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jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against another joint tenant decedent thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's sole property and as if the abuser, neglector, exploiter, or killer has no rights by survivorship. This subsection applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other financial institutions; and any other form of coownership with survivorship interests.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who is convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against the owner or principal obligee of the bond, life

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insurance policy, or other contractual arrangement or the person upon whose life such policy was issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond, policy, or other contractual arrangement becomes payable as though the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(4) Any other property or interest acquired as a result of the abuse, neglect, exploitation, or manslaughter must be returned in accordance with this section.

(5)(a) This section does not affect the rights of any person who purchases property for value and without notice from the abuser, neglector, exploiter, or killer before rights have been adjudicated in accordance with this section.

(b) The abuser, neglector, exploiter, or killer is liable for the amount of the proceeds or the value of the property under paragraph (a).

(6) Any insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless more

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than 2 business days before payment it receives at its home office or principal address written notice, or in the case of a financial institution it receives notice in accordance with s. 655.0201, of a claim under this section.

(7) This section does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain his or her inheritance, survivorship rights, or any other right that might otherwise be removed by this section.

Section 4. Subsection (3) is added to section 736.1104, Florida Statutes, to read:

736.1104 Person ~~Killer~~ not entitled to receive property or other benefits by reason of victim's death.—

(3) A beneficiary of a trust who was convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or a disabled adult, as those terms are defined in s. 825.101, for conduct against a settlor or another person on whose death such beneficiary's interest depends is not entitled to any trust interest, including a homestead dependent on the victim's death, and such interest shall devolve as though the abuser, neglector, exploiter, or killer had predeceased the victim.

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(a) A final judgment of conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the abuser's, neglector's, exploiter's, or killer's conduct as defined in s. 825.102, s. 825.103, or s. 782.07(2) for purposes of this section.

(c) This subsection does not apply if it can be proven by clear and convincing evidence that, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, ratifies an intent that the person so convicted of abuse, neglect, or exploitation retain a trust interest by executing a valid written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the convicted person to retain a trust interest.

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

And the title is amended as follows:

Delete line 16

and insert:

retain an inheritance, survivorship rights, or any other rights if the

By the Committee on Criminal Justice; and Senator Burgess

591-03248-21 20211344c1

A bill to be entitled

An act relating to protection of elderly persons and disabled adults; amending s. 16.56, F.S.; adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; amending s. 733.303, F.S.; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; creating s. 732.8031, F.S.; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; providing that certain persons who have been convicted of certain offenses involving elderly persons or disabled adults may still retain an inheritance or survivorship interest if the victim executes a specified instrument; amending s. 736.1104, F.S.; providing that a beneficiary of a trust may not benefit under the trust if the person was convicted of certain offenses involving elderly persons or disabled adults; amending s. 825.101, F.S.; defining terms; amending s. 825.102, F.S.; specifying additional conduct that constitutes abuse of an elderly person or a disabled adult; providing a defense to certain violations; providing criminal penalties; amending s. 825.103, F.S.; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult; providing criminal penalties; amending s. 825.1035, F.S.; revising

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591-03248-21 20211344c1

provisions concerning injunctions for protection against exploitation of a vulnerable adult; providing for extension of ex parte temporary injunctions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

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5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any violation of chapter 825;

10.~~9.~~ Any criminal violation of part I of chapter 499;

11.~~10.~~ Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

12.~~11.~~ Any criminal violation of s. 409.920 or s. 409.9201;

13.~~12.~~ Any crime involving voter registration, voting, or candidate or issue petition activities;

14.~~13.~~ Any criminal violation of the Florida Money Laundering Act;

15.~~14.~~ Any criminal violation of the Florida Securities and Investor Protection Act; or

16.~~15.~~ Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related

transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Subsection (1) of section 733.303, Florida Statutes, is amended to read:

733.303 Persons not qualified.—

(1) A person is not qualified to act as a personal representative if the person:

(a) Has been convicted of a felony.

(b) Has been convicted in any state or other jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult as those terms are defined in s. 825.101.

(c)~~(b)~~ Is mentally or physically unable to perform the duties.

(d)~~(c)~~ Is under the age of 18 years.

Section 3. Section 732.8031, Florida Statutes, is created to read:

732.8031 Forfeiture for abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult.—

(1) A surviving person who is convicted in any state or other jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult, as those terms are defined in s. 825.101, for conduct against the decedent or another person on whose death such beneficiary's

interest depends is not entitled to any benefits under the will of the decedent or the Florida Probate Code, and the estate of the decedent passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the abuser, neglector, exploiter, or killer passes as if the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the conduct of the abuser or neglector as those terms are described in s. 825.102, exploiter as described in s. 825.103, or killer as provided in s. 782.07.

(2) A joint tenant who is convicted in any state or other jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult, as those terms are defined in s. 825.101, for conduct against another joint tenant decedent thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's sole property and as if the abuser, neglector, exploiter, or killer has no rights by survivorship. This subsection applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other financial institutions; and any other form of coownership with

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survivorship interests.

(a) A conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the conduct of the abuser or neglector as those terms are described in s. 825.102, exploiter as described in s. 825.103, or killer as provided in s. 782.07.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who is convicted in any state or other jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult, as those terms are defined in s. 825.101, for conduct against the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond, policy, or other contractual arrangement becomes payable as though the abuser, neglector, exploiter, or killer had predeceased the decedent.

(a) A conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the conduct of the abuser or neglector as those terms are

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

described in s. 825.102, exploiter as described in s. 825.103, or killer as provided in s. 782.07.

(4) Any other acquisition of property or interest by the abuser, neglector, exploiter, or killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5)(a) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the abuser, neglector, exploiter, or killer for value and without notice property that the abuser, neglector, exploiter, or killer would have acquired except for this section.

(b) The abuser, neglector, exploiter, or killer is liable for the amount of the proceeds or the value of the property under paragraph (a).

(6) Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless before payment it receives at its home office or principal address written notice of a claim under this section.

(7) This section does not apply if, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, executes a written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the person so convicted of abuse, neglect, or exploitation to retain his or her inheritance or survivorship rights.

Section 4. Subsection (3) is added to section 736.1104, Florida Statutes, to read:

736.1104 Person ~~Killer~~ not entitled to receive property or other benefits by reason of victim's death.—

(3) A beneficiary of a trust who was convicted in any state or other jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of an elderly person or disabled adult, as those terms are defined in s. 825.101, for conduct against a settlor or another person on whose death such beneficiary's interest depends is not entitled to any trust interest, including a homestead dependent on the victim's death, and such interest shall devolve as though the abuser, neglecter, exploiter, or killer had predeceased the victim.

(a) A conviction for abuse, neglect, exploitation, or aggravated manslaughter of the decedent or other person creates a rebuttable presumption that this section applies.

(b) In the absence of a qualifying conviction, the court may determine by the greater weight of the evidence whether the decedent's or other person's death was caused by or contributed to by the conduct of the abuser or neglector as those terms are described in s. 825.102, exploiter as described in s. 825.103, or killer as provided in s. 782.07.

Section 5. Present subsections (8) through (14) of section 825.101, Florida Statutes, are redesignated as subsections (10) through (16), respectively, and new subsections (8) and (9) are added to that section, to read:

825.101 Definitions.—As used in this chapter:

(8) "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods.

(9) "Kickback" has the same meaning as in s. 456.054(1).

Section 6. Paragraphs (b) and (c) of subsection (1) of section 825.102, Florida Statutes, are amended, and paragraph (d) is added to that subsection, to read:

825.102 Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.—

(1) "Abuse of an elderly person or disabled adult" means:

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; ~~or~~

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(d) Intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult. It is a defense to a violation of this paragraph that the defendant had reasonable cause to believe that his or her action was necessary to protect the elderly person or disabled adult from danger to his or her welfare.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or

disabled adult commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Paragraphs (c), (d), and (e) of subsection (1) of section 825.103, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

825.103 Exploitation of an elderly person or disabled adult; penalties.—

(1) "Exploitation of an elderly person or disabled adult" means:

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, ~~or~~ transfer of property, kickback, or receipt of an improper benefit. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

1. For agents appointed under chapter 709:

a. Committing fraud in obtaining their appointments;

b. Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;

c.~~b.~~ Abusing their powers;

d.~~c.~~ Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or

e.~~d.~~ Acting contrary to the principal's sole benefit or best interest; or

2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:

a. Committing fraud in obtaining their appointments;

b. Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;

c.~~b.~~ Abusing their powers; or

d.~~c.~~ Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;

(d) Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:

1. Personal accounts;

2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or

3. Convenience accounts created in accordance with s. 655.80; ~~or~~

(e) Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult; or

(f) Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification, alteration, or

fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult without:

1. A court order, from a court having jurisdiction over the elderly person or disabled adult, which authorizes the modification or alteration;

2. A written instrument executed by the elderly person or disabled adult, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or

3. Action of an agent under a valid power of attorney executed by the elderly person or disabled adult which authorizes the modification or alteration.

Section 8. Paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (d) of subsection (5) of section 825.1035, Florida Statutes, are amended to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(2) WHO MAY FILE; VENUE; RECORDING.—

(a) The cause of action may be sought in an adversary proceeding by:

1. A vulnerable adult in imminent danger of being exploited;

2. The guardian of a vulnerable adult in imminent danger of being exploited;

3. A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; ~~or~~

4. An agent under a valid durable power of attorney with

the authority specifically granted in the power of attorney; or

5.~~4.~~ A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

(3) FORM OF PETITION.—

(a) A sworn petition filed under this section must allege the existence of exploitation, or the imminent exploitation, of the vulnerable adult and must include the specific facts and circumstances for which relief is sought. The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION
AGAINST EXPLOITATION OF A VULNERABLE ADULT

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

1. The petitioner's name is: _____

2. The petitioner's address is: _____

3. The petitioner's relationship to the vulnerable adult is: _____

4. How long has the petitioner known the vulnerable adult: _____

5. The vulnerable adult's name is: _____

6. Aliases of the vulnerable adult are: _____

7. The vulnerable adult's date of birth is: _____

8.~~1.~~ The vulnerable adult's address is ~~adult resides at~~: _____ ~~...(address)....~~

9. Does the vulnerable adult have one or more impairments

that impact his or her ability to perform normal activities of daily living or to provide for his or her own care or protection?

Yes_____ No_____

If so, what are this person's impairments? (check all that apply)

.... Long-term physical disability

.... Sensory disability (e.g., hearing or vision impaired)

.... Cognitive disability

.... Mental or emotional disability

.... Developmental disability

.... Infirmity of aging

.... Other (explain)

10.~~2.~~ The respondent's last known address is ~~respondent resides at~~: _____ ~~...(last known address)....~~

11.~~3.~~ The respondent's last known place of employment is: ...(name of business and address)....

12.~~4.~~ Physical description of the respondent: ....

Race....

Sex....

Date of birth....

Height....

Weight....

Eye color....

Hair color....

Distinguishing marks or scars....

13.~~5.~~ Aliases of the respondent: ....

14.~~6.~~ The respondent is associated with the vulnerable adult as follows: ....

15.~~7.~~ The following describes any other cause of action currently pending between the petitioner and the respondent, any proceeding under chapter 744 concerning the vulnerable adult, and any previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit; related case numbers, if available; and the results of any such attempts:.....

16.~~8.~~ The following describes the petitioner's knowledge of any reports made to a government agency, including, but not limited to, the Department of Elderly Affairs, the Department of Children and Families, and the adult protective services program relating to the abuse, neglect, or exploitation of the vulnerable adult; any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult; and the results of any such reports or investigations: ....

17.~~9.~~ The petitioner knows the vulnerable adult is either a victim of exploitation or the petitioner has reasonable cause to believe the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation because the respondent has: ...(describe in the spaces below the incidents or threats of exploitation)....

18.~~10.~~ The following describes the petitioner's knowledge of the vulnerable adult's dependence on the respondent for care; alternative provisions for the vulnerable adult's care in the absence of the respondent, if necessary; available resources the vulnerable adult has to access such alternative provisions; and

the vulnerable adult's willingness to use such alternative provisions: ....

19.~~11.~~ The petitioner knows the vulnerable adult maintains assets, accounts, or lines of credit at the following financial institution(s): ...(list name, address, and account number of each)....

20.~~12.~~ The petitioner believes that the vulnerable adult's assets to be frozen are: ...(mark one)....

....Worth less than $1500;

....Worth between $1500 and $5000; or

....Worth more than $5000.

21.~~13.~~ The petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent.

22.~~14.~~ The petitioner seeks an injunction for the protection of the vulnerable adult, including: ...(mark appropriate section or sections)....

....Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

....Immediately restraining the respondent from committing any acts of exploitation against the vulnerable adult.

....Freezing the assets of the vulnerable adult held at ...(name and address of depository or financial institution)... even if titled jointly with the respondent, or in the respondent's name only, in the court's discretion.

....Freezing the credit lines of the vulnerable adult at ...(name and address of financial institution)... even if jointly with the respondent, in the court's discretion.

....Providing any terms the court deems necessary for the protection of the vulnerable adult or his or her assets,

including any injunctions or directives to law enforcement agencies.

23.~~15.~~ Should the court enter an injunction freezing assets and credit lines, the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities, or the petitioner requests that the following expenses be paid notwithstanding the freeze: ...(for each expense, list the name of the payee, address, account number if known, amount, and a brief explanation of why payment is critical)....

(5) TEMPORARY INJUNCTION; SERVICE; HEARING.—

(d) An ex parte temporary injunction may be effective for a fixed period not to exceed 15 days unless good cause is shown to extend the injunction. The ex parte temporary injunction may be extended one time for up to an additional 30 days. A full hearing, as provided by this section, must be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. ~~The court may grant a continuance of the hearing, before or during the hearing, for good cause shown by any party, which good cause may include a continuance to obtain service of process. An ex parte injunction is not extended beyond the initial 15 days as a result of a continuance.~~

Section 9. This act shall take effect July 1, 2021.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #1344**, relating to Protection of Elderly Persons and Disabled Adults, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1344
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Name Karen Murillo

Job Title Assistant Statewide Prosecutor

Address 400 S. Monroe Street
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1344
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S. Monroe Street
Street

Phone

Tallahassee | FL | 32399
City | *State* | *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1344
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Name Will McKinley

Job Title

Address 106 E. College Ave., Suite 1100
Street
Tallahassee FL 32301
City *State* *Zip*

Phone (850) 681-1980

Email will@poolemckinley.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Scott Holdings, LLC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1436 (298982)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Gruters
SUBJECT:	Florida Postsecondary Academic Library Network
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Pre-meeting**

I. Summary:

PCS/SB 1436 establishes the Florida Postsecondary Academic Library Network (Network) under the joint oversight of the Office of the Board of Governors (BOG) and the Department of Education, and repeals the Complete Florida Plus Program (Complete Florida Plus). The bill retains certain functions from Complete Florida Plus Program, with modifications, and adds new functions. The bill:

- Maintains Complete Florida Plus purposes related to distance learning courses and degree programs, and online academic support services, but specifies that the Network purposes must include providing recommendations on the use and distribution of open-access textbooks and education resources, and innovative pricing techniques as a method to reduce costs.
- Specifies that the Network single library automation system and associated resources and services must include a shared Internet-based catalog and discovery tool, an Internet-based searchable collection of electronic resources, an integrated library management system, and a statewide searchable database that includes an inventory of digital archives and collections that public postsecondary education institutions hold.
- Increases reporting requirements on host entity performance in delivering specified services.
- Maintains an online admissions and computer-assisted student advising system.
- Requires, by June 1, 2022, the Commissioner of Education and the Chancellor of the BOG to provide a joint recommendation for a process by which school district career centers and charter technical career centers would access appropriate Network services.

The bill will require a state recurring appropriation. See Section V for fiscal comments.

The bill takes effect July 1, 2021.

II. Present Situation:

Complete Florida Plus Program Funding for Fiscal Year 2020-2021

In June 2020, the Governor vetoed the $29.4 million appropriation in the 2020-2021 budget for the Complete Florida Plus Program.[1] The program provided support services for distance learning, libraries, and student services. These services were provided to all 40 Florida College System (FCS) and State University System (SUS) institutions. Beginning July 2020, the Florida Department of Education and Board of Governors used limited carryforward funds and nonrecurring contributions from the 40 institutions' funds to ensure that the distance learning and library services components of the program were not disrupted for the 2020-2021 fiscal year.[2]

Complete Florida Plus Program

In 2014, the Legislature amended the Florida Virtual Campus (FLVC) to be the Complete Florida Plus Program (Complete Florida Plus) and in 2015 moved management of the FLVC to the University of West Florida's (UWF's) Division of Research and Strategic Innovation, where its mission and purpose remained the same. The units under FLVC included the Florida Academic Library Services Cooperative and the Distance Learning and Student Services.[3]

Complete Florida Plus was created at the UWF to:

- Facilitate degree completion for Florida's adult learners through the Complete Florida Degree Initiative;[4]
- Maintain and manage Florida's online catalog of distance learning courses, degree programs, and resources;
- Provide statewide online student advising services and support;
- Provide information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within the state;
- Coordinate with the Florida College System (FCS) and the State University System (SUS) to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective; and
- Administer the Florida Academic Library Services Cooperative and consult with the chancellors of the FCS and the SUS regarding the implementation and operations of the cooperative.[5]

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[1] Governor Ron DeSantis, *2020 Veto List* (2020), *available at* https://www.flgov.com/wp-content/uploads/2020/06/2020-Veto-List.pdf, at 5.
[2] Board of Governors, *Agency Legislative Budget Request for Fiscal Year 2021-2022, available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=21014&DocType=PDF, at 180-183.
[3] Florida Virtual Campus, *Organization Profile*, https://www.flvc.org/organization-profile (last visited Feb. 26, 2021). The Florida Virtual Campus (FLVC) was created in 2012 by the Florida Legislature through the consolidation of four statewide organizations: the College Center for Library Automation, the Florida Center for Library Automation, the Florida Center for Advising and Academic Support, and the Florida Distance Learning Consortium.
[4] *See* s. 1006.735(2), F.S.
[5] Distance Learning and Student Services, *Complete Florida Plus Program*, https://dlss.flvc.org/about/legislation-regulation/complete-florida-plus-program (last visited Feb. 25, 2021). *See also* s. 1006.735(1), F.S.

Complete Florida Plus was required to make available online student advising services and support, including all of the following:

- A streamlined online admissions application process, to be used by all postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution. UWF is required to work with FCS institutions and state universities as specified in law.
- A K-20 statewide computer-assisted student advising system to support career and education planning for the K-12 system and the process of advising, registering, and certifying postsecondary students for graduation and to include a degree audit and an articulation component. FCS institutions and state universities are to interface institutional advising systems with the statewide computer-assisted student advising system that meets minimum specified requirements.
- A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning outcomes, student access, the efficient delivery of student support services, the alignment of degrees to career needs, and the overall quality of postsecondary distance learning courses and degree programs.
- Help desk support and training and consultation services to institutions and students using Complete Florida Plus services and resources.
- Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary.
- Development and implementation of a plan, in consultation with public postsecondary education institutions, which describes the services and resources available through Complete Florida Plus to encourage current and prospective students' use.[6]

Complete Florida Plus developed and managed a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions which is intended to assist in the coordination and collaboration of articulation and access. Operational procedures for the catalog must:

- Require participating institutions to provide specified information concerning the distance learning course or degree program.
- Require that distance learning courses and degree programs meet applicable accreditation standards and criteria.
- Require that the catalog is reviewed and updated frequently to ensure compliance with operational procedures.
- Define and describe the catalog's search and retrieval options that will allow users to search by specified criteria, at a minimum.
- Use an Internet-based analytic tool that allows the collection and analysis of specified data.[7]

[6] Section 1006.735(4), F.S.
[7] Section 1006.735(3), F.S.

The UWF is required to submit a report on an annual basis to the President of the Senate and the Speaker of the House of Representatives regarding the implementation and operation of all components of Complete Florida Plus, including information and associated costs relating to the services and functions of the program.[8]

The Northwest Regional Data Center[9] is required by law to provide all data center services necessary to support the statewide Internet-based catalog established and the statewide online student advising services and support.[10]

Florida Academic Library Services Cooperative

The Florida Academic Library Services Cooperative (FALSC) provides a single library automation system and associated resources and services for all public postsecondary institutions to use to support learning, teaching, and research needs.[11] The FALSC develops and manages a library information portal and automated library management tools for use by FCS institutions and state universities.[12]

The FALSC is a unit of the FLVC which operates the integrated library system used by public colleges and university libraries statewide. The FALSC also provides more than 150,000 unique, digital archive and collection items and a statewide collection of over 400,000 online journals, e-books, and e-resources, available to assist nearly 1.3 million students, faculty, and staff throughout Florida.[13]

Products and services offered by the FALSC include:

- Management and maintenance of the statewide collection of e-resources available to students at all 40 public colleges and universities.[14]
- A shared catalog of library holdings for students to search for materials owned by any college or university in Florida.
- An integrated library system used by libraries to manage their local collections.
- Collaboration with public post-secondary education institutions to create and support Florida libraries' digital archives and collections.
- Negotiation and procurement of e-resources for individual institutions through a group licensing process.
- In-person training and consultation on the FALSC products and services, in addition to online webinars, instruction, and self-paced training for all college and university libraries.

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[8] Section 1006.735(5), F.S. *See* Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58.

[9] *See* s. 1004.649, F.S.

[10] Section 1006.735(6), F.S.

[11] Section 1006.73(1), F.S.

[12] Section 1006.73(2), F.S.

[13] Florida Academic Library Services Cooperative, *About FALSC*, https://libraries.flvc.org/about-falsc (last visited Feb. 25, 2021).

[14] Students enrolled in Florida public secondary schools are required to have access to state funded electronic library resources licensed by the Florida Academic Library Services Cooperative. Fla. Admin. Code R. 6A-7.077. Public secondary school students enrolled in the articulated acceleration programs are also eligible to use electronic library resources funded by the Florida Center for Library Automation. Board of Governors Regulation 6.012.

- A centralized Help Desk providing user and technical support for the FALSC library services.
- A statewide open education community to promote and support textbook affordability and Open Educational Resources.[15]

Distance Learning and Student Services

Distance Learning and Student Services (DLSS) provides an array of innovative educational services for students, educators, and administrators in Florida. The DLSS operates several statewide services that impact the success of the state's students, of which is FloridaShines.[16]

FloridaShines

FloridaShines works with the state's public colleges and universities and other partners as a website where students can check their transcripts, register for online courses, search academic libraries across the state, and compare colleges and universities, among other activities, at no cost to the student.[17]

MyCareerShines

MyCareerShines provides career education and associated academic advising as a portal for Complete Florida Plus.[18] The FLVC's MyCareerShines career exploration system allows individuals to take skill and interest assessments and match their results to profiles of potential careers, while emphasizing those with high-growth potential in Florida. Cost-free resources available assist in creating an education plan, searching for scholarships, writing a resume, interviewing, and locating available jobs in Florida. MyCareerShines offers specialized modules for PreK-5 students, middle and high school students, college and university students, and adults.[19]

MyCareerShines has registered more than 859,000 users, with more than 1.2 million career assessments completed by middle school, high school, college, and adult users of the system. MyCareerShines is being used in approximately 3,400 middle school, high school and postsecondary institutions throughout Florida.[20]

III. Effect of Proposed Changes:

The bill establishes the Florida Postsecondary Academic Library Network (Network) under the joint oversight of the Office of the Board of Governors (BOG) and the Department of Education

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[15] *Id.*
[16] Florida Virtual Campus, *Organization Profile*, https://www.flvc.org/organization-profile (last visited Feb. 26, 2021).
[17] *Id.*
[18] Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58, at 1.
[19] *Id.*, at 3.
[20] Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58, at 13.

(DOE) in place of the Florida Academic Library Services Cooperative, and repeals the Complete Florida Plus Program (Complete Florida Plus).

The bill declares that the purpose of the Network is to deliver specified services to public postsecondary education institutions in Florida, namely all Florida College System (FCS) and State University System (SUS) institutions. The bill retains the general purpose of Complete Florida Plus, which includes the following services:

- Provision of information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within the state.
- Coordination with the FCS and SUS to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.
- Administration of a single library automation system and associated resources and services that all public postsecondary institutions use to support learning, teaching, and research needs, and development of automated library management tools.

The bill also adds to the Network the following services and functions:

- To the single library automation system:
  - A shared Internet-based catalog and discovery tool that allows a user to search and, if authorized, access the aggregate library holdings of the state's public postsecondary education institutions. The catalog and discovery tool must allow a user to search the library holdings of one institution, selected institutions, or all institutions and, to the extent feasible, must include an interlibrary loan function that ensures an authorized user can access the required library holding.
  - An Internet-based searchable collection of electronic resources which must include, but not be limited to, full-text journals, articles, databases, and electronic books licensed as specified.
  - An integrated library management system and its associated services that all public postsecondary education institution academic libraries must use for purposes of acquiring, cataloging, circulating, and tracking library material.
  - A statewide searchable database that includes an inventory of digital archives and collections held by public postsecondary education institutions.
- Coordination, with FCS institutions' and state universities' library staff, of the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and entering into contracts for the acquisition of library support services, electronic resources, and other goods and services necessary to carry out its authorized duties.
- Promotion and provision of recommendations concerning the use and distribution of open-access textbooks and education resources and innovative pricing techniques as a method for reducing costs.
- Provision of appropriate help desk support and training and consultation services to institutions and students.

The bill maintains from Complete Florida Plus a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education

institutions, intended to assist in the coordination and collaboration of articulation and access specified in law.[21]

In addition, the bill expands on functions in the Complete Florida Plus catalog of distance learning courses, to specify that the host entity is responsible for developing and disseminating operational procedures and technical guidelines for the catalog, to be followed by all participating institutions, which guidelines must address all of the following:

- Specific information concerning the distance learning course or degree program, including but not limited to course number, classification of instructional programs number, and information on the availability of the course or degree program; any prerequisite course or technology competency or skill; the availability of academic support services and financial aid resources; and course costs, fees, and payment policies.
- Definitions and descriptions of the catalog's search and retrieval options that will at a minimum allow users to search by academic term or course start date; institution, multiple institutions, or all institutions; and course or program delivery methods, course type, course availability, subject or discipline, and course number or classification of instructional programs number.
- An Internet-based analytic tool that allows for the collection and analysis of data as to usage of resources accessed or interaction with constituent institutions whose courses and programs are listed in the catalog.
- Frequent review and updates to institution catalogs to ensure that distance learning courses and degree programs comply with operational procedures.

The bill retains Complete Florida Plus student advising and support, with some modifications. Specifically, the bill requires the student advising services to provide all of the following:

- A streamlined online admissions application process, to be used by all public postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution, which must:
  - Use the transient student admissions application available through the statewide computer-assisted student advising system as specified. This admissions application is the only application required for enrollment of a transient student as described;
  - Implement the financial aid procedures required by the transient student admissions application process;
  - Transfer credit awarded by the institution offering the course to the transient student's degree-granting institution; and
  - Provide an interface between the institutional advising system and the statewide computer-assisted student advising system established, in order to electronically send, receive, and process the transient student admissions application.
- A statewide computer-assisted student advising system to support the process of advising, registering, and capturing student progression toward a degree and career and which must include a degree audit and an articulation component.
- A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning

[21] Sections 1007.01 - 1007.273, F.S.

outcomes, student access, the efficient delivery of student support services, and the overall quality of postsecondary distance learning courses and degree programs.
- Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary.

The bill requires FCS institutions and state universities to interface institutional advising systems with the statewide computer-assisted student advising system, which must, at a minimum:
- Allow a student to access the system at any time;
- Supports K-12 career and education planning;
- Allow a student to search public postsecondary education institutions and identify course options that will meet the requirements of a selected path toward a degree;
- Audit transcripts of students enrolled in a public postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation;
- Serve as the official statewide repository for the common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements;
- Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available student financial assistance sources; and
- Provide the admissions application for transient students as specified, which must include the electronic transfer and receipt of information and records for admissions and readmissions, financial aid, and transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution using the Florida Automated System for Transferring Educational Records (the "FASTER System").

The bill changes the host from the UWF, but retains a reporting requirement similar to Complete Florida Plus. The bill requires the host entity, beginning December 31, 2021, and each year thereafter, to submit a report to the Chancellors of the SUS and FCS regarding the implementation and operation of all components described, including, but not limited to, usage information collected, information and associated costs relating to the services and functions of the program, and the implementation and operation of the automated library services. The chancellors are required to provide an annual report on the performance of the host entity in delivering the services and any recommendations for changes needed to the Governor, the President of the Senate, the Speaker of the House of Representatives, the BOG, and the State Board of Education.

The bill assigns the Office of the BOG and the DOE joint responsibility for determining the host entity for the services described and sharing in the receipt and administration of an associated appropriation as described in the General Appropriations Act. The Chancellors of the FCS and BOG are required to provide oversight for successful delivery by the host entity of the services described. The bill also removes the requirement under Complete Florida Plus that the Northwest Regional Data Center support the Network.

The bill adds a new requirement that the Commissioner of Education and the Chancellor of the SUS must, by June 1, 2022, provide a joint recommendation for a process by which school district career centers operated pursuant to state law and charter technical career centers operated pursuant to state law would access appropriate postsecondary distance learning, student support services, and library assets described. The recommendation must include an analysis of the resources necessary to expand access and assets to centers and their students.

Where applicable, the bill updates statutory references to specified services provided by the Network to read Florida Postsecondary Academic Library Network.

In accordance with the repeal of Complete Florida Plus, the bill removes statutory references to Complete Florida Plus and to the Complete Florida Degree Initiative, removes statutory requirements to use a graphic and description provided by Complete Florida Plus to inform students of the catalog, and removes a directive in law that encouraged veterans, if appropriate, to participate in the Complete Florida Degree Program.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Governor has recommended funding to cover costs associated with the Florida Postsecondary Academic Library Network in the amount of $9,076,322 for Florida College System institutions and $11,836,500 for state universities.[22]

However, the system component that supports career and education planning for the K-12 education system was not included in the Governor's recommended budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 257.02, 295.22, 1004.013, 1006.73, 1007.01, 1007.27, 1009.23, and 1009.24.

This bill repeals section 1006.735 of the Florida Statutes.

IX. Additional Information:

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

PCS 298982 by Appropriations (Recommended by Appropriations Subcommittee on Education):
The committee substitute:

- Includes innovative pricing techniques as a method to reduce costs related to textbooks and education resources; and
- Specifies that the statewide computer-assisted student advising system is a K-20 statewide system that also supports career and education planning for the K-12 system.

B. Amendments:

None.

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

[22] Governor Ron DeSantis, *Fiscal Year 2021-2022 Governor's Recommended General Appropriations Act* (2021), *available at* http://www.bolderbrighterbetterfuture.com/content/Current/reports/Governors-Bill.pdf, Section 1, at 4 and 5.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment

Delete lines 247 - 257
and insert:
(b) A statewide computer-assisted student advising system that shall support career and education planning for the system and the process of advising, registering, and certifying postsecondary students for graduation and that shall include a degree audit and an articulation component. Florida College System institutions and state universities shall interface

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institutional advising systems with the statewide computer-assisted student advising system. At a minimum, the statewide computer-assisted student advising system shall:

1. Allow a student to access the system at any time.

2. Support career and education planning.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the Florida Postsecondary Academic Library Network; amending ss. 257.02 and 295.22, F.S.; conforming provisions to changes made by the act; amending s. 1004.013, F.S.; revising provisions relating to the awareness of certain postsecondary education programs and initiatives; amending s. 1006.73, F.S.; deleting provisions relating to the Florida Academic Library Services Cooperative; providing responsibilities for the Florida Postsecondary Academic Library Network; providing that the Board of Governors and the Department of Education will oversee a host entity chosen to deliver certain services; providing the services to be provided by the host entity; transferring responsibility for the statewide Internet-based catalog of distance learning courses to the host entity; providing requirements for such catalog; transferring responsibility for certain statewide online student advising services to the host entity; providing requirements for such services; requiring the host entity to annually submit a certain report by a specified date; providing requirements for such report; requiring the chancellors of the State University System and the Florida College System to provide a certain report; providing that specified entities have responsibility for the governance and administration of the provided services; requiring

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specified entities to issue a recommendation and report on expanding organizations who may access the provided services; repealing s. 1006.735, F.S., relating to the Complete Florida Plus Program; amending s. 1007.01, F.S.; conforming a cross-reference; amending s. 1007.27, F.S.; conforming a provision to changes made by the act; amending ss. 1009.23 and 1009.24, F.S.; conforming cross-references; revising a requirement to include a certain graphic on specified websites; providing an effective date.

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

Section 1. Subsection (1) of section 257.02, Florida Statutes, is amended to read:

257.02 State Library Council.—

(1) There shall be a State Library Council to advise and assist the division with planning, policy, and priorities related to the development of statewide information services. The council shall consist of nine members who shall be appointed by the Secretary of State. Of the nine members, three members must represent Florida public libraries, two members must represent the Florida Postsecondary Academic Library Network ~~Services Cooperative~~, one member must represent a multitype library cooperative, one member must represent a school library media center, one member must represent the Independent Colleges and Universities of Florida, and one member must represent a Florida library professional association. Members shall be

appointed for 4-year terms. A vacancy on the council shall be filled for the period of the unexpired term. A person may not be appointed to serve more than two consecutive terms as a member of the council. The secretary may remove from office any council member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to, or being found guilty of, a felony.

Section 2. Paragraph (b) of subsection (3) of section 295.22, Florida Statutes, is amended to read:

295.22 Veterans Employment and Training Services Program.—

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

(b) Assist veterans who reside in or relocate to this state and who are seeking employment. The corporation shall offer skills assessments to veterans and assist them in establishing employment goals and applying for and achieving gainful employment.

1. Assessment may include skill match information, skill gap analysis, resume creation, translation of military skills into civilian workforce skills, and translation of military achievements and experience into generally understood civilian workforce skills.

2. Assistance may include providing the veteran with information on current workforce demand by industry or geographic region, creating employment goals, and aiding or teaching general knowledge related to completing applications. The corporation may provide information related to industry

certifications approved by the Department of Education under s. 1008.44 as well as information related to earning academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military under s. 1004.096.

3. The corporation shall encourage veterans to register with the state's job bank system and may refer veterans to local one-stop career centers for further services. The corporation shall provide each veteran with information about state workforce programs and shall consolidate information about all available resources on one website that, if possible, includes a hyperlink to each resource's website and contact information, if available. ~~If appropriate, a veteran shall be encouraged to participate in the Complete Florida Degree Program established under s. 1006.735.~~

4. Assessment and assistance may be in person or by electronic means, as determined by the corporation to be most efficient and best meet the needs of veterans.

Section 3. Paragraph (a) of subsection (2) of section 1004.013, Florida Statutes, is amended to read:

1004.013 SAIL to 60 Initiative.—

(2) The State Board of Education and the Board of Governors shall work collaboratively to, at a minimum:

(a) Increase the awareness and use of:

1. The student advising system established under s. 1006.73 ~~s. 1006.735(4)(b)~~.

~~2. The Complete Florida Degree Initiative established under s. 1006.735(2) that facilitates degree completion for the state's adult learners. The Chancellor of the State University~~

~~System and the Chancellor of the Florida College System shall consult with the Complete Florida Degree Initiative to identify barriers to program expansion and develop recommendations to increase the number of participating institutions and students served by the program. The recommendations must consider, at a minimum, methods for increasing outreach efforts to help students complete the "last mile" by providing financial assistance to students who are within 12 credit hours of completing their first associate or baccalaureate degree, but have separated from their institution of enrollment for more than one semester. Recommendations must be submitted to the Board of Governors, the State Board of Education, and the Governor no later than October 1, 2019.~~

2.~~3.~~ Summer bridge programs at state universities and Florida College System institutions that help students transition to postsecondary education.

Section 4. Section 1006.73, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 1006.73, F.S., for present text.)

1006.73 Florida Postsecondary Academic Library Network.—

(1) PURPOSE.—The Board of Governors and the Department of Education shall jointly oversee the host entity in accordance with subsection (5) which will deliver the following services to public postsecondary education institutions in this state, which, for the purposes of this section, means all Florida College System and State University System institutions:

(a) Provide information regarding and access to distance learning courses and degree programs offered by public

postsecondary education institutions within this state.

(b) Coordinate with the Florida College System and the State University System to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.

(c) Administer a single library automation system and associated resources and services that all public postsecondary institutions shall use to support learning, teaching, and research needs and develop automated library management tools that shall include, but are not limited to, the following services and functions:

1. A shared Internet-based catalog and discovery tool that allows a user to search and, if authorized, access the aggregate library holdings of this state's public postsecondary education institutions. The catalog and discovery tool shall allow a user to search the library holdings of one institution, selected institutions, or all institutions and, to the extent feasible, shall include an interlibrary loan function that ensures an authorized user can access the required library holding.

2. An Internet-based searchable collection of electronic resources which shall include, but not be limited to, full-text journals, articles, databases, and electronic books licensed pursuant to paragraph (d).

3. An integrated library management system and its associated services that all public postsecondary education institution academic libraries shall use for purposes of acquiring, cataloging, circulating, and tracking library material.

4. A statewide searchable database that includes an inventory of digital archives and collections held by public postsecondary education institutions.

(d) In collaboration with library staff from Florida College System institutions and state universities, coordinate the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and enter into contracts for the acquisition of library support services, electronic resources, and other goods and services necessary to carry out its duties under this section.

(e) Promote and provide recommendations concerning the use and distribution of open-access textbooks and education resources and innovative pricing techniques that comply with all applicable laws in regard to copyrighted material as a method for reducing costs.

(f) Provide appropriate help desk support, training, and consultation services to institutions and students.

(2) STATEWIDE INTERNET-BASED CATALOG OF DISTANCE LEARNING COURSES.—There is established a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions which is intended to assist in the coordination and collaboration of articulation and access pursuant to parts II and III of chapter 1007. The host entity is responsible for developing and disseminating operational procedures and technical guidelines for the catalog, to be followed by all participating institutions. Operating procedures and technical guidelines will address the following:

(a) Specific information concerning the distance learning

course or degree program, including, but not limited to, course number, classification of instructional programs number, and information on the availability of the course or degree program; any prerequisite course or technology competency or skill; the availability of academic support services and financial aid resources; and course costs, fees, and payment policies.

(b) Definitions and descriptions of the catalog's search and retrieval options that, at a minimum, will allow users to search by academic term or course start date; institution, multiple institutions, or all institutions; and course or program delivery methods, course type, course availability, subject or discipline, and course number or classification of instructional programs number.

(c) An Internet-based analytic tool that allows for the collection and analysis of data as to usage of resources accessed or interaction with constituent institutions whose courses and programs are listed in the catalog.

(d) Frequent review and updates to institution catalogs to ensure that distance learning courses and degree programs comply with operational procedures.

(3) STATEWIDE ONLINE STUDENT ADVISING SERVICES AND SUPPORT.—The following online services and support shall be made available on a statewide basis:

(a) A streamlined online admissions application process, which shall be used by all public postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's

degree-granting institution, which shall:

1. Use the transient student admissions application available through the statewide computer-assisted student advising system established pursuant to paragraph (b). This admissions application is the only application required for enrollment of a transient student as described in this paragraph.

2. Implement the financial aid procedures required by the transient student admissions application process.

3. Transfer credit awarded by the institution offering the course to the transient student's degree-granting institution.

4. Provide an interface between the institutional advising system and the statewide computer-assisted student advising system established pursuant to paragraph (b) in order to electronically send, receive, and process transient student admissions application.

(b) A K-20 statewide computer-assisted student advising system that shall support career and education planning for the K-12 system and the process of advising, registering, and certifying postsecondary students for graduation and that shall include a degree audit and an articulation component. Florida College System institutions and state universities shall interface institutional advising systems with the statewide computer-assisted student advising system. At a minimum, the statewide computer-assisted student advising system shall:

1. Allow a student to access the system at any time.

2. Support K-12 career and education planning.

3. Allow a student to search public postsecondary education institutions and identify course options that will meet the

requirements of a selected path toward a degree.

4. Audit transcripts of students enrolled in a public postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation.

5. Serve as the official statewide repository for the common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements.

6. Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available sources of student financial assistance.

7. Provide the admissions application for transient students pursuant to paragraph (a) which must include the electronic transfer and receipt of information and records for:

a. Admissions and readmissions.

b. Financial aid.

c. Transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution using the Florida Automated System for Transferring Educational Records (the "FASTER System").

(c) A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning outcomes, student access, the efficient delivery of student support services, and the overall quality of postsecondary distance learning courses and degree programs.

(d) Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and

entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary to carry out duties under this section.

(4) REPORTING.—Beginning December 31, 2021, and each year thereafter, the host entity shall submit a report to the chancellors of the State University System and the Florida College System regarding the implementation and operation of all components described in this section, including, but not limited to, usage information collected under paragraph (2)(c), information and associated costs relating to the services and functions of the program, and the implementation and operation of the automated library services. The chancellors will provide an annual report on the performance of the host entity in delivering the services and any recommendations for changes needed to this section to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Board of Governors, and the State Board of Education.

(5) GOVERNANCE AND ADMINISTRATION.—The Office of the Board of Governors and the Department of Education shall have joint responsibility for determining the host entity for the services described in this section and shall share in the receipt and administration of an associated appropriation as described in the General Appropriations Act. The chancellors of the Florida College System and the Board of Governors shall provide oversight for successful delivery by the host entity of the services described in this section.

(6) RECOMMENDATION ON OTHER EDUCATIONAL INSTITUTIONS TO BE INCLUDED WITHIN THE FLORIDA POSTSECONDARY ACADEMIC LIBRARY

NETWORK.—By June 1, 2022, the Commissioner of Education and the Chancellor of the State University System shall provide a joint recommendation for a process by which school district career centers operated under s. 1001.44 and charter technical career centers under s. 1002.34 would access appropriate postsecondary distance learning, student support services, and library assets described in this section. The recommendation must include an analysis of the resources necessary to expand access and assets to centers and their students.

Section 5. Section 1006.735, Florida Statutes, is repealed.

Section 6. Paragraph (h) of subsection (3) of section 1007.01, Florida Statutes, is amended to read:

1007.01 Articulation; legislative intent; purpose; role of the State Board of Education and the Board of Governors; Articulation Coordinating Committee.—

(3) The Commissioner of Education, in consultation with the Chancellor of the State University System, shall establish the Articulation Coordinating Committee, which shall make recommendations related to statewide articulation policies and issues regarding access, quality, and reporting of data maintained by the K-20 data warehouse, established pursuant to ss. 1001.10 and 1008.31, to the Higher Education Coordination Council, the State Board of Education, and the Board of Governors. The committee shall consist of two members each representing the State University System, the Florida College System, public career and technical education, K-12 education, and nonpublic postsecondary education and one member representing students. The chair shall be elected from the membership. The Office of K-20 Articulation shall provide

administrative support for the committee. The committee shall:

(h) Recommend roles and responsibilities of public education entities in interfacing with the single, statewide computer-assisted student advising system established pursuant to s. 1006.73 ~~s. 1006.735~~.

Section 7. Subsection (1) of section 1007.27, Florida Statutes, is amended to read:

1007.27 Articulated acceleration mechanisms.—

(1) It is the intent of the Legislature that a variety of articulated acceleration mechanisms be available for secondary and postsecondary students attending public educational institutions. It is intended that articulated acceleration serve to shorten the time necessary for a student to complete the requirements associated with the conference of a high school diploma and a postsecondary degree, broaden the scope of curricular options available to students, or increase the depth of study available for a particular subject. Articulated acceleration mechanisms shall include, but are not limited to, dual enrollment and early admission as provided for in s. 1007.271, advanced placement, credit by examination, the International Baccalaureate Program, and the Advanced International Certificate of Education Program. Credit earned through the Florida Virtual School shall provide additional opportunities for early graduation and acceleration. Students of Florida public secondary schools enrolled pursuant to this subsection shall be deemed authorized users of the state-funded electronic library resources that are licensed for Florida College System institutions and state universities by the Florida Postsecondary Academic Library Network ~~Services~~

~~Cooperative~~. Verification of eligibility shall be in accordance with rules established by the State Board of Education and regulations established by the Board of Governors and processes implemented by Florida College System institutions and state universities.

Section 8. Paragraphs (a) and (c) of subsection (16) and subsection (17) of section 1009.23, Florida Statutes, are amended to read:

1009.23 Florida College System institution student fees.—

(16)(a) Each Florida College System institution may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.73 ~~s. 1006.735~~, a per-credit-hour distance learning course user fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

(c) If an institution assesses the distance learning fee, the institution must provide a link to the catalog within the advising and distance learning sections of the institution's website~~, using a graphic and description provided by the Complete Florida Plus Program, to inform students of the catalog~~.

(17) Each Florida College System institution that accepts transient students, pursuant to s. 1006.73 ~~s. 1006.735~~, may establish a transient student fee not to exceed $5 per course for processing the transient student admissions application.

Section 9. Paragraph (t) of subsection (14) and paragraphs

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(a) and (c) of subsection (17) of section 1009.24, Florida Statutes, are amended to read:

1009.24 State university student fees.—

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

(t) A transient student fee that may not exceed $5 per course for accepting a transient student and processing the transient student admissions application pursuant to s. 1006.73 ~~s. 1006.735~~.

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)-(s) shall be based on reasonable costs of services. The Board of Governors shall adopt regulations and timetables necessary to implement the fees and fines authorized under this subsection. The fees assessed under this subsection may be used for debt only as authorized under s. 1010.62.

(17)(a) A state university may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.73 ~~s. 1006.735~~, a per-credit-hour distance learning course fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

(c) If an institution assesses the distance learning fee, the institution must provide a link to the catalog within the advising and distance learning sections of the institution's

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website~~, using a graphic and description provided by the Complete Florida Plus Program, informing students of the catalog~~.

Section 10. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1436
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); and Senator Gruters
SUBJECT:	Florida Postsecondary Academic Library Network
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Fav/CS**

I. Summary:

CS/SB 1436 establishes the Florida Postsecondary Academic Library Network (Network) under the joint oversight of the Office of the Board of Governors (BOG) and the Department of Education, and repeals the Complete Florida Plus Program (Complete Florida Plus). The bill retains certain functions from Complete Florida Plus, with modifications, and adds new functions. The bill:

- Maintains Complete Florida Plus purposes related to distance learning courses and degree programs, and online academic support services, but specifies that the Network purposes must include providing recommendations on the use and distribution of open-access textbooks and education resources, and innovative pricing techniques as a method to reduce costs.
- Specifies that the Network single library automation system and associated resources and services must include a shared Internet-based catalog and discovery tool, an Internet-based searchable collection of electronic resources, an integrated library management system, and a statewide searchable database that includes an inventory of digital archives and collections that public postsecondary education institutions hold.
- Increases reporting requirements on host entity performance in delivering specified services.
- Maintains an online admissions and computer-assisted student advising system.
- Requires, by June 1, 2022, the Commissioner of Education and the Chancellor of the BOG to provide a joint recommendation for a process by which school district career centers and charter technical career centers would access appropriate Network services.

The bill will require a state recurring appropriation. See Section V for fiscal comments.

The bill takes effect July 1, 2021.

II. Present Situation:

Complete Florida Plus Program Funding for Fiscal Year 2020-2021

In June 2020, the Governor vetoed the $29.4 million appropriation in the 2020-2021 budget for the Complete Florida Plus Program (Complete Florida Plus).[1] The program provided support services for distance learning, libraries, and student services. These services were provided to all 40 Florida College System (FCS) and State University System (SUS) institutions. Beginning July 2020, the Florida Department of Education and Board of Governors used limited carryforward funds and nonrecurring contributions from the 40 institutions' funds to ensure that the distance learning and library services components of the program were not disrupted for the 2020-2021 fiscal year.[2]

Complete Florida Plus Program

In 2014, the Legislature amended the Florida Virtual Campus (FLVC) to be the Complete Florida Plus Program and in 2015 moved management of the FLVC to the University of West Florida's (UWF's) Division of Research and Strategic Innovation, where its mission and purpose remained the same. The units under FLVC included the Florida Academic Library Services Cooperative and the Distance Learning and Student Services.[3]

Complete Florida Plus was created at UWF to:

- Facilitate degree completion for Florida's adult learners through the Complete Florida Degree Initiative;[4]
- Maintain and manage Florida's online catalog of distance learning courses, degree programs, and resources;
- Provide statewide online student advising services and support;
- Provide information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within the state;
- Coordinate with the Florida College System (FCS) and the State University System (SUS) to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective; and
- Administer the Florida Academic Library Services Cooperative and consult with the chancellors of the FCS and the SUS regarding the implementation and operations of the cooperative.[5]

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[1] Governor Ron DeSantis, *2020 Veto List* (2020), *available at* https://www.flgov.com/wp-content/uploads/2020/06/2020-Veto-List.pdf, at 5.
[2] Board of Governors, *Agency Legislative Budget Request for Fiscal Year 2021-2022, available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=21014&DocType=PDF, at 180-183.
[3] Florida Virtual Campus, *Organization Profile*, https://www.flvc.org/organization-profile (last visited Feb. 26, 2021). The Florida Virtual Campus (FLVC) was created in 2012 by the Florida Legislature through the consolidation of four statewide organizations: the College Center for Library Automation, the Florida Center for Library Automation, the Florida Center for Advising and Academic Support, and the Florida Distance Learning Consortium.
[4] *See* s. 1006.735(2), F.S.
[5] Distance Learning and Student Services, *Complete Florida Plus Program*, https://dlss.flvc.org/about/legislation-regulation/complete-florida-plus-program (last visited Feb. 25, 2021). *See also* s. 1006.735(1), F.S.

Complete Florida Plus was required to make available online student advising services and support, including all of the following:

- A streamlined online admissions application process, to be used by all postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution. UWF is required to work with FCS institutions and state universities as specified in law.
- A K-20 statewide computer-assisted student advising system to support career and education planning for the K-12 system and the process of advising, registering, and certifying postsecondary students for graduation and to include a degree audit and an articulation component. FCS institutions and state universities are to interface institutional advising systems with the statewide computer-assisted student advising system that meets minimum specified requirements.
- A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning outcomes, student access, the efficient delivery of student support services, the alignment of degrees to career needs, and the overall quality of postsecondary distance learning courses and degree programs.
- Help desk support and training and consultation services to institutions and students using Complete Florida Plus services and resources.
- Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary.
- Development and implementation of a plan, in consultation with public postsecondary education institutions, which describes the services and resources available through Complete Florida Plus to encourage current and prospective students' use.[6]

Complete Florida Plus developed and managed a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions which is intended to assist in the coordination and collaboration of articulation and access. Operational procedures for the catalog must:

- Require participating institutions to provide specified information concerning the distance learning course or degree program.
- Require that distance learning courses and degree programs meet applicable accreditation standards and criteria.
- Require that the catalog is reviewed and updated frequently to ensure compliance with operational procedures.
- Define and describe the catalog's search and retrieval options that will allow users to search by specified criteria, at a minimum.
- Use an Internet-based analytic tool that allows the collection and analysis of specified data.[7]

[6] Section 1006.735(4), F.S.
[7] Section 1006.735(3), F.S.

UWF is required to submit a report on an annual basis to the President of the Senate and the Speaker of the House of Representatives regarding the implementation and operation of all components of Complete Florida Plus, including information and associated costs relating to the services and functions of the program.[8]

The Northwest Regional Data Center[9] is required by law to provide all data center services necessary to support the statewide Internet-based catalog established and the statewide online student advising services and support.[10]

Florida Academic Library Services Cooperative

The Florida Academic Library Services Cooperative (FALSC) provides a single library automation system and associated resources and services for all public postsecondary institutions to use to support learning, teaching, and research needs.[11] The FALSC develops and manages a library information portal and automated library management tools for use by FCS institutions and state universities.[12]

The FALSC is a unit of the FLVC which operates the integrated library system used by public colleges and university libraries statewide. The FALSC also provides more than 150,000 unique, digital archive and collection items and a statewide collection of over 400,000 online journals, e-books, and e-resources, available to assist nearly 1.3 million students, faculty, and staff throughout Florida.[13]

Products and services offered by the FALSC include:

- Management and maintenance of the statewide collection of e-resources available to students at all 40 public colleges and universities.[14]
- A shared catalog of library holdings for students to search for materials owned by any college or university in Florida.
- An integrated library system used by libraries to manage their local collections.
- Collaboration with public post-secondary education institutions to create and support Florida libraries' digital archives and collections.
- Negotiation and procurement of e-resources for individual institutions through a group licensing process.
- In-person training and consultation on the FALSC products and services, in addition to online webinars, instruction, and self-paced training for all college and university libraries.

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[8] Section 1006.735(5), F.S. *See* Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58.

[9] *See* s. 1004.649, F.S.

[10] Section 1006.735(6), F.S.

[11] Section 1006.73(1), F.S.

[12] Section 1006.73(2), F.S.

[13] Florida Academic Library Services Cooperative, *About FALSC*, https://libraries.flvc.org/about-falsc (last visited Feb. 25, 2021).

[14] Students enrolled in Florida public secondary schools are required to have access to state funded electronic library resources licensed by the Florida Academic Library Services Cooperative. Fla. Admin. Code R. 6A-7.077. Public secondary school students enrolled in the articulated acceleration programs are also eligible to use electronic library resources funded by the Florida Center for Library Automation. Board of Governors Regulation 6.012.

- A centralized Help Desk providing user and technical support for the FALSC library services.
- A statewide open education community to promote and support textbook affordability and Open Educational Resources.[15]

Distance Learning and Student Services

Distance Learning and Student Services (DLSS) provides an array of innovative educational services for students, educators, and administrators in Florida. The DLSS operates several statewide services that impact the success of the state's students, of which is FloridaShines.[16]

FloridaShines

FloridaShines works with the state's public colleges and universities and other partners as a website where students can check their transcripts, register for online courses, search academic libraries across the state, and compare colleges and universities, among other activities, at no cost to the student.[17]

MyCareerShines

MyCareerShines provides career education and associated academic advising as a portal for Complete Florida Plus.[18] The FLVC's MyCareerShines career exploration system allows individuals to take skill and interest assessments and match their results to profiles of potential careers, while emphasizing those with high-growth potential in Florida. Cost-free resources available assist in creating an education plan, searching for scholarships, writing a resume, interviewing, and locating available jobs in Florida. MyCareerShines offers specialized modules for PreK-5 students, middle and high school students, college and university students, and adults.[19]

MyCareerShines has registered more than 859,000 users, with more than 1.2 million career assessments completed by middle school, high school, college, and adult users of the system. MyCareerShines is being used in approximately 3,400 middle school, high school and postsecondary institutions throughout Florida.[20]

III. Effect of Proposed Changes:

The bill establishes the Florida Postsecondary Academic Library Network (Network) under the joint oversight of the Office of the Board of Governors (BOG) and the Department of Education

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[15] *Id.*
[16] Florida Virtual Campus, *Organization Profile*, https://www.flvc.org/organization-profile (last visited Feb. 26, 2021).
[17] *Id.*
[18] Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58, at 1.
[19] *Id.*, at 3.
[20] Florida Virtual Campus, *Complete Florida Plus Program 2019 Annual Report* (2019), *available at* https://www.flvc.org/documents/96858/1300774/CFPP+2019+Annual+Report.pdf/fcdee5fd-f6e4-014d-89c1-0efbc42f9b58, at 13.

(DOE) in place of the Florida Academic Library Services Cooperative, and repeals the Complete Florida Plus Program (Complete Florida Plus).

The bill declares that the purpose of the Network is to deliver specified services to public postsecondary education institutions in Florida, namely all Florida College System (FCS) and State University System (SUS) institutions. The bill retains the general purpose of Complete Florida Plus, which includes the following services:

- Provision of information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within the state.
- Coordination with the FCS and SUS to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.
- Administration of a single library automation system and associated resources and services that all public postsecondary institutions use to support learning, teaching, and research needs, and development of automated library management tools.

The bill also adds to the Network the following services and functions:

- To the single library automation system:
  - A shared Internet-based catalog and discovery tool that allows a user to search and, if authorized, access the aggregate library holdings of the state's public postsecondary education institutions. The catalog and discovery tool must allow a user to search the library holdings of one institution, selected institutions, or all institutions and, to the extent feasible, must include an interlibrary loan function that ensures an authorized user can access the required library holding.
  - An Internet-based searchable collection of electronic resources which must include, but not be limited to, full-text journals, articles, databases, and electronic books licensed as specified.
  - An integrated library management system and its associated services that all public postsecondary education institution academic libraries must use for purposes of acquiring, cataloging, circulating, and tracking library material.
  - A statewide searchable database that includes an inventory of digital archives and collections held by public postsecondary education institutions.
- Coordination, with FCS institutions' and state universities' library staff, of the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and entering into contracts for the acquisition of library support services, electronic resources, and other goods and services necessary to carry out its authorized duties.
- Promotion and provision of recommendations concerning the use and distribution of open-access textbooks and education resources and innovative pricing techniques as a method for reducing costs.
- Provision of appropriate help desk support and training and consultation services to institutions and students.

The bill maintains from Complete Florida Plus a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education

institutions, intended to assist in the coordination and collaboration of articulation and access specified in law.[21]

In addition, the bill expands on functions in the Complete Florida Plus catalog of distance learning courses, to specify that the host entity is responsible for developing and disseminating operational procedures and technical guidelines for the catalog, to be followed by all participating institutions, which guidelines must address all of the following:

- Specific information concerning the distance learning course or degree program, including but not limited to course number, classification of instructional programs number, and information on the availability of the course or degree program; any prerequisite course or technology competency or skill; the availability of academic support services and financial aid resources; and course costs, fees, and payment policies.
- Definitions and descriptions of the catalog's search and retrieval options that will at a minimum allow users to search by academic term or course start date; institution, multiple institutions, or all institutions; and course or program delivery methods, course type, course availability, subject or discipline, and course number or classification of instructional programs number.
- An Internet-based analytic tool that allows for the collection and analysis of data as to usage of resources accessed or interaction with constituent institutions whose courses and programs are listed in the catalog.
- Frequent review and updates to institution catalogs to ensure that distance learning courses and degree programs comply with operational procedures.

The bill retains Complete Florida Plus student advising and support, with some modifications. Specifically, the bill requires the student advising services to provide all of the following:

- A streamlined online admissions application process, to be used by all public postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution, which must:
  - Use the transient student admissions application available through the statewide computer-assisted student advising system as specified. This admissions application is the only application required for enrollment of a transient student as described;
  - Implement the financial aid procedures required by the transient student admissions application process;
  - Transfer credit awarded by the institution offering the course to the transient student's degree-granting institution; and
  - Provide an interface between the institutional advising system and the statewide computer-assisted student advising system established, in order to electronically send, receive, and process the transient student admissions application.
- A statewide computer-assisted student advising system to support the process of advising, registering, and certifying student progression toward a degree and career and which must include a degree audit and an articulation component.
- A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning

[21] Sections 1007.01 - 1007.273, F.S.

outcomes, student access, the efficient delivery of student support services, and the overall quality of postsecondary distance learning courses and degree programs.
- Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary.

The bill requires FCS institutions and state universities to interface institutional advising systems with the statewide computer-assisted student advising system, which must, at a minimum:
- Allow a student to access the system at any time;
- Support career and education planning;
- Allow a student to search public postsecondary education institutions and identify course options that will meet the requirements of a selected path toward a degree;
- Audit transcripts of students enrolled in a public postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation;
- Serve as the official statewide repository for the common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements;
- Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available student financial assistance sources; and
- Provide the admissions application for transient students as specified, which must include the electronic transfer and receipt of information and records for admissions and readmissions, financial aid, and transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution using the Florida Automated System for Transferring Educational Records (the "FASTER System").

The bill changes the host from UWF, but retains a reporting requirement similar to Complete Florida Plus. The bill requires the host entity, beginning December 31, 2021, and each year thereafter, to submit a report to the Chancellors of the SUS and FCS regarding the implementation and operation of all components described, including, but not limited to, usage information collected, information and associated costs relating to the services and functions of the program, and the implementation and operation of the automated library services. The chancellors are required to provide an annual report on the performance of the host entity in delivering the services and any recommendations for changes needed to the Governor, the President of the Senate, the Speaker of the House of Representatives, the BOG, and the State Board of Education.

The bill assigns the Office of the BOG and the DOE joint responsibility for determining the host entity for the services described and sharing in the receipt and administration of an associated appropriation as described in the General Appropriations Act. The Chancellors of the FCS and the BOG are required to provide oversight for successful delivery by the host entity of the services described. The bill also removes the requirement under Complete Florida Plus that the Northwest Regional Data Center support the Network.

The bill adds a new requirement that the Commissioner of Education and the Chancellor of the SUS must, by June 1, 2022, provide a joint recommendation for a process by which school district career centers operated pursuant to state law and charter technical career centers operated pursuant to state law would access appropriate postsecondary distance learning, student support services, and library assets as described. The recommendation must include an analysis of the resources necessary to expand access and assets to centers and their students.

Where applicable, the bill updates statutory references to specified services provided by the Network to read Florida Postsecondary Academic Library Network.

In accordance with the repeal of Complete Florida Plus, the bill removes statutory references to Complete Florida Plus and to the Complete Florida Degree Initiative, removes statutory requirements to use a graphic and description provided by Complete Florida Plus to inform students of the catalog, and removes a directive in law that encouraged veterans, if appropriate, to participate in the Complete Florida Degree Program.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Governor has recommended funding to cover costs associated with the Florida Postsecondary Academic Library Network in the amount of $9,076,322 for Florida College System institutions and $11,836,500 for state universities.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 257.02, 295.22, 1004.013, 1006.73, 1007.01, 1007.27, 1009.23, and 1009.24.

This bill repeals section 1006.735 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 19, 2021:
The committee substitute:

- Includes innovative pricing techniques as a method to reduce costs related to textbooks and education resources; and
- Specifies that the statewide computer-assisted student advising system must, in addition to its other functions, support career and education planning.

B. Amendments:

None.

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

[22] Governor Ron DeSantis, *Fiscal Year 2021-2022 Governor's Recommended General Appropriations Act* (2021), *available at* http://www.bolderbrighterbetterfuture.com/content/Current/reports/Governors-Bill.pdf, Section 1, at 4 and 5.

By Senator Gruters

23-01057A-21 20211436__

A bill to be entitled

An act relating to the Florida Postsecondary Academic Library Network; amending ss. 257.02 and 295.22, F.S.; conforming provisions to changes made by the act; amending s. 1004.013, F.S.; revising provisions relating to the awareness of certain postsecondary education programs and initiatives; amending s. 1006.73, F.S.; deleting provisions relating to the Florida Academic Library Services Cooperative; providing responsibilities for the Florida Postsecondary Academic Library Network; providing that the Board of Governors and the Department of Education will oversee a host entity chosen to deliver certain services; providing the services to be provided by the host entity; transferring responsibility for the statewide Internet-based catalog of distance learning courses to the host entity; providing requirements for such catalog; transferring responsibility for certain statewide online student advising services to the host entity; providing requirements for such services; requiring the host entity to annually submit a certain report by a specified date; providing requirements for such report; requiring the chancellors of the State University System and the Florida College System to provide a certain report; providing that specified entities have responsibility for the governance and administration of the provided services; requiring specified entities to issue a recommendation and report on expanding organizations who may access the

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provided services; repealing s. 1006.735, F.S., relating to the Complete Florida Plus Program; amending s. 1007.01, F.S.; conforming a cross-reference; amending s. 1007.27, F.S.; conforming a provision to changes made by the act; amending ss. 1009.23 and 1009.24, F.S.; conforming cross-references; revising a requirement to include a certain graphic on specified websites; providing an effective date.

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

Section 1. Subsection (1) of section 257.02, Florida Statutes, is amended to read:

257.02 State Library Council.—

(1) There shall be a State Library Council to advise and assist the division with planning, policy, and priorities related to the development of statewide information services. The council shall consist of nine members who shall be appointed by the Secretary of State. Of the nine members, three members must represent Florida public libraries, two members must represent the Florida Postsecondary Academic Library Network ~~Services Cooperative~~, one member must represent a multitype library cooperative, one member must represent a school library media center, one member must represent the Independent Colleges and Universities of Florida, and one member must represent a Florida library professional association. Members shall be appointed for 4-year terms. A vacancy on the council shall be filled for the period of the unexpired term. A person may not be

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appointed to serve more than two consecutive terms as a member of the council. The secretary may remove from office any council member for malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to, or being found guilty of, a felony.

Section 2. Paragraph (b) of subsection (3) of section 295.22, Florida Statutes, is amended to read:

295.22 Veterans Employment and Training Services Program.—

(3) ADMINISTRATION.—Florida Is For Veterans, Inc., shall administer the Veterans Employment and Training Services Program and perform all of the following functions:

(b) Assist veterans who reside in or relocate to this state and who are seeking employment. The corporation shall offer skills assessments to veterans and assist them in establishing employment goals and applying for and achieving gainful employment.

1. Assessment may include skill match information, skill gap analysis, resume creation, translation of military skills into civilian workforce skills, and translation of military achievements and experience into generally understood civilian workforce skills.

2. Assistance may include providing the veteran with information on current workforce demand by industry or geographic region, creating employment goals, and aiding or teaching general knowledge related to completing applications. The corporation may provide information related to industry certifications approved by the Department of Education under s. 1008.44 as well as information related to earning academic

college credit at public postsecondary educational institutions for college-level training and education acquired in the military under s. 1004.096.

3. The corporation shall encourage veterans to register with the state's job bank system and may refer veterans to local one-stop career centers for further services. The corporation shall provide each veteran with information about state workforce programs and shall consolidate information about all available resources on one website that, if possible, includes a hyperlink to each resource's website and contact information, if available. ~~If appropriate, a veteran shall be encouraged to participate in the Complete Florida Degree Program established under s. 1006.735.~~

4. Assessment and assistance may be in person or by electronic means, as determined by the corporation to be most efficient and best meet the needs of veterans.

Section 3. Paragraph (a) of subsection (2) of section 1004.013, Florida Statutes, is amended to read:

1004.013 SAIL to 60 Initiative.—

(2) The State Board of Education and the Board of Governors shall work collaboratively to, at a minimum:

(a) Increase the awareness and use of:

1. The student advising system established under s. 1006.73 ~~s. 1006.735(4)(b)~~.

~~2. The Complete Florida Degree Initiative established under s. 1006.735(2) that facilitates degree completion for the state's adult learners. The Chancellor of the State University System and the Chancellor of the Florida College System shall consult with the Complete Florida Degree Initiative to identify~~

~~barriers to program expansion and develop recommendations to increase the number of participating institutions and students served by the program. The recommendations must consider, at a minimum, methods for increasing outreach efforts to help students complete the "last mile" by providing financial assistance to students who are within 12 credit hours of completing their first associate or baccalaureate degree, but have separated from their institution of enrollment for more than one semester. Recommendations must be submitted to the Board of Governors, the State Board of Education, and the Governor no later than October 1, 2019.~~

2.~~3.~~ Summer bridge programs at state universities and Florida College System institutions that help students transition to postsecondary education.

Section 4. Section 1006.73, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 1006.73, F.S., for present text.)

1006.73 Florida Postsecondary Academic Library Network.—

(1) PURPOSE.—The Board of Governors and the Department of Education shall jointly oversee the host entity in accordance with subsection (5) which will deliver the following services to public postsecondary education institutions in this state, which, for the purposes of this section, means all Florida College System and State University System institutions:

(a) Provide information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within this state.

(b) Coordinate with the Florida College System and the

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State University System to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.

(c) Administer a single library automation system and associated resources and services that all public postsecondary institutions shall use to support learning, teaching, and research needs and develop automated library management tools that shall include, but are not limited to, the following services and functions:

1. A shared Internet-based catalog and discovery tool that allows a user to search and, if authorized, access the aggregate library holdings of this state's public postsecondary education institutions. The catalog and discovery tool shall allow a user to search the library holdings of one institution, selected institutions, or all institutions and, to the extent feasible, shall include an interlibrary loan function that ensures an authorized user can access the required library holding.

2. An Internet-based searchable collection of electronic resources which shall include, but not be limited to, full-text journals, articles, databases, and electronic books licensed pursuant to paragraph (d).

3. An integrated library management system and its associated services that all public postsecondary education institution academic libraries shall use for purposes of acquiring, cataloging, circulating, and tracking library material.

4. A statewide searchable database that includes an inventory of digital archives and collections held by public

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postsecondary education institutions.

(d) In collaboration with library staff from Florida College System institutions and state universities, coordinate the negotiation of statewide licensing of electronic library resources and preferred pricing agreements, issue purchase orders, and enter into contracts for the acquisition of library support services, electronic resources, and other goods and services necessary to carry out its duties under this section.

(e) Promote and provide recommendations concerning the use and distribution of open-access textbooks and education resources as a method for reducing costs.

(f) Provide appropriate help desk support, training, and consultation services to institutions and students.

(2) STATEWIDE INTERNET-BASED CATALOG OF DISTANCE LEARNING COURSES.—There is established a statewide Internet-based catalog of distance learning courses, degree programs, and resources offered by public postsecondary education institutions which is intended to assist in the coordination and collaboration of articulation and access pursuant to parts II and III of chapter 1007. The host entity is responsible for developing and disseminating operational procedures and technical guidelines for the catalog, to be followed by all participating institutions. Operating procedures and technical guidelines will address the following:

(a) Specific information concerning the distance learning course or degree program, including, but not limited to, course number, classification of instructional programs number, and information on the availability of the course or degree program; any prerequisite course or technology competency or skill; the

availability of academic support services and financial aid resources; and course costs, fees, and payment policies.

(b) Definitions and descriptions of the catalog's search and retrieval options that, at a minimum, will allow users to search by academic term or course start date; institution, multiple institutions, or all institutions; and course or program delivery methods, course type, course availability, subject or discipline, and course number or classification of instructional programs number.

(c) An Internet-based analytic tool that allows for the collection and analysis of data as to usage of resources accessed or interaction with constituent institutions whose courses and programs are listed in the catalog.

(d) Frequent review and updates to institution catalogs to ensure that distance learning courses and degree programs comply with operational procedures.

(3) STATEWIDE ONLINE STUDENT ADVISING SERVICES AND SUPPORT.—The following online services and support shall be made available on a statewide basis:

(a) A streamlined online admissions application process, which shall be used by all public postsecondary institutions, for undergraduate transient students currently enrolled and pursuing a degree at a public postsecondary education institution who enroll in a course offered by a public postsecondary education institution that is not the student's degree-granting institution, which shall:

1. Use the transient student admissions application available through the statewide computer-assisted student advising system established pursuant to paragraph (b). This

admissions application is the only application required for enrollment of a transient student as described in this paragraph.

2. Implement the financial aid procedures required by the transient student admissions application process.

3. Transfer credit awarded by the institution offering the course to the transient student's degree-granting institution.

4. Provide an interface between the institutional advising system and the statewide computer-assisted student advising system established pursuant to paragraph (b) in order to electronically send, receive, and process transient student admissions application.

(b) A statewide computer-assisted student advising system that shall support the process of advising, registering, and capturing student progression toward a degree and career and shall include a degree audit and an articulation component. Florida College System institutions and state universities shall interface institutional advising systems with the statewide computer-assisted student advising system. At a minimum, the statewide computer-assisted student advising system shall:

1. Allow a student to access the system at any time.

2. Allow a student to search public postsecondary education institutions and identify course options that will meet the requirements of a selected path toward a degree.

3. Audit transcripts of students enrolled in a public postsecondary education institution to assess current academic standing, the requirements for a student to transfer to another institution, and all requirements necessary for graduation.

4. Serve as the official statewide repository for the

common prerequisite manual, admissions information for transferring programs, foreign language requirements, residency requirements, and statewide articulation agreements.

5. Provide information relating to career descriptions and corresponding educational requirements, admissions requirements, and available sources of student financial assistance.

6. Provide the admissions application for transient students pursuant to paragraph (a) which must include the electronic transfer and receipt of information and records for:

a. Admissions and readmissions.

b. Financial aid.

c. Transfer of credit awarded by the institution offering the course to the transient student's degree-granting institution using the Florida Automated System for Transferring Educational Records (the "FASTER System").

(c) A method for identifying and evaluating new technologies and instructional methods for improving distance learning instruction and development for faculty, student learning outcomes, student access, the efficient delivery of student support services, and the overall quality of postsecondary distance learning courses and degree programs.

(d) Negotiation of statewide licensing resources and preferred pricing agreements, issuing purchase orders, and entering into contracts for the acquisition of distance learning resources, student and support services, electronic resources, and other goods and services necessary to carry out duties under this section.

(4) REPORTING.—Beginning December 31, 2021, and each year thereafter, the host entity shall submit a report to the

chancellors of the State University System and the Florida College System regarding the implementation and operation of all components described in this section, including, but not limited to, usage information collected under paragraph (2)(c), information and associated costs relating to the services and functions of the program, and the implementation and operation of the automated library services. The chancellors will provide an annual report on the performance of the host entity in delivering the services and any recommendations for changes needed to this section to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Board of Governors, and the State Board of Education.

(5) GOVERNANCE AND ADMINISTRATION.—The Office of the Board of Governors and the Department of Education shall have joint responsibility for determining the host entity for the services described in this section and shall share in the receipt and administration of an associated appropriation as described in the General Appropriations Act. The chancellors of the Florida College System and the Board of Governors shall provide oversight for successful delivery by the host entity of the services described in this section.

(6) RECOMMENDATION ON OTHER EDUCATIONAL INSTITUTIONS TO BE INCLUDED WITHIN THE FLORIDA POSTSECONDARY ACADEMIC LIBRARY NETWORK.—By June 1, 2022, the Commissioner of Education and the Chancellor of the State University System shall provide a joint recommendation for a process by which school district career centers operated under s. 1001.44 and charter technical career centers under s. 1002.34 would access appropriate postsecondary distance learning, student support services, and library assets

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described in this section. The recommendation must include an analysis of the resources necessary to expand access and assets to centers and their students.

Section 5. Section 1006.735, Florida Statutes, is repealed.

Section 6. Paragraph (h) of subsection (3) of section 1007.01, Florida Statutes, is amended to read:

1007.01 Articulation; legislative intent; purpose; role of the State Board of Education and the Board of Governors; Articulation Coordinating Committee.—

(3) The Commissioner of Education, in consultation with the Chancellor of the State University System, shall establish the Articulation Coordinating Committee, which shall make recommendations related to statewide articulation policies and issues regarding access, quality, and reporting of data maintained by the K-20 data warehouse, established pursuant to ss. 1001.10 and 1008.31, to the Higher Education Coordination Council, the State Board of Education, and the Board of Governors. The committee shall consist of two members each representing the State University System, the Florida College System, public career and technical education, K-12 education, and nonpublic postsecondary education and one member representing students. The chair shall be elected from the membership. The Office of K-20 Articulation shall provide administrative support for the committee. The committee shall:

(h) Recommend roles and responsibilities of public education entities in interfacing with the single, statewide computer-assisted student advising system established pursuant to s. 1006.73 ~~s. 1006.735~~.

Section 7. Subsection (1) of section 1007.27, Florida

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Statutes, is amended to read:

1007.27 Articulated acceleration mechanisms.—

(1) It is the intent of the Legislature that a variety of articulated acceleration mechanisms be available for secondary and postsecondary students attending public educational institutions. It is intended that articulated acceleration serve to shorten the time necessary for a student to complete the requirements associated with the conference of a high school diploma and a postsecondary degree, broaden the scope of curricular options available to students, or increase the depth of study available for a particular subject. Articulated acceleration mechanisms shall include, but are not limited to, dual enrollment and early admission as provided for in s. 1007.271, advanced placement, credit by examination, the International Baccalaureate Program, and the Advanced International Certificate of Education Program. Credit earned through the Florida Virtual School shall provide additional opportunities for early graduation and acceleration. Students of Florida public secondary schools enrolled pursuant to this subsection shall be deemed authorized users of the state-funded electronic library resources that are licensed for Florida College System institutions and state universities by the Florida Postsecondary Academic Library Network ~~Services Cooperative~~. Verification of eligibility shall be in accordance with rules established by the State Board of Education and regulations established by the Board of Governors and processes implemented by Florida College System institutions and state universities.

Section 8. Paragraphs (a) and (c) of subsection (16) and

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subsection (17) of section 1009.23, Florida Statutes, are amended to read:

1009.23 Florida College System institution student fees.—

(16)(a) Each Florida College System institution may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.73 ~~s. 1006.735~~, a per-credit-hour distance learning course user fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

(c) If an institution assesses the distance learning fee, the institution must provide a link to the catalog within the advising and distance learning sections of the institution's website~~, using a graphic and description provided by the Complete Florida Plus Program, to inform students of the catalog~~.

(17) Each Florida College System institution that accepts transient students, pursuant to s. 1006.73 ~~s. 1006.735~~, may establish a transient student fee not to exceed $5 per course for processing the transient student admissions application.

Section 9. Paragraph (t) of subsection (14) and paragraphs (a) and (c) of subsection (17) of section 1009.24, Florida Statutes, are amended to read:

1009.24 State university student fees.—

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

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(t) A transient student fee that may not exceed $5 per course for accepting a transient student and processing the transient student admissions application pursuant to s. 1006.73 ~~s. 1006.735~~.

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)-(s) shall be based on reasonable costs of services. The Board of Governors shall adopt regulations and timetables necessary to implement the fees and fines authorized under this subsection. The fees assessed under this subsection may be used for debt only as authorized under s. 1010.62.

(17)(a) A state university may assess a student who enrolls in a course listed in the distance learning catalog, established pursuant to s. 1006.73 ~~s. 1006.735~~, a per-credit-hour distance learning course fee. For purposes of assessing this fee, a distance learning course is a course in which at least 80 percent of the direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.

(c) If an institution assesses the distance learning fee, the institution must provide a link to the catalog within the advising and distance learning sections of the institution's website~~, using a graphic and description provided by the Complete Florida Plus Program, informing students of the catalog~~.

Section 10. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 17, 2021

I respectfully request that **Senate Bill #1436**, relating to Florida Postsecondary Academic Library Network, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1532
INTRODUCER:	Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Book
SUBJECT:	Child Support
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Fav/CS**
2.	Ravelo	Cibula	JU	**Fav/CS**
3.	Blizzard	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1532 makes numerous changes to the Child Support Program, which is administered by the Department of Revenue (DOR), Florida's Title IV-D agency. As the state's Title IV-D agency, the DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services, or are automatically referred because a parent is receiving cash or food assistance.

The bill makes the following changes to the Child Support Program:

- Specifies that affidavits of default or a default in payments are not required for Title IV-D cases to have accounts established in the Clerk of Court Child Support Collection System, and that Title IV-D payments are processed through the State Disbursement Unit;
- Amends the statements the DOR is required to certify when requesting a consumer report, to conform to the federal Fair Credit Reporting Act;
- Allows notices relating to consumer reports to be made by regular mail instead of by certified or registered mail;
- Prohibits the state from treating incarceration as voluntary unemployment when a support order is established or modified, unless limited exceptions apply;
- Codifies how social security dependent benefits affect the amount of child support ordered; the extent to which the parent receives credit for the benefits; and how a parent obtains credit for dependent benefits;
- Updates the process for rendering final orders;

- Authorizes the use of electronic notices of garnishment to consenting financial institutions;
- Revises the data exchange process between the DOR and the Department of Financial Services relating to the use of unclaimed property for past due child support;
- Permits the DOR to transmit confidential and exempt information with limited exception by unencrypted electronic mail to a parent, caregiver, or other person authorized to receive information about DOR services upon his or her consent; and
- Requires an entity to report to the State Directory of New Hires nonemployees who perform services and are paid $600 or more in a calendar year.

Additionally, the bill expands the authorized topics under the parent education and family stabilization course that is required for parents of minor children seeking a dissolution of marriage. The bill requires the parents of children with special needs or emotional concerns to select a course that is tailored towards those needs. Moreover, a court may authorize a parent to take an additional course covering those needs, separate from the required parent education and family stabilization course.

The bill has an indeterminate operational fiscal impact to the DOR. However, any impact is likely insignificant and can be absorbed within existing resources.

The bill is effective October 1, 2021.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Support of Children (Section 1)

Present Situation

Title IV-D cases

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.[1] The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.[2] The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.[3]

[1] 42 U.S.C. s. 651, et. seq.
[2] *Id*.
[3] U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), An Office of the Administration for Children & Families, *About the Office of Child Support Enforcement*, (February 2, 2021) *available at* https://www.acf.hhs.gov/css/about (last visited Mar. 8, 2021).

As Florida's IV-D agency,[4] the Department of Revenue (DOR) is responsible for collecting and enforcing child support.[5] The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year.[6] The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;
- Collect and disburse child support payments; and
- Monitor and enforce child support orders.[7]

Child support services are available even if a parent lives in another state or country. To receive the no-cost services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.[8]

The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.[9]

Depository Role in IV-D Cases

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU)[10] administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligors must make all child support payments in IV-D cases to the SDU.[11]

Upon request of the parties, the court may order that child support payments be made through the depository or directly to the obligee if it is in the child's best interest.[12] If such an order is made,

[4] Section 409.2557(1), F.S.
[5] *See* s. 61.13, F.S.
[6] The Department of Revenue (DOR), *Child Support Program: Overview 2019*, p. 6, 19, *available at* https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x_Child_Support_Overview_Presentation_External_2020_FFY_2018-19.pdf (last visited Mar. 8, 2021).
[7] *Id*. at 7.
[8] *Id*. at 5.
[9] The DOR, *About the Child Support Program*, available at https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx (last visited Mar. 8, 2021).
[10] Section 61.046(20), F.S., provides that the "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.
[11] Sections 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 U.S.C. s. 654b(a)(1)(A).
[12] Section 61.13(1)(d), F.S.

any party or the DOR in an IV-D case may file an affidavit with the depository[13] that alleges the obligor has defaulted on his or her child support payment obligations and that requests the payments be made through the depository.[14] The party must submit a copy of the affidavit to the court and to all parties.[15] Fifteen days after receipt of the affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the State Disbursement Unit.[16]

When a private case with a support order payable directly to the parent who is owed support becomes an IV-D case, the clerk's depository must create payment accounts on the Clerk of Court Child Support Collection System (CLERC System) for payments to be disbursed to the parent owed support and for the payment data to be sent to the DOR.[17] A private case may become an IV-D case due to either payment of public assistance or because a parent applies for IV-D services.[18]

Effect of Bill

The bill amends s. 61.13, F.S., to:

- Specify that payments in IV-D cases must be made to the SDU; and
- Require that, upon notice by the DOR that it is providing IV-D services in a case with an existing support order, the depository establish a case on the CLERC System and set up the appropriate payment accounts so that payments can be disbursed by the SDU, regardless of whether there is a default in payment.

Child Support Guidelines; Retroactive Payments (Section 4)

Present Situation

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, the head of the IV-D agency, or its designee, must certify that:[19]

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;

[13] Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.
[14] Section 61.13(1)(d)3., F.S.
[15] *Id.*
[16] *Id.*
[17] The DOR, *Senate Bill 1532 Agency Analysis*, p. 2, (March 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR Analysis").
[18] *Id.*
[19] Section 61.1354(3), F.S.

- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.

In *DOR v. Jackson*,[20] the Florida Supreme Court held that a parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are not in agreement on whether income can be imputed when determining *an initial* child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,[21] the Fourth District Court of Appeal (DCA) reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,[22] which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,[23] the First District Court of Appeal affirmed an order declining to impose a child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*,[24] the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.[25] On September 17, 2020, the U.S. Office of Child Support Enforcement proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or

[20] 846 So. 2d 486 (Fla. 2003).
[21] 34 So. 3d 121 (Fla. 4th DCA 2010).
[22] 727 So. 2d 328 (Fla. 4th DCA 1999).
[23] 196 So.3d 1267 (Fla. 1st DCA 2016).
[24] 220 So. 3d 480 (Fla. 5th DCA 2017).
[25] 45 CFR 302.56(c)(3).

- Any offense of which the individual's dependent child or the child support recipient was the victim.[26]

Effect of Bill

The bill prohibits treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law. This change will bring the state guidelines into closer compliance with federal regulations, though state guidelines would include exemptions not authorized in current regulations. Should the proposed rule creating limited exceptions for treating incarceration as voluntary unemployment be finalized, the exception in the bill relating to "willful nonpayment of child support" will be in conflict with the new federal rule, which may necessitate a future amendment.

The bill also amends s. 61.30(2) and (10), F.S., to be consistent with Florida case law, specifying:

- Social security benefits received by a minor child due to the retirement or disability of the child's parent are considered part of the parent's gross income for determining child support obligations.
- A parent is entitled to credit for social security benefits paid directly to the child or the child's caregiver when the benefits are paid due to the parent's retirement or disability.
- The parent's share of the monthly support obligation is considered paid in full each month for which such benefits are paid that are equal to or greater than the parent's share of the monthly obligation.
- If the benefits are less than the parent's share of the monthly obligation, the parent must pay the difference. If the benefits are more than the parent's share of the monthly obligation, the excess inures to the benefit of the child and may not be credited to arrears or retroactive support that accrued before the benefits commenced.

To obtain credit, a parent subject to a court order for child support, or the DOR in a IV-D case, may file a motion with the court or include the request in a petition to modify the support order, and that, alternatively, in a IV-D case, the DOR may determine and apply credit after notice and opportunity for hearing as provided under ch. 120, F.S. If credit is determined and applied by the DOR, the DOR shall notify the clerk of court and the clerk shall update the payment record.

Consumer Reporting Agencies (Section 2)

Present Situation

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:

[26] 85 FR 58029 (September 17, 2020).

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;
- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.[27]

Effect of Bill

The bill amends s. 63.1354, F.S., requiring consumer reporting agencies to provide requested consumer reports to the DOR, rather than the head of the IV-D agency or its designee. The bill also requires that, when requesting a consumer report, certified statements required to be made under s. 61.1354, F.S., to conform to the federal Fair Credit Reporting Act (FCRA)[28] and that the DOR, rather than the head of the IV-D agency, or its designee, make the certification.

Although the FCRA was amended in 2015 to remove the requirement to provide notice to individuals, the bill maintains the current notice requirement; however, the bill authorizes such notice to be made by regular mail instead of by certified or registered mail.

Parent Education and Family Stabilization (Section 3)

Present Situation

When the parents of minor children are in the process of a divorce or separation, they are required by statute to take a course on parent education and family stabilization. The course must be completed prior to the entry of the final judgement of dissolution of marriage.[29] The course is a minimum of four hours long, and designed to educate, train, and assist divorcing parents on the consequences of divorce on parents and children. The course may include topics such as:

- Legal aspects of deciding child-related issues between parents;
- Emotional aspects of separation and divorce on adults;
- Emotional aspects of separation and divorce on children;
- Family relationships and family dynamics;
- Financial responsibilities to a child or children;
- Issues regarding spousal or child abuse and neglect; and
- Skill-based relationship education that may be generalized to parenting, workplace, school, neighborhood, and civic relationships.[30]

[27] Section 61.1354(3), F.S.
[28] 15 U.S.C. s. 1681b(a)(4). FCRA protects information held by credit reporting agencies, and places legal obligations on companies who report information to them. The Federal Trade Commission, *Fair Credit Reporting Act*, available at https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Mar. 8, 2021).
[29] Section 61.21(4), F.S.
[30] Section 61.21(2)(a), F.S.

The Department of Children and Families approves a list of providers to teach this course, which is called the Parent Education and Family Stabilization Course.[31]

Effect of Bill

The bill provides the following legislative finding: "It is…beneficial to divorcing or separating parents of children who have identified special needs or emotional concerns to have available an educational program that will provide information tailored to children who have special needs or emotional concerns."

The bill adds to the list of topics that may be taught under the Parent Education and Family Stabilization Course to include the "particularized needs of children who have identified special needs or emotional concerns." Neither current law nor the bill require the course to include this subject in particular, as the list only contains topics that *may* be included. The course, in general, is only required to "educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children."[32] The bill does require, however, the parents of children with special needs or emotional concerns to select a course that is tailored to education relating to children who have special needs or emotional concerns.

The bill gives a court discretion to require a parent to attend a course separate from the Parent Education and Family Stabilization Course. Specifically, a court may require a parent to attend additional courses relating to children who have special needs or emotional concerns.

Rendering Final Orders (Section 5)

Present Situation

Final orders determining paternity or paternity and child support rendered as authorized by s. 409.256(11), F.S., and administrative support orders rendered as authorized by s. 409.2563(7), F.S., are prepared, reviewed and approved using the Child Support Program's automated system.[33] Once approved, the rendered final orders are digitally stored as PDF documents after electronic signatures are affixed and copies are automatically mailed to the parties by the automated system.[34] Under current law, rendered means that a signed written order is filed with the clerk or any deputy clerk of the DOR and served on the respondent. [35] The date of filing must also be indicated on the face of the order at the time of rendition.[36] Final orders issued by the Child Support Program under ss. 409.256 and 409.2563, F.S., must state that "The Final Order has been rendered on the above date by filing it with the agency clerk of the Florida Department of Revenue and serving it on the respondent."[37]

[31] Section 61.21(2), F.S. The approved providers can be found at https://www.myflfamilies.com/service-programs/child-welfare/stabilization/
[32] Section 61.21(2), F.S.
[33] The DOR, *Senate Bill 1532 Analysis*, p. 5 (March 12, 2021).
[34] *Id*.
[35] Sections 409.256(1)(i) and 409.2563(1)(e), F.S.
[36] *Id*.
[37] The DOR, *Senate Bill 1532 Analysis*, p. 5 (March 12, 2021).

As it relates to administrative support orders, s. 409.2563(8), F.S., also requires the DOR to file a certified copy of such orders with the clerk of the circuit court. Currently, the DOR's automated system generates final administrative support orders, which are batch e-filed electronically through the Florida Courts E-Filing Portal or automatically sent via U.S. mail to the clerk.[38]

Effect of Bill

The bill amends ss. 409.256(1)(i) and 409.2563(1)(e), F.S., modifying the definition of "rendered" to reflect that final orders and administrative support orders are system-generated with electronic signatures, rather than filed with the agency clerk or a deputy clerk.

The bill also removes the requirement to file a certified copy of an administrative support order with the clerk of the circuit court, as the orders are filed electronically or automatically sent via U.S. mail to the clerk.

Garnishment/ Federally Assisted State Transmitted Levy (Section 7)

Present Situation

The DOR is authorized to collect unpaid child support obligations by garnishing accounts at banks, credit unions and other financial institutions.[39] Upon service of the initial garnishment notice (Notice to Freeze) by registered mail, a person in possession of personal property owned by or owed to a person who owes past due support may not transfer or otherwise dispose of the obligor's property until 60 days after receipt of the notice.[40] After the Notice to Freeze is served on the one in possession of the property, the obligor is served with a Notice of Intent to Levy by certified or registered mail and given an opportunity to contest the notice.[41] If a timely petition to contest is not filed, or there is a hearing and an order entered that garnishment may proceed, the DOR is authorized to serve a Notice of Levy by registered mail on the one in possession of the property to be levied upon.[42]

The federal OCSE sponsors the Federally Assisted State Transmitted (FAST) Levy program. The FAST Levy program, which is voluntary for both child support and financial institutions, allows the agency and institutions to communicate more easily in respect of levy actions and in a standardized, automated manner.[43] The FAST Levy program also reduces costs, increases efficiency to collect past due child support, and gets support to families faster.[44] To participate, the DOR must provide notice by secure electronic means to the participating financial institutions. However, since the statute requires service of the Notice of Levy by registered mail, the DOR and Florida financial institutions are currently unable to participate in the FAST Levy program.

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[38] *Id*.
[39] Section 409.25656, F.S
[40] Section 409.25656(1), F.S
[41] *See* ss. 409.25656(7) and (8), F.S.
[42] Section 409.25656(3), F.S. The Notice of Levy requires a financial institution to transfer the funds in the account to the DOR up to the amount of past due or overdue support. The DOR then disburses the funds to the parent who is owed support.
[43] Office of Child Support Enforcement: *An Office of the Administration for Children & Families, FAST Levy Overview*, available at https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview (last visited Mar. 8, 2021).
[44] *Id*.

Effect of Bill

The bill amends s. 409.25656(4), F.S., authorizing the DOR to deliver levy notices electronically to banks, credit unions, and other financial institutions that provide express consent to receive notice in that manner. For financial institutions that elect to participate in the FAST Levy program, the DOR would notify participating financial institutions of pending levy actions by periodically transmitting an electronic data file to the OCSE.[45] The financial institution would access the data on the secure website maintained by the federal office and process the data to determine which customer accounts would be levied on and for what amounts.[46] The financial institution would provide this data to the central site which would generate a response file to the DOR that would be used to automatically update the Child Support Program's automated system.[47] Financial institutions that do not elect to participate in the program would continue to receive hard copy levy notices from the DOR by registered mail pursuant to current law.

Unclaimed Property (Section 8)

Present Situation

Florida's Department of Financial Services (DFS) regulates the disposition of unclaimed property in this state.[48] In addition to money and securities, unclaimed property includes tangible property such as watches, jewelry, coins, currency, stamps, historical items and other miscellaneous articles from abandoned safe deposit boxes. Until claimed, unclaimed money is deposited into the state school fund, where it is used for public education. Florida's Chief Financial Officer holds unclaimed property claimable accounts valued at $2 billion, mostly from dormant accounts in financial institutions, insurance and utility companies, securities and trust holdings. There is, however, no statute of limitations, and citizens have the right to claim their property any time at no cost.[49]

As part of an effort to collect and pay past due support, s. 409.25658, F.S., requires the DOR and the DFS to identify past due obligors' unclaimed property held by the DFS.[50] The DOR is required to periodically provide the DFS with an electronic file of support obligors who owe past due support.[51] The DFS is then required to conduct a data match of the file against all apparent owners of unclaimed property under ch. 717, F.S., and provide the resulting match list to the DOR.[52] Upon receipt of the data match list, the DOR is required to provide the DFS the obligor's last known address and DFS is required to follow the notification procedures under s. 717.118, F.S., ensuring owners of unclaimed property are notified in a cost-effective manner.[53]

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[45] The DOR, *Senate Bill 1532 Analysis*, p. 6 (March 12, 2021).
[46] *Id*.
[47] *Id*.
[48] Section 717.101, F.S.
[49] The DFS, *Unclaimed Property*, available at https://myfloridacfo.com/division/unclaimedproperty/home (last visited Mar. 8, 2021).
[50] Section 409.25658(1), F.S.
[51] Section 409.25658(2), F.S.
[52] *Id*.
[53] Section 409.25658(3), F.S.

Prior to paying the approved claim for unclaimed property of an obligor owing past due support, the DFS must notify the DOR that the claim has been approved.[54] Upon such notice by the DFS to the DOR, the DOR must immediately send a notice by certified mail to the obligor, with a copy to the DFS, advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support owed, and informing the obligor of the obligor's right to request a hearing under ch. 120, F.S.[55] The DFS must retain custody of the property until a final order is entered by the DOR and any appeals have been concluded.[56] If the obligor does not request a hearing, the DOR enters a final order instructing the DFS to transfer the property to the DOR in the amount stated in the final order.[57]

The following chart reflects recent data from the DOR on the number of actions, collections, and final orders related to unclaimed property:[58]

State Fiscal Year	Actions Initiated	Final Orders Entered	Collections Received
2020/21 (YTD)	5,261	4,617	$721,040
2019/20	6,943	4,904	$1,165,414
2018/19	6,726	5,285	$1,021,727
2017/18	8,316	5,035	$1,388,238

Effect of Bill

The bill switches the current roles of the DOR and the DFS as they relate to unclaimed property. The DFS must periodically provide the DOR with an electronic data file of unclaimed property accounts. The DOR must then use this data to identify support obligors with unclaimed property accounts and send the DFS an electronic data file with the names and other personal identifying information of the support obligors.[59] The bill authorizes the DOR to submit claims for unclaimed property to the DFS.

The bill requires the DOR to send a notice of intent to intercept unclaimed property by regular mail, instead of certified mail. If a support obligor does not request a hearing, the DOR notifies the DFS to transfer property to the DOR in the amount of the past due support instead of entering a final order.

Customer Service via E-mail (Section 9)

Present Situation

Under the Department of Management Services, Division of State Technology, R. 60GG-2.003(4)(b)1., F.A.C., each state agency is required to "[e]ncrypt confidential and exempt information during transmission, except when the transport medium is owned or

[54] Section 409.25658(4), F.S.
[55] *Id*.
[56] *Id*.
[57] Section 409.25658(4), F.S.
[58] E-mail from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: DOR Child Support Concepts Information, March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[59] This reflects the 2015 Memorandum of Understanding currently in effect between the DOR and the DFS. *See* The DOR Analysis at p. 7.

managed by the agency and controls are in place to protect the data during transit." Due to the COVID-19 pandemic, the DOR is operating under a waiver of this rule, providing consumer services by e-mail, phone, fax, online chat, and online self-help.[60] Since March 2020, e-mails from customers have increased tenfold.[61] Using encrypted e-mail to respond to customers' e-mails is cumbersome and disfavored by customers.[62]

Effect of Bill

The bill amends s. 409.2567, F.S., authorizing the DOR to include confidential and exempt information in unencrypted e-mail communications with a parent, caregiver, or other person who is authorized to receive the information, provided the parent, caregiver, or other person consents. Social security numbers, federal tax information, driver license numbers, and bank account numbers may not be provided in this manner.

Compensation Reporting (Section 10)

Present Situation

Under state and federal law, employers are required to report newly hired or rehired employees to the State Directory of New Hires[63] within 20 days after the date of hire.[64] Employers must report the employee's name, address, social security number, date of birth (if available) date of hire (the date the employee first performs services for pay), employer's name and address, and the employer's federal employer identification number.[65] Employers may report new hires online by submitting electronic data files or by fax, phone or by first class mail.

The Child Support Program adds the new hire data to the State Directory of New Hires database daily and performs automated data matching using the names and social security numbers provided to identify employers of individuals who owe child support.[66] Within two business days after the information is reported and added to the data base, the Child Support Program must, when appropriate, issue an income deduction notice to the employer.[67] The information is also made available to other agencies responsible for determining eligibility for various benefit programs under s. 409.2576(9), F.S.

Some individuals rendering services for payment may not be classified as employees but might instead be considered independent contractors. However, income paid to individuals not classified as employees is not reported to the State Directory of New Hires, limiting the ability of the Child Support Program to collect child support by income deduction. Income earned by independent contractors who are paid or will be paid $600 or more during a calendar year by a

[60] The DOR, *Senate Bill 1532 Analysis*, p. 7 (March 12, 2021).
[61] *Id.*
[62] *Id.*
[63] The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state.
[64] *See* s. 409.2576, F.S. and 42 USC s. 653a.
[65] Section 409.2576(3)(a), F.S. See also, OCSE, New Hire Reporting-Answers to Employer Questions, available at https://www.acf.hhs.gov/css/faq/new-hire-reporting-answers-employer-questions (last visited Mar. 8, 2021).
[66] The DOR, *Senate Bill 1532 Analysis*, p. 7. (March 12, 2021).
[67] Section 409.2576(7), F.S.

service-recipient engaged in a business must be reported to the Internal Revenue Service.[68] Mandatory reporting of these individuals in the same manner as employees could result in increased child support collections for families. Several states have laws requiring employers to report new-hire information on independent contractors, including California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, Ohio, Texas, Utah and West Virginia.[69]

Effect of Bill

The bill amends s. 409.2576, F.S., adding the definition of "service recipient," a person engaged in a trade or business for whom a service is performed by an individual in a capacity other than that of an employee. The bill requires a service recipient to report to the State Directory of New Hires any individual, other than an employee, to whom the service recipient pays more than $600 in a calendar year for services performed by the individual in the course of the service recipient's trade or business.

The bill also specifies that, for an individual who is not an employee, the service recipient's report must include the individual's name, address, and social security number, or other identifying number assigned under s. 6109 of the Internal Revenue Code, the date services for payment were first performed by the individual, and the name, address, and employer identification number of the service recipient. The bill provides that service recipients must report these individuals within 20 days after the earlier of either:

- First making payments that require an IRS Form 1099; or
- Entering into a contract providing for such payments.

The bill specifies that the information would be provided to the National Directory of New Hires for use by other state child support programs, the same as new hire reports for employees under current law.

The effective date of the bill is October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[68] 26 U.S.C. s. 6041A
[69] The DOR, *Senate Bill 1532 Analysis*, p. 8. (March 12, 2021).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will need to start reporting independent contractors' information to the State Directory of New Hires and the new reporting requirement may require more resources and additional costs to private businesses.

Incarcerated parents will benefit from not having their incarceration treated as voluntary unemployment, as income will not be imputed to them while they have no ability to pay, reducing the amount in past-due child support they would otherwise owe.

Financial institutions that participate in the Federally Assisted State Transmitted (FAST) Levy program may experience cost savings with the improved efficiencies associated with participating in the program such as processing levy notices from multiple states in a standardized, automated manner.

Providers of parenting courses that address children having special needs or emotional concerns may experience greater demands for their courses and greater revenues.

C. Government Sector Impact:

With respect to a fiscal impact on state government, the Department of Revenue reports an operational impact, which is most likely insignificant, and can be absorbed within existing resources.[70] The Florida Court Clerks & Comptrollers (FCCC) report the bill would most likely result in minimal impact to the Clerks' operations and to those of FCCC in its operation and maintenance of the Clerk of Court Child Support Collection System.[71]

[70] The DOR, *Senate Bill 1532 Analysis*, p. 9 (March 12, 2021)
[71] The FCCC, *Senate Bill 1532 Analysis*, p. 4 (March 12, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

The short title of the bill, an act relating to child support, is narrower than its subject matter, which relates to child support and parenting courses. The Legislature may wish to revise the short title to be "an act relating to family law."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.1354, 61.21, 61.30, 409.256, 409.2563, 409.25656, 409.25658, 409.2567, and 409.2576.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Judiciary on March 22, 2021:
The committee substitute amends the list of topics taught in the Parent Education and Family Stabilization Course to include the particularized needs of children who have identified special needs or emotional concerns.

- Requires parents of children with special needs or emotional concerns to take a Parent Education and Family Stabilization course tailored towards those needs prior to any dissolution of marriage.
- Allows for a court to require a parent to take a course relating to children who have special needs or emotional concerns. This course would be separate from the required Parent Education and Family Stabilization Course.

CS by Children, Families, and Elder Affairs on March 9, 2021:
The committee substitute:

- Amends the provision which permits the Department of Revenue (DOR) to deliver notices required under the garnishment section to the obligor by secured electronic means upon express written consent to a person who is in possession of personal property belonging to the obligor;
- Authorizes the DOR to transmit certain confidential and exempt electronic mail regarding support services made on behalf of dependent children in an "unencrypted" format; and
- Makes technical changes to the notice that may be given by the DOR to receive depository services even if the obligor is not delinquent in payment of child support.

B. Amendments:

None.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Book

590-03167-21 20211532c2

A bill to be entitled

An act relating to child support; amending s. 61.13, F.S.; revising requirements for child support depositories in Title IV-D cases; requiring the depositories to transmit case data through and set up appropriate payment accounts in the Clerk of the Court Child Support Enforcement Collection System upon certain notice from the Department of Revenue; amending s. 61.1354, F.S.; revising provisions related to the sharing of information between consumer reporting agencies and the department; requiring consumer reports to be kept confidential and used only for specified purposes; amending s. 61.21, F.S.; revising legislative findings; revising course topics for the Parent Education and Family Stabilization Course; requiring certain parties to complete a Parent Education and Family Stabilization Course tailored to education relating to children who have special needs or emotional concerns; authorizing the court to require additional education courses for certain parents; amending s. 61.30, F.S.; prohibiting the treatment of incarceration as voluntary unemployment for purposes of establishing or modifying child support orders, with exceptions; providing that certain social security benefits are included in a parent's gross income; authorizing certain social security benefits paid to be applied as a credit for purposes of monthly support obligations; providing requirements for such credit; providing procedures for

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a parent to seek application of such credit; amending s. 409.256, F.S.; revising the definition of the term "rendered"; amending s. 409.2563, F.S.; revising the definition of the term "rendered"; deleting a requirement that a certain order filed by the department be a certified copy of the order; amending s. 409.25656, F.S.; authorizing the department to deliver certain notices by secure electronic means under certain circumstances; amending s. 409.25658, F.S.; revising provisions related to the department's joint efforts with the Department of Financial Services to use unclaimed property for past due child support; amending s. 409.2567, F.S.; authorizing the department to include confidential and exempt information in unencrypted electronic mail communications with parents, caregivers, or other authorized persons under certain circumstances, with exceptions; amending s. 409.2576, F.S.; requiring service recipients to report certain information to the State Directory of New Hires; defining the term "service recipient"; providing reporting requirements for service recipients; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing;

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powers of court.—

(1)

(d)1. All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order.

2. If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. Support orders that are not subject to immediate income deduction may be directed through the depository under s. 61.181 or made payable directly to the obligee. Payments made by immediate income deduction shall be made to the State Disbursement Unit. The court shall provide a copy of the order to the depository.

3. For support orders payable directly to the obligee, any party~~, or the department in a IV-D case,~~ may subsequently file an affidavit with the depository alleging a default in payment of child support and stating that the party wishes to require that payments be made through the depository. The party shall provide copies of the affidavit to the court and to each other party. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be paid through the depository, except that payments in Title IV-D cases and income deduction payments shall be made to the State Disbursement Unit. In Title IV-D cases, an affidavit of default or a default in payments is not required to receive depository services. Upon notice by the department that it is providing Title IV-D services in a case with an existing support order, the depository shall transmit case data through, and set up appropriate payment accounts in, regardless of whether there

is a delinquency, the Clerk of the Court Child Support Enforcement Collection System as required under s. 61.181(2)(b).

Section 2. Subsection (3) of section 61.1354, Florida Statutes, is amended to read:

61.1354 Sharing of information between consumer reporting agencies and the IV-D agency.—

(3) A consumer reporting agency ~~For purposes of determining an individual's income and establishing an individual's capacity to make support payments or for determining the appropriate amount of child support payment to be made by the individual, consumer reporting agencies~~ shall provide, upon request, consumer reports to the department ~~head of the IV-D agency~~ pursuant to s. 604 of the Fair Credit Reporting Act, provided that the department ~~head of the IV-D agency, or its designee,~~ certifies that:

(a) The consumer report is needed for the purpose of ~~determining an individual's income and~~ establishing an individual's capacity to make support payments, ~~or~~ determining the appropriate level of support payments, or enforcing a child support order, award, agreement, or judgment ~~amount of child support payment to be made by the individual~~;

(b) The consumer's parentage of the child to whom the obligation relates has been established or acknowledged by the consumer in accordance with state laws under which the obligation arises ~~Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to the laws of Florida~~;

(c) The individual whose report is sought was provided with

at least 15 days' prior notice, by regular ~~certified or registered~~ mail to the individual's last known address, that the report was requested; and

(d) The consumer report will be kept confidential, will be used solely for the purpose described in paragraph (a), and will not be used in connection with any other civil, administrative, or criminal proceeding or for any other purpose.

Section 3. Present paragraph (d) of subsection (1) of section 61.21, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, subsection (12) is added to that section, and paragraph (c) of subsection (1), paragraph (a) of subsection (2), and subsection (4) of that section are amended, to read:

61.21 Parenting course authorized; fees; required attendance authorized; contempt.—

(1) LEGISLATIVE FINDINGS; PURPOSE.—It is the finding of the Legislature that:

(c) It is ~~has been found to be~~ beneficial to parents who are separating or divorcing to have available an educational program that will provide general information regarding:

1. The issues and legal procedures for resolving time-sharing and child support disputes.

2. The emotional experiences and problems of divorcing adults.

3. The family problems and the emotional concerns and needs of the children.

4. The availability of community services and resources.

(d) It is also beneficial to divorcing or separating parents of children who have identified special needs or

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emotional concerns to have available an educational program that will provide information tailored to children who have special needs or emotional concerns.

(2) The Department of Children and Families shall approve a parenting course which must ~~shall~~ be ~~a course of~~ a minimum of 4 hours and designed to educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.

(a) The parenting course referred to in this section is ~~shall be~~ named the Parent Education and Family Stabilization Course and may include, but need not be limited to, the following topics as they relate to court actions between parents involving custody, care, time-sharing, and support of a child or children:

1. Legal aspects of deciding child-related issues between parents.

2. Emotional aspects of separation and divorce on adults.

3. Emotional aspects of separation and divorce on children.

4. Family relationships and family dynamics.

5. Financial responsibilities to a child or children.

6. Issues regarding spousal or child abuse and neglect.

7. Skill-based relationship education that may be generalized to parenting, workplace, school, neighborhood, and civic relationships.

8. Particularized needs of children who have identified special needs or emotional concerns.

(4)(a) All parties to a dissolution of marriage proceeding with minor children or a paternity action that involves issues of parental responsibility shall ~~be required to~~ complete the

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Parent Education and Family Stabilization Course before ~~prior to~~ the entry by the court of a final judgment. If the parties have children who have identified special needs or emotional concerns, the parties must select a Parent Education and Family Stabilization Course that is tailored to education relating to children who have special needs or emotional concerns.

(b) The court may excuse a party from attending the parenting course, or from completing the course within the required time, for good cause.

(12) The court, in its discretion, may require a parent to attend educational courses relating to children who have special needs or emotional concerns in addition to the Parent Education and Family Stabilization Course required under this section.

Section 4. Present paragraph (c) of subsection (2) of section 61.30, Florida Statutes, is redesignated as paragraph (e), new paragraphs (c) and (d) are added to that subsection, and subsection (10) of that section is amended, to read:

61.30 Child support guidelines; retroactive child support.—

(2) Income shall be determined on a monthly basis for each parent as follows:

(c) Except for incarceration for willful nonpayment of child support or for an offense against a child or person who is owed child support, incarceration may not be treated as voluntary unemployment in establishing or modifying a support order. However, the court may deviate from the child support guideline amount as provided in paragraph (1)(a).

(d) Social security benefits received by a minor child due to the retirement or disability of the child's parent shall be included in the parent's gross income.

(10)(a) Each parent's actual dollar share of the total minimum child support need shall be determined by multiplying the minimum child support need by each parent's percentage share of the combined monthly net income.

(b)1. A parent is entitled to credit for social security benefits paid directly to the child or the child's caregiver when the benefits are paid due to the parent's retirement or disability. The parent's share of the monthly support obligation is paid in full each month for which such benefits are paid that are equal to or greater than the parent's share of the monthly obligation. If the benefits are less than the parent's share of the monthly obligation, the parent owes the difference. If the benefits are more than the parent's share of the monthly obligation, the excess inures to the benefit of the child and may not be credited to arrears or retroactive support that accrued before the benefits commenced.

2. To obtain credit for social security benefits paid, a parent subject to a court order for child support, or the department in a Title IV-D case, may file a motion with the court or include the request in a petition to modify the support order. Alternatively, in a Title IV-D case, the department may determine and apply credit after notice and an opportunity for a hearing are provided in accordance with chapter 120. If the department determines that a credit applies, the department shall notify the clerk of court, and the clerk shall update the payment record to reflect the credit.

Section 5. Paragraph (i) of subsection (1) of section 409.256, Florida Statutes, is amended to read:

409.256 Administrative proceeding to establish paternity or

paternity and child support; order to appear for genetic testing.—

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

(i) "Rendered" means that a signed written order is issued by ~~filed with the clerk or a deputy clerk of~~ the Department of Revenue and served on the respondent. ~~The date of filing must be indicated on the face of the order at the time of rendition.~~

Section 6. Paragraph (e) of subsection (1) and subsection (8) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

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

(e) "Rendered" means that a signed written order is issued by ~~filed with the clerk or any deputy clerk of~~ the department and served on the respondent. ~~The date of filing must be indicated on the face of the order at the time of rendition.~~

Other terms used in this section have the meanings ascribed in ss. 61.046 and 409.2554.

(8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department shall file with the clerk of the circuit court a ~~certified~~ copy of an administrative support order rendered under this section. The depository operated pursuant to s. 61.181 for the county where the administrative support order has been filed shall:

(a) Act as the official recordkeeper for payments required under the administrative support order;

(b) Establish and maintain the necessary payment accounts;

(c) Upon a delinquency, initiate the judgment by operation

of law procedure as provided by s. 61.14(6); and

(d) Perform all other duties required of a depository with respect to a support order entered by a court of this state.

When a proceeding to establish an administrative support order is commenced under subsection (4), the department shall file a copy of the initial notice with the depository. The depository shall assign an account number and provide the account number to the department within 4 business days after the initial notice is filed.

Section 7. Subsection (4) of section 409.25656, Florida Statutes, is amended to read:

409.25656 Garnishment.—

(4) A notice that is delivered under this section is effective at the time of delivery against all credits, other personal property, or debts of the obligor which are not at the time of such notice subject to an attachment, garnishment, or execution issued through a judicial process. Upon express written consent of a person who is or may be in possession of personal property belonging to the obligor, the department may deliver the notices required by this section to that person by secure electronic means.

Section 8. Section 409.25658, Florida Statutes, is amended to read:

409.25658 Use of unclaimed property for past due support.—

(1) In a joint effort to facilitate the collection and payment of past due support, the Department of Revenue, in cooperation with the Department of Financial Services, shall identify persons owing support collected by the department

~~through a court~~ who are presumed to have unclaimed property held by the Department of Financial Services.

(2) The Department of Financial Services ~~department~~ shall periodically provide the department ~~of Financial Services~~ with an electronic file of unclaimed property accounts. The department shall use the data to identify obligors with unclaimed property accounts and shall provide the Department of Financial Services with an electronic data file that includes the names and other personal identifying information of the obligors ~~support obligors who owe past due support. The Department of Financial Services shall conduct a data match of the file against all apparent owners of unclaimed property under chapter 717 and provide the resulting match list to the department~~.

(3) As the state's Title IV-D agency under s. 409.2557(1), the department is authorized to submit claims for unclaimed property to the Department of Financial Services for the purpose of collecting past due support and shall do so in accordance with the standards established by the Department of Financial Services ~~Upon receipt of the data match list, the department shall provide to the Department of Financial Services the obligor's last known address. The Department of Financial Services shall follow the notification procedures under s. 717.118~~.

(4) Before ~~Prior to~~ paying an obligor's approved claim, the Department of Financial Services shall notify the department that such claim has been approved. Upon confirmation that the Department of Financial Services has approved the claim or a claim submitted by the department, the department shall

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~~immediately~~ send a notice by regular ~~certified~~ mail to the obligor~~, with a copy to the Department of Financial Services,~~ advising the obligor of the department's intent to intercept the property ~~approved claim~~ up to the amount of the past due support, and informing the obligor of the obligor's right to request a hearing under chapter 120. If there is a hearing, the Department of Financial Services shall retain custody of the property until a final order has been entered and any appeals thereon have been concluded. If the obligor fails to request a hearing, the department shall inform ~~enter a final order instructing~~ the Department of Financial Services to transfer to the department the property up to the amount of past due support owed ~~in the amount stated in the final order~~. Upon ~~such~~ transfer, the Department of Financial Services shall be released from further liability related to the transferred property.

(5) ~~The provisions of~~ This section provides ~~provide~~ a supplemental remedy, and the department may use this remedy in conjunction with any other method of collecting support.

Section 9. Subsection (1) of section 409.2567, Florida Statutes, is amended to read:

409.2567 Services to individuals not otherwise eligible.—

(1)(a) All support services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department. The federally required application fee for individuals who do not receive public assistance is $1, which shall be waived for all applicants and paid by the department. The annual fee required under 42 U.S.C. s. 654(6)(B), as amended by Pub. L. No. 115-123,

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for cases involving an individual who has never received temporary cash assistance and for whom the department has collected the federally required minimum amount of support shall be paid by the department.

(b) The department may include confidential and exempt information in unencrypted electronic mail communications with a parent, a caregiver, or any other person who is authorized to receive the information, provided the parent, caregiver, or other person consents to such communications, except that social security numbers, federal tax information, driver license numbers, and bank account numbers may not be provided in this manner.

Section 10. Section 409.2576, Florida Statutes, is amended to read:

409.2576 State Directory of New Hires.—

(1) DIRECTORY CREATED.—The State Directory of New Hires is hereby created and shall be administered by the Department of Revenue or its agent. All employers and service recipients in this ~~the~~ state shall furnish a report consistent with subsection (3) for each newly hired or rehired employee or individual who is not an employee but is provided payment for services rendered, unless the employee or individual is employed by or under contract with a federal or state agency performing intelligence or counterintelligence functions and the head of such agency has determined that reporting pursuant to this section could endanger the safety of the employee or individual or compromise an ongoing investigation or intelligence mission.

(2) DEFINITIONS.—For purposes of this section:

(b) ~~(a)~~ "Employee" is defined as an individual who is an

employee within the meaning of chapter 24 of the Internal Revenue Code of 1986.

(c) ~~(b)~~ "Employer" has the meaning given such term in s. 3401(d) of the Internal Revenue Code of 1986 and includes any government entity and labor organization.

(d) ~~(c)~~ "Labor organization" has the meaning given such term in s. 2(5) of the National Labor Relations Act and includes any entity which is used by the organization and an employer to carry out requirements described in s. 8(f)(3) of such act of an agreement between the organization and employer.

(a) ~~(d)~~ "Date of hire" is the first day of work for which the employee is owed income.

(e) "Service recipient" means a person engaged in a trade or business who pays an individual for services rendered in the course of such trade or business.

(3) EMPLOYERS AND SERVICE RECIPIENTS TO FURNISH REPORTS.—

(a) ~~Each employer subject to the reporting requirements of chapter 443 with 250 or more employees, shall provide to the State Directory of New Hires, a report listing the employer's legal name, address, and reemployment assistance identification number. The report must also provide the name and social security number of each new employee or rehired employee at the end of the first pay period following employment or reemployment.~~

~~(b)~~ All employers shall furnish a report to the State Directory of New Hires of the state in which the newly hired or rehired employee works. The report required in this section shall be made on a W-4 form or, at the option of the employer, an equivalent form, and can be transmitted magnetically,

electronically, by first-class mail, or other methods which may be prescribed by the State Directory. Each report shall include the name, address, date of hire, and social security number of every new and rehired employee and the name, address, and federal employer identification number of the reporting employer. If available, the employer may also include the employee's date of birth in the report. Multistate employers that report new hire information electronically or magnetically may designate a single state to which it will transmit the above noted report, provided the employer has employees in that state and the employer notifies the Secretary of Health and Human Services in writing to which state the information will be provided. Agencies of the United States Government shall report directly to the National Directory of New Hires.

(b) A service recipient shall report to the State Directory of New Hires an individual who is not an employee in the same manner as described in paragraph (a) but who the service recipient, while engaged in a trade or business, pays in an amount of $600 or more per calendar year for services rendered in the course of the trade or business. The report must include the name, address, and social security number or other identifying number assigned to the individual under section 6109 of the Internal Revenue Code of 1986; the date services for payment were first rendered by the individual; and the name, address, and employer identification number of the service recipient.

(c) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in

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

accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement and those programs listed in subsection (9).

(4) TIME FOR REPORTS.—

(a) Employers must report new hire information, as described in subsection (3), within 20 days of the hire date of the employee, or, in the case of employers that report new hire information electronically or by magnetic tape, by two monthly transmissions, if necessary, not less than 12 days nor more than 16 days apart.

(b) Service recipients must report on individuals subject to reporting under paragraph (3)(b) within 20 days after the earlier of:

1. The date of the first payment made which requires an information return in accordance with section 6041A(a) of the Internal Revenue Code of 1986; or

2. The date on which a contract providing for such payments is entered into.

If service recipients report individuals under this paragraph electronically or by magnetic tape, the reports may be made by two monthly transmissions, if necessary, but may not be less than 12 days or more than 16 days apart.

(5) ENTRY OF DATA.—The State Directory of New Hires shall enter ~~new hire~~ information reported under this section into an automated database within 5 business days of receipt.

(6) MATCHES TO STATE REGISTRY.—~~Not later than May 1, 1998,~~

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

The Department of Revenue or its agent must conduct automated matches of the social security numbers of employees reported to the State Directory of New Hires against the social security numbers of records in the State Case Registry. The Title IV-D agency shall use the new hire information received to locate individuals for the purposes of establishing paternity and establishing, modifying, and enforcing support obligations. Private entities under contract with the Title IV-D agency to provide Title IV-D services may have access to information obtained from the State Directory of New Hires and must comply with privacy safeguards.

(7) WAGE WITHHOLDING NOTICE AND NATIONAL MEDICAL SUPPORT NOTICE.—The department shall transmit a wage withholding notice consistent with s. 61.1301 and, when appropriate, a national medical support notice, as defined in s. 61.046, ~~to the employee's employer~~ within 2 business days after entry of the new hire information into the State Directory of New Hires' database, unless the court has determined that the obligor's ~~employee's~~ wages or other income is ~~are~~ not subject to withholding or, for purposes of the national medical support notice, the support order does not contain a provision ~~for the employee~~ to provide health insurance. The withholding notice shall direct the employer or other payor of income to withhold income in accordance with the income deduction order, and the national medical support notice shall direct the employer to withhold premiums for health insurance.

(8) PROVIDING INFORMATION TO NATIONAL DIRECTORY.—The State Directory of New Hires must furnish information regarding newly hired or rehired employees and other individuals subject to

reporting to the National Directory of New Hires for matching with the records of other state case registries within 3 business days of entering such information ~~from the employer~~ into the State Directory of New Hires. The State Directory of New Hires shall enter into an agreement with the Department of Economic Opportunity or its tax collection service provider for the quarterly reporting to the National Directory of New Hires information on wages and reemployment assistance taken from the quarterly report to the Secretary of Labor, now required by Title III of the Social Security Act, except that no report shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(9) DISCLOSURE OF INFORMATION.—

(a) ~~New hire~~ Information reported under this section shall be disclosed to the state agency administering the following programs for the purposes of determining eligibility under those programs:

1. Any state program funded under part A of Title IV of the Social Security Act;

2. The Medicaid program under Title XIX of the Social Security Act;

3. The reemployment assistance or unemployment compensation program under s. 3304 of the Internal Revenue Code of 1954;

4. The food assistance program under the Food and Nutrition Act of 2008; and

5. Any state program under a plan approved under Title I

(Old-Age Assistance for the Aged), Title X (Aid to the Blind), Title XIV (Aid to the Permanently and Totally Disabled), or Title XVI (Aid to the Aged, Blind, or Disabled; Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(b) ~~New hire~~ Information reported under this section shall be disclosed to the state agencies operating employment security and workers' compensation programs for the purposes of administering such programs.

Section 11. This act shall take effect October 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 23, 2021

I respectfully request that **Senate Bill 1532**, relating to Child Support, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for consideration.

Lauren Book

Senator Lauren Book
Florida Senate, District 32

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1560 (419562)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Ausley
SUBJECT:	Broadband Internet Service
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1560 expands the duties of the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO) to further the development of broadband Internet service in Florida.

The bill requires the Office to undertake two mapping programs: one that identifies Florida's geographic availability of broadband and one that inventory assets that may be used for the further buildout of broadband infrastructure. The first maps are due June 30, 2022.

The bill creates the Broadband Opportunity Program, administered by the Office, to award grants for the expansion of broadband Internet service in unserved and underserved areas of Florida. The program is subject to appropriation.

The bill also creates the Broadband Deployment Task Force within the Office to support and provide recommendations to the Office for the deployment of broadband Internet throughout Florida. The task force is required to identify federal funding sources and gaps in service areas and recommend to the office strategies for expansion, among other duties. The task force is required to submit a report of its findings and recommendations for inclusion in the DEO annual report.

The bill expands the Office's local technology planning teams' duties to focus on rural, unserved, and underserved areas; and requires the Office to identify potentially eligible households for the federal Emergency Broadband Benefit Program and provide other information to them.

The increased duties required by the bill will have a significant negative fiscal impact on the agency. The DEO estimates a cost of about $3.7 million in Fiscal Year 2021-2022 and a recurring cost of about $1.7 million. The bill makes no appropriations for the increased workload, including the mapping; the task force; or the grant program, which is subject to appropriation.

The bill is effective July 1, 2021.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[3] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[4] Communities that lack broadband access can have difficulty attracting new capital investment.[5] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[6]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per

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[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), *available at* https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Mar. 28, 2021).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Mar. 28, 2021).
[3] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Mar. 28, 2021). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[4] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Mar. 28, 2021). *See also* Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7 (Oct. 25, 2019), *available at* https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Mar. 28, 2021).
[5] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.
[6] New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap* (Aug. 6, 2020), *available at* https://research.newamericaneconomy.org/report/internet-access-covid-19/ (last visited Mar. 15, 2021).

second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[7] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[8]

Federal Broadband Initiatives

FCC Digital Opportunity Data Collection Program

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States.[9] In August 2019, the FCC adopted the Digital Opportunity Data Collection Program, which modernized the collection of broadband deployment data by creating granular coverage maps, as opposed to census tract maps, and by implementing a process to accept public data to confirm the maps' accuracy.[10] In March 2020, Congress ratified the FCC's Data Collection Program with passage of the Broadband Data Act, which requires the FCC to establish a semiannual collection of geographically granular broadband coverage data to use to create coverage maps.[11] Congress allocated $65 million to the FCC to achieve this mapping project in December 2020.[12]

To create these geographic service maps, the FCC collects information from service providers according to specific reporting standards. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[13] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[14] The FCC anticipates completing initial, targeted mapping by July 2021.[15]

FCC's Rural Digital Opportunity Fund

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America over the next decade. The first phase of the fund began in 2020 and made available up to $16 billion to target census blocks that are wholly unserved by fixed broadband speeds of at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[16]

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[7] CRS, *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), *available at* https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Mar. 15, 2021).
[8] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 1.
[9] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), *available at* https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Mar. 28, 2021).
[10] *Id*. at 3.
[11] 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).
[12] Marguerite Reardon, CNET, *FCC Chair Rosenworcel Launches Broadband Mapping Taskforce* (Feb. 17, 2021), *available at* https://www.cnet.com/news/fcc-chair-rosenworcel-launches-broadband-mapping-task-force/ (last visited Mar. 28, 2021).
[13] FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 15 at 5, 8-16.
[14] FCC, *Broadband Data Collection Consumer Information*, *available at* https://www.fcc.gov/BroadbandData/consumers (last visited Apr. 1, 2021).
[15] FCC, *Carr Welcomes New, Four-Month Timeline for Broadband Maps*, *available at* https://docs.fcc.gov/public/attachments/DOC-370911A1.pdf (last visited Apr. 1, 2021).
[16] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund* (Feb. 7, 2020), *available at* https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (last visited Mar. 28, 2021).

Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[17]

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.[18] Using this more precise data, the second phase of FCC grants will make available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[19]

FCC's Emergency Broadband Benefit Program

Congress appropriated $3.2 billion in December 2020 to expand broadband access via subsidies for broadband service to students, families, and unemployed workers.[20] Eligible households can receive a discount of up to $50 per month off their broadband service bill for service and associated equipment. A household is eligible to receive a subsidy if any member of the household: qualifies for the Lifeline program, receives benefits under the free or reduce-price school lunch program, received a Federal Pell Grant, experienced a substantial loss of income in the last year and had a total household income in 2020 below $99,000 for single filers and $198,000 for joint filers, or meets criteria to participate in service providers' existing low-income or COVID-19 programs.[21] The program will conclude when all the funding has been expended or six months after the end of the public health emergency.[22]

U.S. Department of Agriculture Programs

The U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks.[23] The ReConnect Program offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service. Eligible entities include cooperatives and nonprofits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants for a grant or a loan/grant combination under the ReConnect Program must submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[24]

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[17] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, *available at* https://www.fcc.gov/document/auction-904-winning-bidders (last visited Mar. 28, 2021).
[18] *See*, FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 3.
[19] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 4.
[20] National Conference of State Legislatures (NCSL), *COVID-19 Economic Relief Bill: Broadband Provisions* (Jan. 4, 2021), *available at* https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx (last visited Mar. 28, 2021).
[21] FCC, *Emergency Broadband Benefit Program*, https://www.fcc.gov/broadbandbenefit (last visited Mar. 28, 2021).
[22] *See* FCC, *FCC Adopts Report and Order for Emergency Broadband Benefit Program*, *available at* https://www.fcc.gov/document/fcc-adopts-report-and-order-emergency-broadband-benefit-program-0 (last visited Mar. 31, 2021).
[23] USDA, *Telecom Programs*, *available at* https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Mar. 28, 2021).
[24] *See* USDA, *ReConnect Loan and Grant Program*, *available at* https://www.usda.gov/reconnect#anchor1 (last visited Mar. 28, 2021.

Miscellaneous Federal Broadband Initiatives

Federal assets to assist with the expansion and promotion of broadband comes from a variety of sources, for example:[25]

- The FCC's E-Rate Universal Service Fund subsidizes telephone service (including broadband Internet access) to low-income households, high-cost areas, rural healthcare providers, and eligible schools and libraries;[26]
- The U.S. Department of Housing and Urban Development[27] and Department of Education[28] offer block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;[29] and
- The National Telecommunications and Information Administration within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[30]

The COVID-19 relief bill passed by Congress in December 2020[31] included the following funding to expand broadband Internet access for students, families, and unemployed workers:[32]

- $300 million for rural broadband;[33]
- $250 million for the FCC's telehealth program;[34]
- $285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;[35]

[25] *See generally*, National Telecommunications and Information Administration (NTIA), American Broadband Initiative, *Progress Report* (June 2020), *available at* https://www.ntia.doc.gov/files/ntia/publications/abi_progress_report_june2020.pdf (last visited Mar. 28, 2021).
[26] FCC, *E-Rate: Universal Service Program for Schools and Libraries* (Sep. 16, 2020), *available at* https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate (last visited Mar. 28, 2021).
[27] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), *available at* https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Mar. 28, 2021).
[28] U.S. Department of Education, *Rural and Low-Income School Program*, *available at* https://www2.ed.gov/programs/reaprlisp/index.html (last visited Mar. 28, 2021).
[29] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, *available at* https://www.doi.gov/broadband (last visited Mar. 28, 2021).
[30] Broadband USA, *State Broadband Leaders Network* (Dec. 19, 2018), *available at* https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Mar. 28, 2021).
[31] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021).
[32] NCSL, *COVID-19 Economic Relief Bill: Broadband*, *supra* note 24.
[33] *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, *available at* https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Mar. 28, 2021). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at a speed of 25/3Mbps or higher.
[34] FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), *available at* https://www.fcc.gov/covid-19-telehealth-program (last visited Mar. 28, 2021).
[35] *See generally*, NTIA, *Minority Broadband Initiative*, *available at* https://www.ntia.doc.gov/category/minority-broadband-initiative (last visited Mar. 28, 2021).

- $1.9 billion for "rip and replace" efforts related to Huawei and ZTE equipment in U.S. networks;[36] and
- $1 billion in grants for tribal broadband programs.[37]

Additionally, the American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects, like broadband infrastructure and $130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.[38]

Other State Action

All 50 states have created either a task force, commission, or authority to coordinate broadband expansion.[39] One organization has studied the work of several state broadband offices authorities and determined that effective practices include stakeholder outreach and engagement at both the state and local levels; thorough development of a policy framework with well-defined goals; adoption of a state broadband plan; and helping communities identify their broadband goals and needs to better connect them with satisfactory resources.[40]

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).[41] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.

Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in Florida which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community

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[36] B. Braverman, M. Browne, and J. Mark, *Let Her Rip! FCC Adopts Remove-and-Replace Rules* (Jan. 15, 2021), *available at* https://www.dwt.com/insights/2021/01/fcc-huawei-zte-rip-and-replace-rules (last visited Mar. 28, 2021). *See also*, FCC, *Second Report and Order in re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* (Dec. 10, 2020), *available at* https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf (last visited Mar. 28, 2021).

[37] *See generally*, NTIA, *NTIA Announces Tribal Consultations on New Program to Increase Broadband Access Across Indian Country* (Feb. 5, 2021), *available at* https://www.ntia.gov/blog/2021/ntia-announces-tribal-consultations-new-program-increase-broadband-access-across-indian (last visited Mar. 28, 2021).

[38] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, *available at* https://home.treasury.gov/news/press-releases/jy0069 (last visited Apr. 2, 2021).

[39] NCSL, *State Broadband Task Forces, Commissions or Authorities and Other Broadband Resources* (June 2020), *available at* https://www.ncsl.org/research/telecommunications-and-information-technology/state-broadband-task-forces-commissions.aspx (last visited Mar. 28, 2021).

[40] Kathryn de Wit, Pew Charitable Trusts, *How States are Expanding Broadband Access* (Feb. 27, 2020), *available at* https://www.pewtrusts.org/en/research-and-analysis/reports/2020/02/how-states-are-expanding-broadband-access (last visited Mar. 15, 2021).

[41] Chapter 2020-26, Laws of Fla.

organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved[42] areas of the state through grant programs; and
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.[43]

The DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals.[44]

III. Effect of Proposed Changes:

Office of Broadband Mapping Requirements (Section 1, amending s. 364.0135, F.S.)

The bill expands the Office's duties to require it to develop geographical information system (GIS) maps of Florida's broadband Internet service availability by June 30, 2022, and to update the mapping annually thereafter. The mapping must be consistent with the FCC's Digital Opportunity Data Collection Program and be made in consultation with other state agencies, local governments, service providers, private businesses, educational institutions, and community organizations and leaders.

The maps must specifically identify:
- Where broadband-capable networks currently exist and where broadband Internet service is available to Florida's consumers.
- The download and upload rates at which service providers make broadband Internet service available to Florida's businesses and individuals.
- Gaps in Florida's broadband Internet service coverage—especially any areas that are underserved or unserved within rural areas of opportunity.[45]
- Any other mapping information that another Florida agency has already compiled.
- Locations where broadband Internet service is not available, or is provided at speeds below 25/3 Mbps, as identified by public input.

The bill permits the Office to collaborate with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to create a process to collect and verify public data regarding the availability of broadband Internet service. The bill repeals the current requirement in s. 364.0135(4)(a), F.S., that the Office include a process to review and

[42] Section 364.0135(2)(d), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream
[43] Section 364.0135(4), F.S.
[44] Section 364.0135(5), F.S.
[45] The currently designated rural areas of opportunity (RAOs) are the Northwest RAO, the South Central RAO, and the North Central RAO. *See* DEO, *Rural Areas of Opportunity*, *available at* http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Mar. 28, 2021).

verify public input regarding transmission speeds and availability of broadband Internet service in its strategic plan.

The Office must also verify any mapping data it receives from another governmental entity or a contractor by comparing it to the source of the data and by evaluating the collection methodology, study organization, and verification processes. If a contractor is used, the governmental entity must also describe the contractor collecting the data.

The bill also requires the Office to create another GIS map by June 30, 2022, that details Florida's broadband infrastructure assets. This map must include the location of any state and federal physical or funding assets that can be used for expanding broadband infrastructure by, e.g., burying or stringing fiber optic cable. Such assets include municipally or city-owned towers, public transportation corridors, capital projects, community-owned land and infrastructure (such as utility poles), and federal E-rate funding commitments.

Florida Broadband Opportunity Program (Section 2, amending s. 364.0136, F.S.)

The bill creates the Broadband Opportunity Program, which will award grants of up to $5 million per project to applicants who seek to expand access to broadband Internet service in unserved and underserved areas of the state. The Office will administer the grant program. Entities may apply for grants to fund the installation or deployment of infrastructure that supports broadband Internet service in underserved or unserved areas. Eligible entities to apply for a grant include businesses and Indian tribes. The grant program is subject to appropriation and state funds may not be used to install or deploy broadband Internet service in a geographic area that already has service from at least one provider.

Applicants must submit a grant application to the Office, which must include:
- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed;
- Evidence demonstrating the unserved or underserved nature of the project area and the number of households and businesses that would have new access to broadband Internet service or that would have upgraded broadband Internet service as a result of the grant;
- A list of significant community institutions that would benefit from the grant;
- The total cost of the project and the timeframe in which it would be completed;
- Sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.

The Office must publish the criteria and quantitative scoring system it will use to evaluate applications and award grants each fiscal year. The criteria and quantitative scoring system must include the criteria listed in the bill, as discussed below.

After it receives grant program applications, the Office must publish the proposed areas to be served and the proposed broadband Internet speed at which the area will be served. A broadband Internet service provider that provides existing service in, or adjacent to, a proposed project area may challenge the grant program applicant's plan. The challenge must be made within 45 days of the Office publishing the application information and demonstrate that:

- The provider currently has deployed broadband Internet service to retail customers within the proposed project area;
- The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or
- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

The Office must notify the applicant if a challenge is made. If the Office determines that the challenge is valid, the Office may not fund the challenged project. If a challenger fails to fulfill its commitment to provide broadband Internet service in accordance with its challenge, it is excluded from submitting another challenge for the next two grant cycles, unless the Office determines the failure to fulfill the commitment was due to circumstances beyond provider's control.

The Office must prioritize applications that:
- Offer broadband Internet service to community institutions including libraries, educational institutions, public safety facilities, and healthcare facilities;
- Facilitate the use of telemedicine and electronic health records;
- Serve economically distressed areas of the state;
- Provide for scalability to transmission speeds of at least 100/10 Mbps;
- Actively promote the adoption of the newly available broadband Internet services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband Internet service to the greatest number of unserved and underserved households and businesses;
- Leverage greater amounts of funding for the project from private or federal sources; or
- Demonstrate consistency with the Office's strategic plan.[46]

The Office must attempt to award grants to qualified applicants in all regions of the state. The Office cannot award grants:
- To provide broadband Internet service to an area that already has broadband Internet service from at least one provider.
- To a governmental entity, rural electric cooperative or its broadband affiliate, or an educational institution or affiliate, for the purpose of providing broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed broadband Internet service to the unserved or underserved area.
- For the purpose of serving any retail end user that already has access to broadband Internet service.
- To any entity if, when combined with any other federal, state, or local funds, the grant will constitute more than 50 percent of the project's funding.

[46] The Office has not published a strategic plan at this time.

The Office must enter into an agreement with the applicant that is awarded a grant under the grant program. The agreement must specify the total amount of the grant, performance conditions, payment schedule, and sanctions for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

By October 15, 2022, and each year thereafter, the Office must publish on its website and include in the DEO's annual report under s. 20.60, F.S.:

- A list of all grant applications it received during the previous fiscal year and for each application:
  - The results of any quantitative weighting or scoring system the Office used to award grants or rank the applications.
  - The grant amount requested.
  - The grant amount awarded, if any.
  - A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which the grant was awarded and in securing adoption of such service in each project area.
- All written challenges during the previous fiscal year.

Florida Broadband Deployment Task Force (Section 1, amending s. 364.0135(5), F.S.)

The bill creates a Broadband Deployment Task Force to support and provide recommendations to the Office for the deployment of broadband Internet service throughout Florida, including addressing rural infrastructure issues and urban adoption strategies.

The task force members must have an interest and significant expertise in broadband and the bill establishes the membership as follows:

- One member each from the Department of Agriculture and Consumer Services, the Department of Management Services, the Department of Transportation, the Department of Education, the Department of Health, and the Office of Technology and Information Services within the Department of Environmental Protection, all of whom will be appointed by his or her respective agency head;
- One member from the Florida Association of Counties to represent underserved or unserved rural communities, who will be appointed by the DEO's executive director;
- One member of the Florida League of Cities to represent underserved or unserved rural communities, who will be appointed by the DEO's executive director;
- Two members of the public—one who lives in an underserved area and one who lives in an unserved area of Florida—who will be appointed by the Governor; and
- One member from each of the following types of broadband industry providers, who will all be appointed by the Governor: a wireless provider, a wireline provider, a broadband satellite provider, a cable provider, a rural local exchange carrier, and a competitive local exchange carrier.

The initial task force members must be appointed by September 1, 2021. The DEO is required to provide administrative and technical assistance to the task force.

The bill outlines the following specific duties for the task force:

- Identify federal funding sources to assist with the expansion or improvement of broadband Internet in Florida;
- Identify geographic gaps in Florida's broadband Internet service coverage;
- Identify specific projects to further deploy broadband Internet service throughout Florida;
- Develop strategies and recommendations to the Office for inclusion in the strategic plan to:
  - Expand broadband Internet service to rural areas of opportunity—including establishing partnerships with local governments, other state and federal entities, electric utilities, businesses, and the public;
  - Address areas in the state which have broadband Internet service, but where such service is not affordable, as part of an urban strategy;
  - Enable outreach and establish partnerships to best use the federal Emergency Broadband Benefit Program; and
- Coordinate with state agencies and other governmental entities that have oversight in broadband Internet activities or that control potential funding opportunities.

By October 15, the task force is required to submit an annual report that details its findings and recommendations to the DEO for inclusion in its annual report. The Office must also publish the report on its website. The task force expires three years after its members are required to be appointed, on September 1, 2024.

Office of Broadband's Role in the Emergency Broadband Benefit Program (Section 3, creating s. 364.0137, F.S.)

The bill requires the Office to establish a process to identify households that may be eligible to receive a subsidy under the federal Emergency Broadband Benefit Program. The Office must also, when possible, provide notice to identified households that they may be eligible to receive assistance under the program along with information on other state or federal resources that may provide assistance with debt relief.

The bill adopts the federal Emergency Broadband Benefit Program recipient eligibility language, as discussed above in the Present Situation.

The bill requires providers to provide the subsidies in compliance with the federal program. A provider cannot disqualify an eligible household because a member of the household owes payments to the provider or has owed payments in the past. The bill continues to mirrors the federal law by requiring that the subsidy must be up to $50, but no more than the standard rate for service and associated equipment.

Local Technology Planning Teams

Current law requires the Office to create local technology planning teams or partnerships, the membership of which consists of representatives of education, health care, private business, agriculture, economic development organizations, local government, and tourism. Current law does not provide a specific purpose or goal for these teams. The bill adds language that targets the teams' work to unserved and underserved communities—especially fiscally constrained counties. The bill outlines the following duties for the teams:

- Work with rural communities to help them understand their current service availability;

- Locate unserved and underserved businesses or residents;
- Identify assets that may be used to further deploy broadband;
- Build partnerships with broadband service providers;
- Identify opportunities to increase the use and deployment of broadband in the community; and
- Be proactive in fiscally constrained counties to identify and provide assistance with applications for federal broadband grants.

Miscellaneous

Legislative Findings

The bill updates the legislative findings to state that Florida's sustainable adoption of broadband Internet service is essential to all its residents, rather than beneficial to specific entities.

Definitions

The bill adds a definition of the term "unserved" to mean a geographic area of Florida in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a speed of 25/3 Mbps—the speed used by the FCC to define sufficient broadband Internet.

The bill also amends the definition of "underserved" to mean a geographic area of Florida in which there is no internet service provider that offers a connection to the Internet with a capacity for transmission at a speed of 100/10 Mbps. This is higher than any current definition of broadband.

Public Records

The bill adds language that clarifies that any information that is already confidential or exempt from public disclosure under ch. 119, F.S., when held by the DEO retains that confidentiality or exemption when given to the DEO by a broadband service provider pursuant to s. 364.0135, F.S.

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[47] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[48]

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that Florida agencies must provide access to its public records.[49] The Legislature may exempt specific types

[47] Art. I, s. 24(a), Fla. Const.
[48] *Id*.
[49] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

of public records from public access requirements;[50] the exemption must state with specificity the public necessity that justifies the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[51] For example, s. 288.075(3) and (4), F.S., make trade secrets held by an economic development agency and proprietary confidential business information held by an economic development agency, respectively, confidential and exempt from s. 119.071(1), F.S.

Effective Date

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create a new public records exemption or expand an existing exemption.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure and identifying funding

[50] Art. I, s. 24(c), Fla. Const.

[51] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

sources to subsidize other related costs. The bill will benefit eligible provides by assisting them to expand their services.

Households eligible for the federal Emergency Broadband Benefit Program may benefit from notification by the DEO of their potential eligibility for the program.

C. Government Sector Impact:

The bill creates several new duties for the DEO, including:

- Undertaking GIS mapping for both broadband Internet service availability and broadband infrastructure assets;
- Gathering public input for the service availability map;
- Providing administrative and technical support to the task force created within the Office;
- Administering the Broadband Opportunity Program; and
- Identifying and providing information to potentially eligible households for the federal Emergency Broadband Benefit Program.

The bill does not appropriate the Office any resources or funding to complete these expanded duties. To staff the Office to meet these new duties, the DEO estimates the need for 3 FTE and 1 OPS, at a total cost of about $321,000 recurring.[52]

The DEO estimates that to hire a vendor and complete project setup for the GIS mapping would cost about $1 million in Fiscal Year 2021-2022 and $500,000 recurring for yearly maintenance and updates. Related to the broadband infrastructure asset mapping, the DEO estimates that to hire a vendor and complete project setup for the asset mapping would cost about $1 million in Fiscal Year 2021-2022 and $500,000 recurring for yearly maintenance and updates.

To establish the task force, host and conduct the meetings, pay for travel and per diem expenses, and complete the annual report, the DEO estimates a cost of $300,000 recurring. The task force is required to verify any mapping data it receives from another governmental entity or contractor; the DEO anticipates hiring a vendor to assist with this requirement, with an initial setup cost of $1 million in in Fiscal Year 2021-2022.

Related to the new duties that the bill prescribes to local technology planning teams, the DEO estimates a recurring cost of $100,000 to provide administrative support and cover the costs of meeting and other related expenses.

The bill does not appropriate any funds to the Broadband Opportunity Program, created in the bill to provide grants to support the growth of broadband Internet infrastructure in Florida. The bill provides that this program is subject to appropriation. At this time, no funding is provided in SB 2500 for this program.

[52] Fiscal impacts attributed to DEO estimates are from DEO, *Fiscal Request – SB 1560 Broadband Internet Service* (April 5, 2021) (on file with the Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 20.052, F.S., sets forth requirements for advisory bodies created by law. The body must be created only when found to be necessary and beneficial to furthering a public purpose, and it must be terminated when that need or benefit no longer exists. The body may not be created unless it meets a statutorily defined purpose; its powers and responsibilities conform to s. 20.03, F.S., as discussed below; its members are appointed to 4-year staggered terms; and its members serve without additional compensation or honorarium, unless otherwise expressly provided, and are authorized to receive only per diem and reimbursement for travel.

The bill states that the task force shall operate in a manner consistent with s. 20.052, F.S. The bill does not expressly provide for task force member terms, whether the members are authorized to receive per diem or travel reimbursement, or the duration of the task force. By operating in a manner consistent with s. 20.052, F.S., the term of task force members is 4 years, though the application of staggered terms is not clear, and task force members serve without additional compensation, but are entitled to per diem or travel reimbursement.

Section 20.03, F.S., defines a "task force" as an advisory body that is created by a specific statutory enactment for a time not to exceed 3 years and that will cease to exist after it completes its assignment. The task force created in the bill expires three years after its members are appointed, on September 1, 2024.

The confidentiality and public record exemption language in s. 364.0135(6), F.S., of the bill appears to reiterate current confidentiality and public record exemption language that already exist elsewhere in law. Therefore, this language appears to be duplicative and unnecessary.

The DEO may lack expertise to be able to identify potentially eligible households for the federal Emergency Broadband Benefit Program and to direct consumers to state or federal resources that may provide assistance with debt relief as required by the bill.

VIII. Statutes Affected:

The bill substantially amends section 364.0135 of the Florida Statutes.

The bill creates the following sections of the Florida Statutes: 364.0136 and 364.0137.

IX. Additional Information:

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

PCS 419562 by Appropriations (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development):
The proposed committee substitute does the following:

- Removes duplicative language related to public input;
- Clarifies that the Office of Technology and Information Services is within the Department of Environmental Protection (task force member);
- Clarifies the duties of the task force and directs strategies developed to be recommended to the Office of Broadband for inclusion in its strategic plan;
- Requires the annual report by the task force to be submitted by October 15 for inclusion in the DEO annual report and also to be published on the Office's website;
- Sets the task force to expire 3 years after appointments are required to be made – on September 1, 2024;
- Clarifies that current law related to priority to grants by the Office does not apply to the new Broadband Opportunity Grant Program;
- Allows for leverage of federal funding for grants under the grant program; and
- Requires the annual report by the Office on the grant program to be submitted by October 15 for inclusion in the DEO annual report and clarifies the timeframe for the information (by fiscal year).

CS by Commerce and Tourism on March 15, 2021:
The CS creates the Broadband Opportunity Program to award grants to support broadband Internet infrastructure in underserved and unserved areas of Florida. The Grant Program will be administered by the Office and is subject to appropriation.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	
	.	

The Committee on Appropriations (Ausley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

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

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sustainable adoption of broadband Internet service is critical to the economic and business development of this ~~the~~ state and is essential ~~beneficial~~ for all residents of this state, libraries, schools, colleges and universities, health care providers, and community organizations.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of this ~~the~~ state by encouraging adoption and use ~~utilization~~ levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(d) "Underserved" means a geographic area of this ~~the~~ state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 ~~10~~ megabits per second downstream and at least 10 megabits ~~1 megabit~~ per second upstream.

(e) "Unserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and at least 3 megabits per second upstream.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing

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support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has short-term and long-term goals and strategies for increasing and improving the availability of and access to ~~use of~~ broadband Internet service in this ~~the~~ state. In development of the plan, the department shall incorporate applicable federal broadband activities, including any efforts or initiatives of the Federal Communications Commission, to improve broadband Internet service in this state. ~~The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state.~~ The plan must identify available federal funding sources for the expansion or improvement of broadband. The strategic plan must be submitted to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022. The strategic plan must be updated biennially thereafter.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local

health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture. The local technology planning teams or partnerships shall work with rural communities to help the communities understand their current broadband availability, locate unserved and underserved businesses and residents, identify assets relevant to broadband deployment, build partnerships with broadband service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of broadband Internet services in the community. The teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

(c) Provide technical and planning assistance related to broadband infrastructure to rural communities.

(d) ~~(c)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing

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affordable and sustainable broadband Internet service in underserved areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(e) ~~(d)~~ Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in this ~~the~~ state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of this ~~the~~ state are best positioned to benefit from federal and state broadband deployment programs.

(f) By June 30, 2022, and subject to appropriation, develop geographic information system maps of broadband Internet service availability throughout this state. The office shall collaborate with broadband service providers, state agencies, local governmental entities, private businesses, educational institutions, and community organizations and leaders to develop such maps.

1. The maps must do all of the following:

a. Be consistent with the Digital Opportunity Data Collection program reporting standards established by the Federal Communications Commission.

b. Identify where broadband-capable networks exist and broadband Internet service is available to end users.

c. Identify download and upload transmission speeds made available to businesses and individuals in this state.

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d. Identify gaps in broadband Internet service coverage, specifying underserved and unserved areas within those areas of this state designated as a rural area of opportunity under s. 288.0656(2).

e. Include any other mapping information already compiled by other state agencies.

f. Be updated annually.

2. Any mapping data received from another governmental entity or a contractor must be verified. Such data must be verified against the source of the data and whether such entity is able to demonstrate that it has employed a sound and reliable methodology in the collection, organization, and verification of the data it has submitted to the office. If a governmental entity enters into a valid contract with a contractor to collect broadband availability data, the entity must describe the third party providing the data as well as the methodology used to collect, organize, and verify the availability data provided.

3. The office must establish a mechanism to receive and verify public input which identifies locations in which broadband Internet service is not available, including locations in which broadband Internet service is provided at data transmission speeds below the standard established by the Federal Communications Commission for broadband Internet service. Upon verification, the office shall adjust its geographic information system maps to reflect information received from the public. In developing and implementing this mechanism, the office may work in collaboration with, and receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private

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businesses, and community organizations.

(g) By June 30, 2022, and subject to appropriation, develop a broadband infrastructure asset map that includes, but is not limited to:

1. State and federal assets, including, but not limited to, municipally or city-owned towers that may be used by providers; rights-of-way that may be made available for easier and less expensive access to burying or stringing fiber optic cable; public transportation corridors; capital projects that may be used as an opportunity to lay new fiber optic conduit for future activation; and federal E-rate funding commitments; and

2. Community-owned land and infrastructure, including, but not limited to, land that may be leased and utility poles that may be used to expand broadband networks.

(h) Administer the Broadband Opportunity Program established in s. 364.0136.

(5) CONFIDENTIALITY.—Any information that is confidential or exempt from public disclosure under chapter 119 when in the possession of the department retains its status as confidential or exempt from disclosure under chapter 119 when provided by a broadband service provider under this section.

(6) ~~(5)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 2. Section 364.0136, Florida Statutes, is created

to read:

364.0136 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the Florida Office of Broadband within the Department of Economic Opportunity to award grants to applicants who seek to expand broadband Internet service to unserved and underserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be subject to appropriation.

(2) Grants awarded under this section shall fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. State funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Indian tribes.

(c) A political subdivision in partnership with a provider of broadband Internet service.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity, a rural electric cooperative or its broadband affiliate, or an educational institution or affiliate to provide broadband Internet service to any residential or commercial premises,

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unless other broadband Internet service providers have not deployed service to an unserved or underserved area. This subsection does not apply to provision of broadband Internet service in an unserved or underserved area in a fiscally constrained county as defined in s. 218.67.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include all of the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure which is proposed.

(c) Evidence demonstrating the unserved or underserved nature of the project area.

(d) The number of households and businesses which would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (7).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved or underserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge must contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a

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result of a broadband Internet service provider's challenge, and the provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the office may not consider another challenge from the provider for the next two grant application cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(7)(a) Notwithstanding s. 364.0135(4)(c), in evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss which are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from residents, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved and underserved households and

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businesses;

8. Leverage greater amounts of funding for a project from private or federal sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 364.0135.

(b) The office must endeavor to award grants to qualified applications serving all regions of this state.

(8)(a) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(b) A grant awarded under this section, when combined with any state, local, or federal funds, may not fund more than 50 percent of the total cost of a project. However, the grant award may fund more than 50 percent of the total cost of a project in a fiscally constrained county as defined in s. 218.67.

(c) A single project may not be awarded a grant in excess of $5 million.

(9) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(10) By October 15, 2022, and each year thereafter, the office shall publish on its website and include in the department’s annual report required under s. 20.60 all of the following information:

(a) A list of all grant applications received during the

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previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous fiscal year and the results of those challenges.

(11) The department may adopt rules to implement this section.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to broadband Internet service; amending s. 364.0135, F.S.; revising legislative findings; defining terms; revising the duties of the Florida Office of Broadband within the Department of Economic Opportunity; requiring the office's strategic plan to include short-term and long-term goals for increasing the availability of and access to broadband Internet service in this state; providing requirements

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for the development of the plan; requiring the updated plan to be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislature by a specified date; requiring the plan to be updated biennially; requiring local technology planning teams or partnerships to work with rural communities for specified purposes; requiring the office to provide technical and planning assistance related to broadband infrastructure to rural communities; requiring the office to develop geographic information system maps in collaboration with specified entities and consistent with certain federal reporting standards by a specified date; specifying required contents of the maps; requiring the department to annually update such maps and establish a mechanism to receive and verify governmental and public input related to broadband Internet service; authorizing the department to work collaboratively with specified entities in developing the mechanism; requiring the office to develop a broadband infrastructure asset map by a specified date; specifying required contents of the map; providing that certain information provided to the department from broadband service providers retains its exemption from public disclosure; providing rulemaking authority; creating s. 364.0136, F.S.; creating the Broadband Opportunity Program within the office; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application

requirements; requiring the office to publish certain information related to grant applications and grant awards on its website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring the office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website and include the information in the department's annual report; providing an effective date.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to broadband Internet service; amending s. 364.0135, F.S.; revising legislative findings; defining terms; revising the duties of the Florida Office of Broadband within the Department of Economic Opportunity; requiring local technology planning teams or partnerships to work with rural communities for specified purposes; requiring the office to develop geographic information system maps in collaboration with specified entities and consistent with certain federal reporting standards by a specified date; specifying required contents of the maps; requiring the department to annually update such maps and establish a mechanism to receive and verify governmental and public input related to broadband Internet service; authorizing the department to work collaboratively with specified entities in developing the mechanism; requiring the office to develop a broadband infrastructure asset map by a specified date; specifying required contents of the map; establishing the Broadband Deployment Task Force within the department for a specified purpose; requiring the department to provide administrative and technical assistance to the task force; providing for the membership and duties of the task force; requiring the task force to submit annual progress reports to

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the department by a specified date for inclusion in its annual report; providing for expiration of the task force; providing that certain information provided to the department from broadband service providers retains its exemption from public disclosure; creating s. 364.0136, F.S.; creating the Broadband Opportunity Program within the office; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application requirements; requiring the office to publish certain information related to grant applications and grant awards on its website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring the office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website and include the information in the department’s annual report; creating s. 364.0137, F.S.; defining terms; requiring the office to establish a process to identify eligible households to receive federal Emergency Broadband Benefit Program funds under certain circumstances; providing for direct subsidy payments; providing for household participation in the program; requiring the office to

provide certain information to potentially eligible households; providing an effective date.

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

Section 1. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of this ~~the~~ state and is essential ~~beneficial~~ for all residents of this state, libraries, schools, colleges and universities, health care providers, and community organizations.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of this ~~the~~ state by encouraging adoption and use ~~utilization~~ levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(d) "Task force" means the Broadband Deployment Task Force within the office.

(e) ~~(d)~~ "Underserved" means a geographic area of this ~~the~~ state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity

for transmission at a consistent speed of at least 100 ~~10~~ megabits per second downstream and at least 10 megabits ~~1 megabit~~ per second upstream.

(f) "Unserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and at least 3 megabits per second upstream.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in this ~~the~~ state. ~~The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state.~~

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries:

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libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture. The local technology planning teams or partnerships shall work with rural communities to help the communities understand their current broadband availability, locate unserved and underserved businesses and residents, identify assets relevant to broadband deployment, build partnerships with broadband service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of broadband Internet services in the community. The teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

(c) Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in

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underserved areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(d) Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in this ~~the~~ state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of this ~~the~~ state are best positioned to benefit from federal and state broadband deployment programs.

(e) By June 30, 2022, develop geographic information system maps of broadband Internet service availability throughout this state. The office shall collaborate with broadband service providers, state agencies, local governmental entities, private businesses, educational institutions, and community organizations and leaders to develop such maps.

1. The maps must do all of the following:

a. Be consistent with the Digital Opportunity Data Collection program reporting standards established by the Federal Communications Commission.

b. Identify where broadband-capable networks exist and broadband Internet service is available to end users.

c. Identify download and upload transmission speeds made available to businesses and individuals in this state.

d. Identify gaps in broadband Internet service coverage, specifying underserved and unserved areas within those areas of

this state designated as a rural area of opportunity under s. 288.0656(2).

e. Include any other mapping information already compiled by other state agencies.

f. Be updated annually.

2. Any mapping data received from another governmental entity or a contractor must be verified. Such data must be verified against the source of the data and whether such entity is able to demonstrate that it has employed a sound and reliable methodology in the collection, organization, and verification of the data it has submitted to the office. If a governmental entity enters into a valid contract with a contractor to collect broadband availability data, the entity must describe the third party providing the data as well as the methodology used to collect, organize, and verify the availability data provided.

3. The office must establish a mechanism to receive and verify public input which identifies locations in which broadband Internet service is not available, including locations in which broadband Internet service is provided at data transmission speeds below the standard established by the Federal Communications Commission for broadband Internet service. Upon verification, the office shall adjust its geographic information system maps to reflect information received from the public. In developing and implementing this mechanism, the office may work in collaboration with, and receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations.

(f) By June 30, 2022, develop a broadband infrastructure

asset map that includes, but is not limited to:

1. State and federal assets, including, but not limited to, municipally or city-owned towers that may be used by providers; rights-of-way that may be made available for easier and less expensive access to burying or stringing fiber optic cable; public transportation corridors; capital projects that may be used as an opportunity to lay new fiber optic conduit for future activation; and federal E-rate funding commitments; and

2. Community-owned land and infrastructure, including, but not limited to, land that may be leased and utility poles that may be used to expand broadband networks.

(g) Administer the Broadband Opportunity Program established in s. 364.0136.

(5) BROADBAND DEPLOYMENT TASK FORCE.—The Broadband Deployment Task Force, a task force as defined in s. 20.03(8), is established within the department to support and provide recommendations to the office for the deployment of broadband Internet service throughout this state, including, but not limited to, rural buildout and urban adoption strategies. The department shall provide administrative and technical assistance to the task force in the performance of its duties. The task force shall operate in a manner consistent with s. 20.052.

(a) The task force shall be composed of the following members, who must be appointed by September 1, 2021, and who must have an interest and significant expertise in broadband Internet services:

1. One member from each of the following state agencies, who shall be appointed by his or her agency head: the Department of Agriculture and Consumer Services, the Department of

Management Services, the Department of Transportation, the Department of Education, the Department of Health, and the Office of Technology and Information Services within the Department of Environmental Protection.

2. One member from the Florida Association of Counties as a representative of underserved or unserved rural communities, who is recommended by the association and appointed by the executive director.

3. One member from the Florida League of Cities as a representative of underserved or unserved rural communities, who is recommended by the league and appointed by the executive director.

4. Two members of the public who are appointed by the Governor, including one member who resides in an underserved area of this state and one member who resides in an unserved area of this state.

5. One member from each of the following segments of the broadband industry, who shall be appointed by the Governor: a wireless provider, a wireline provider, a broadband satellite provider, a cable provider, a rural local exchange carrier, and a competitive local exchange carrier.

(b) Any vacancy on the task force must be filled in the same manner as the original appointment.

(c) The task force shall identify:

1. Any available federal funding sources for the expansion or improvement of broadband Internet services in this state.

2. Any gaps in broadband Internet service coverage for any area of this state.

3. Specific projects that will accomplish the deployment of

broadband Internet service throughout this state.

(d) The task force shall develop strategies and make recommendations to the office for inclusion in its strategic plan to:

1. Expand broadband Internet service to any area of this state designated as a rural area of opportunity, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public to support broadband Internet service in such areas.

2. Address areas of this state which have broadband Internet service, but where such service is not affordable, as part of an urban strategy.

3. Enable outreach and establish partnerships to facilitate maximum use of the federal Emergency Broadband Benefit Program within the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and regulations adopted thereunder.

(e) The task force may coordinate with state agencies and other governmental entities with oversight in broadband Internet activities or potential funding opportunities.

(f) The task force shall submit an annual report of its findings and recommendations by October 15 to the department for inclusion in its annual report required under s. 20.60. The office must also publish the report on its website.

(g) This subsection expires on September 1, 2024.

(6) CONFIDENTIALITY.—Any information that is confidential or exempt from public disclosure under chapter 119 when in the possession of the department retains its status as confidential or exempt from disclosure under chapter 119 when provided by a

broadband service provider under this section.

(7)~~(5)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 2. Section 364.0136, Florida Statutes, is created to read:

364.0136 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the Florida Office of Broadband within the Department of Economic Opportunity to award grants to applicants who seek to expand broadband Internet service to unserved and underserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be subject to appropriation.

(2) Grants awarded under this section shall fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. State funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact

business in this state.

(b) Indian tribes.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity, a rural electric cooperative or its broadband affiliate, or an educational institution or affiliate to provide broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved or underserved area.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include all of the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure which is proposed.

(c) Evidence demonstrating the unserved or underserved nature of the project area.

(d) The number of households and businesses which would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall

publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (7).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved or underserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge must contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to

provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge, and the provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the office may not consider another challenge from the provider for the next two grant application cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(7)(a) Notwithstanding s. 364.0135(4)(c), in evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss which are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from

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residents, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved and underserved households and businesses;

8. Leverage greater amounts of funding for a project from private or federal sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 364.0135.

(b) The office must endeavor to award grants to qualified applications serving all regions of this state.

(8)(a) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(b) A grant awarded under this section, when combined with any state, local, or federal funds, may not fund more than 50 percent of the total cost of a project.

(c) A single project may not be awarded a grant in excess of $5 million.

(9) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(10) By October 15, 2022, and each year thereafter, the office shall publish on its website and include in the department's annual report required under s. 20.60 all of the

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following information:

(a) A list of all grant applications received during the previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous fiscal year and the results of those challenges.

Section 3. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband assistance funds.—

(1) For purposes of this section, the term:

(a) "Broadband service provider" means a provider of broadband Internet access service in this state.

(b) "Federal broadband program" means the Emergency Broadband Benefit Program within the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and regulations adopted thereunder.

(2) In order to assist participating broadband service providers in identifying potential recipients for broadband assistance funds under the federal broadband program, the Florida Office of Broadband, as created in s. 364.0135, must establish a process to quickly identify potential eligible

households to receive such funds.

(3) An eligible broadband service provider that participates in and receives funds under the federal broadband program must provide direct subsidy payments by providing monthly discounts for eligible households as set forth in the federal broadband program. A provider may not disqualify a household because a member of the household has any past or present arrearages with a broadband provider. Such discounts may be no more than the standard rate for an Internet service offering and associated equipment, in an amount equal to that set forth in the federal broadband program.

(4) To be eligible for direct subsidy payments, an eligible household must demonstrate low income. Such eligible households include those in which at least one member of the household is eligible for the National School Lunch Program or the School Breakfast Program, as provided in s. 595.402, has experienced a substantial loss of income since February 29, 2020, has received a federal Pell Grant, is eligible for the federal Lifeline program, or meets participation requirements for a service provider's existing low-income or COVID-19 program, subject to any other eligibility requirements required by the Federal Communications Commission.

(5) Where possible, the office shall provide potentially eligible households with notice of their potential eligibility to receive financial assistance under the federal broadband program and shall also direct the members of those households to other state or federal resources that may provide assistance with debt relief.

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1560
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Commerce and Tourism Committee; and Senator Ausley
SUBJECT:	Broadband Internet Service
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1560 expands the duties of the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO) to further the development of broadband Internet service in Florida.

The bill creates the Broadband Opportunity Program, administered by the Office, to award grants for the expansion of broadband Internet service in unserved and underserved areas of Florida. The program is subject to appropriation.

The bill expands the Office's local technology planning teams' duties to focus on rural, unserved, and underserved areas.

The increased duties required by the bill will have an insignificant negative fiscal impact on the agency.

The bill is effective July 1, 2021.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[3] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[4] Communities that lack broadband access can have difficulty attracting new capital investment.[5] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[6]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[7] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[8]

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[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), *available at* https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Mar. 28, 2021).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Mar. 28, 2021).
[3] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Mar. 28, 2021). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[4] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Mar. 28, 2021). *See also* Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7 (Oct. 25, 2019), *available at* https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Mar. 28, 2021).
[5] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.
[6] New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap* (Aug. 6, 2020), *available at* https://research.newamericaneconomy.org/report/internet-access-covid-19/ (last visited Mar. 15, 2021).
[7] CRS, *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), *available at* https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Mar. 15, 2021).
[8] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 1.

Federal Broadband Initiatives

FCC Digital Opportunity Data Collection Program

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States.[9] In August 2019, the FCC adopted the Digital Opportunity Data Collection Program, which modernized the collection of broadband deployment data by creating granular coverage maps, as opposed to census tract maps, and by implementing a process to accept public data to confirm the maps' accuracy.[10] In March 2020, Congress ratified the FCC's Data Collection Program with passage of the Broadband Data Act, which requires the FCC to establish a semiannual collection of geographically granular broadband coverage data to use to create coverage maps.[11] Congress allocated $65 million to the FCC to achieve this mapping project in December 2020.[12]

To create these geographic service maps, the FCC collects information from service providers according to specific reporting standards. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[13] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[14] The FCC anticipates completing initial, targeted mapping by July 2021.[15]

FCC's Rural Digital Opportunity Fund

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America over the next decade. The first phase of the fund began in 2020 and made available up to $16 billion to target census blocks that are wholly unserved by fixed broadband speeds of at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[16] Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[17]

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.[18] Using this more precise data, the second phase of FCC

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[9] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), *available at* https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Mar. 28, 2021).
[10] *Id*. at 3.
[11] 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).
[12] Marguerite Reardon, CNET, *FCC Chair Rosenworcel Launches Broadband Mapping Taskforce* (Feb. 17, 2021), *available at* https://www.cnet.com/news/fcc-chair-rosenworcel-launches-broadband-mapping-task-force/ (last visited Mar. 28, 2021).
[13] FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 15 at 5, 8-16.
[14] FCC, *Broadband Data Collection Consumer Information*, *available at* https://www.fcc.gov/BroadbandData/consumers (last visited Apr. 1, 2021).
[15] FCC, *Carr Welcomes New, Four-Month Timeline for Broadband Maps*, *available at* https://docs.fcc.gov/public/attachments/DOC-370911A1.pdf (last visited Apr. 1, 2021).
[16] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund* (Feb. 7, 2020), *available at* https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (last visited Mar. 28, 2021).
[17] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, *available at* https://www.fcc.gov/document/auction-904-winning-bidders (last visited Mar. 28, 2021).
[18] *See*, FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 3.

grants will make available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[19]

FCC's Emergency Broadband Benefit Program

Congress appropriated $3.2 billion in December 2020 to expand broadband access via subsidies for broadband service to students, families, and unemployed workers.[20] Eligible households can receive a discount of up to $50 per month off their broadband service bill for service and associated equipment. A household is eligible to receive a subsidy if any member of the household: qualifies for the Lifeline program, receives benefits under the free or reduce-price school lunch program, received a Federal Pell Grant, experienced a substantial loss of income in the last year and had a total household income in 2020 below $99,000 for single filers and $198,000 for joint filers, or meets criteria to participate in service providers' existing low-income or COVID-19 programs.[21] The program will conclude when all the funding has been expended or six months after the end of the public health emergency.[22]

U.S. Department of Agriculture Programs

The U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks.[23] The ReConnect Program offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service. Eligible entities include cooperatives and nonprofits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants for a grant or a loan/grant combination under the ReConnect Program must submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[24]

[19] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 4.
[20] National Conference of State Legislatures (NCSL), *COVID-19 Economic Relief Bill: Broadband Provisions* (Jan. 4, 2021), *available at* https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx (last visited Mar. 28, 2021).
[21] FCC, *Emergency Broadband Benefit Program*, https://www.fcc.gov/broadbandbenefit (last visited Mar. 28, 2021).
[22] *See* FCC, *FCC Adopts Report and Order for Emergency Broadband Benefit Program*, *available at* https://www.fcc.gov/document/fcc-adopts-report-and-order-emergency-broadband-benefit-program-0 (last visited Mar. 31, 2021).
[23] USDA, *Telecom Programs*, *available at* https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Mar. 28, 2021).
[24] *See* USDA, *ReConnect Loan and Grant Program*, *available at* https://www.usda.gov/reconnect#anchor1 (last visited Mar. 28, 2021.

Miscellaneous Federal Broadband Initiatives

Federal assets to assist with the expansion and promotion of broadband comes from a variety of sources, for example:[25]

- The FCC's E-Rate Universal Service Fund subsidizes telephone service (including broadband Internet access) to low-income households, high-cost areas, rural healthcare providers, and eligible schools and libraries;[26]
- The U.S. Department of Housing and Urban Development[27] and Department of Education[28] offer block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;[29] and
- The National Telecommunications and Information Administration within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[30]

The COVID-19 relief bill passed by Congress in December 2020[31] included the following funding to expand broadband Internet access for students, families, and unemployed workers:[32]

- $300 million for rural broadband;[33]
- $250 million for the FCC's telehealth program;[34]
- $285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;[35]

[25] *See generally*, National Telecommunications and Information Administration (NTIA), American Broadband Initiative, *Progress Report* (June 2020), *available at* https://www.ntia.doc.gov/files/ntia/publications/abi_progress_report_june2020.pdf (last visited Mar. 28, 2021).
[26] FCC, *E-Rate: Universal Service Program for Schools and Libraries* (Sep. 16, 2020), *available at* https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate (last visited Mar. 28, 2021).
[27] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), *available at* https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Mar. 28, 2021).
[28] U.S. Department of Education, *Rural and Low-Income School Program*, *available at* https://www2.ed.gov/programs/reaprlisp/index.html (last visited Mar. 28, 2021).
[29] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, *available at* https://www.doi.gov/broadband (last visited Mar. 28, 2021).
[30] Broadband USA, *State Broadband Leaders Network* (Dec. 19, 2018), *available at* https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Mar. 28, 2021).
[31] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021).
[32] NCSL, *COVID-19 Economic Relief Bill: Broadband*, *supra* note 24.
[33] *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, *available at* https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Mar. 28, 2021). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at a speed of 25/3Mbps or higher.
[34] FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), *available at* https://www.fcc.gov/covid-19-telehealth-program (last visited Mar. 28, 2021).
[35] *See generally*, NTIA, *Minority Broadband Initiative*, *available at* https://www.ntia.doc.gov/category/minority-broadband-initiative (last visited Mar. 28, 2021).

- $1.9 billion for "rip and replace" efforts related to Huawei and ZTE equipment in U.S. networks;[36] and
- $1 billion in grants for tribal broadband programs.[37]

Additionally, the American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects, like broadband infrastructure and $130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.[38]

Other State Action

All 50 states have created either a task force, commission, or authority to coordinate broadband expansion.[39] One organization has studied the work of several state broadband offices authorities and determined that effective practices include stakeholder outreach and engagement at both the state and local levels; thorough development of a policy framework with well-defined goals; adoption of a state broadband plan; and helping communities identify their broadband goals and needs to better connect them with satisfactory resources.[40]

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).[41] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.

Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in Florida which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community

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[36] B. Braverman, M. Browne, and J. Mark, *Let Her Rip! FCC Adopts Remove-and-Replace Rules* (Jan. 15, 2021), *available at* https://www.dwt.com/insights/2021/01/fcc-huawei-zte-rip-and-replace-rules (last visited Mar. 28, 2021). *See also*, FCC, *Second Report and Order in re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* (Dec. 10, 2020), *available at* https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf (last visited Mar. 28, 2021).

[37] *See generally*, NTIA, *NTIA Announces Tribal Consultations on New Program to Increase Broadband Access Across Indian Country* (Feb. 5, 2021), *available at* https://www.ntia.gov/blog/2021/ntia-announces-tribal-consultations-new-program-increase-broadband-access-across-indian (last visited Mar. 28, 2021).

[38] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, *available at* https://home.treasury.gov/news/press-releases/jy0069 (last visited Apr. 2, 2021).

[39] NCSL, *State Broadband Task Forces, Commissions or Authorities and Other Broadband Resources* (June 2020), *available at* https://www.ncsl.org/research/telecommunications-and-information-technology/state-broadband-task-forces-commissions.aspx (last visited Mar. 28, 2021).

[40] Kathryn de Wit, Pew Charitable Trusts, *How States are Expanding Broadband Access* (Feb. 27, 2020), *available at* https://www.pewtrusts.org/en/research-and-analysis/reports/2020/02/how-states-are-expanding-broadband-access (last visited Mar. 15, 2021).

[41] Chapter 2020-26, Laws of Fla.

organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved[42] areas of the state through grant programs; and
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.[43]

The DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals.[44]

III. Effect of Proposed Changes:

Office of Broadband Mapping Requirements (Section 1, amending s. 364.0135, F.S.)

The bill expands the Office's duties to require it, subject to appropriation, to develop geographical information system (GIS) maps of Florida's broadband Internet service availability. If funds are appropriated, the initial GIS mapping must be complete by June 30, 2022, and must be updated annually thereafter. The mapping must be consistent with the FCC's Digital Opportunity Data Collection Program and be made in consultation with other state agencies, local governments, service providers, private businesses, educational institutions, and community organizations and leaders.

The maps must specifically identify:
- Where broadband-capable networks currently exist and where broadband Internet service is available to Florida's consumers.
- The download and upload rates at which service providers make broadband Internet service available to Florida's businesses and individuals.
- Gaps in Florida's broadband Internet service coverage—especially any areas that are underserved or unserved within rural areas of opportunity.[45]
- Any other mapping information that another Florida agency has already compiled.
- Locations where broadband Internet service is not available, or is provided at speeds below 25/3 Mbps, as identified by public input.

The bill permits the Office to collaborate with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to create a process to collect and verify public data regarding the availability of broadband Internet service. The bill repeals the current requirement in s. 364.0135(4)(a), F.S., that the Office include a process to review and

[42] Section 364.0135(2)(d), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream
[43] Section 364.0135(4), F.S.
[44] Section 364.0135(5), F.S.
[45] The currently designated rural areas of opportunity (RAOs) are the Northwest RAO, the South Central RAO, and the North Central RAO. *See* DEO, *Rural Areas of Opportunity*, *available at* http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Mar. 28, 2021).

verify public input regarding transmission speeds and availability of broadband Internet service in its strategic plan.

The Office must also verify any mapping data it receives from another governmental entity or a contractor by comparing it to the source of the data and by evaluating the collection methodology, study organization, and verification processes. If a contractor is used, the governmental entity must also describe the contractor collecting the data.

The bill also requires the Office to create another GIS map by June 30, 2022, that details Florida's broadband infrastructure assets. This activity is also subject to appropriation. This map must include the location of any state and federal physical or funding assets that can be used for expanding broadband infrastructure by, e.g., burying or stringing fiber optic cable. Such assets include municipally or city-owned towers, public transportation corridors, capital projects, community-owned land and infrastructure (such as utility poles), and federal E-rate funding commitments.

Florida Broadband Opportunity Program (Section 2, amending s. 364.0136, F.S.)

The bill creates the Broadband Opportunity Program, which will award grants of up to $5 million per project to applicants who seek to expand access to broadband Internet service in unserved and underserved areas of the state. The Office will administer the grant program. Entities may apply for grants to fund the installation or deployment of infrastructure that supports broadband Internet service in underserved or unserved areas. Eligible entities to apply for a grant include businesses, a political subdivision in partnership with a provider, and Indian tribes. The grant program is subject to appropriation and state funds may not be used to install or deploy broadband Internet service in a geographic area that already has service from at least one provider.

Applicants must submit a grant application to the Office, which must include:
- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed;
- Evidence demonstrating the unserved or underserved nature of the project area and the number of households and businesses that would have new access to broadband Internet service or that would have upgraded broadband Internet service as a result of the grant;
- A list of significant community institutions that would benefit from the grant;
- The total cost of the project and the timeframe in which it would be completed;
- Sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.

The Office must publish the criteria and quantitative scoring system it will use to evaluate applications and award grants each fiscal year. The criteria and quantitative scoring system must include the criteria listed in the bill, as discussed below.

After it receives grant program applications, the Office must publish the proposed areas to be served and the proposed broadband Internet speed at which the area will be served. A broadband Internet service provider that provides existing service in, or adjacent to, a proposed project area

may challenge the grant program applicant's plan. The challenge must be made within 45 days of the Office publishing the application information and demonstrate that:

- The provider currently has deployed broadband Internet service to retail customers within the proposed project area;
- The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or
- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

The Office must notify the applicant if a challenge is made. If the Office determines that the challenge is valid, the Office may not fund the challenged project. If a challenger fails to fulfill its commitment to provide broadband Internet service in accordance with its challenge, it is excluded from submitting another challenge for the next two grant cycles, unless the Office determines the failure to fulfill the commitment was due to circumstances beyond provider's control.

The Office must prioritize applications that:

- Offer broadband Internet service to community institutions including libraries, educational institutions, public safety facilities, and healthcare facilities;
- Facilitate the use of telemedicine and electronic health records;
- Serve economically distressed areas of the state;
- Provide for scalability to transmission speeds of at least 100/10 Mbps;
- Actively promote the adoption of the newly available broadband Internet services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband Internet service to the greatest number of unserved and underserved households and businesses;
- Leverage greater amounts of funding for the project from private or federal sources; or
- Demonstrate consistency with the Office's strategic plan.[46]

The Office must attempt to award grants to qualified applicants in all regions of the state. The Office cannot award grants:

- To provide broadband Internet service to an area that already has broadband Internet service from at least one provider.
- To a governmental entity, rural electric cooperative or its broadband affiliate, or an educational institution or affiliate, for the purpose of providing broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed broadband Internet service to the unserved or underserved area. This prohibition does not apply to grants for project areas in fiscally constrained counties.
- For the purpose of serving any retail end user that already has access to broadband Internet service.

[46] The Office has not published a strategic plan at this time.

- To any entity if, when combined with any other federal, state, or local funds, the grant will constitute more than 50 percent of the project's funding. This prohibition does not apply to grants for project areas in fiscally constrained counties.

The Office must enter into an agreement with the applicant that is awarded a grant under the grant program. The agreement must specify the total amount of the grant, performance conditions, payment schedule, and sanctions for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

By October 15, 2022, and each year thereafter, the Office must publish on its website and include in the DEO's annual report under s. 20.60, F.S.:

- A list of all grant applications it received during the previous fiscal year and for each application:
  - The results of any quantitative weighting or scoring system the Office used to award grants or rank the applications.
  - The grant amount requested.
  - The grant amount awarded, if any.
  - A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which the grant was awarded and in securing adoption of such service in each project area.
- All written challenges during the previous fiscal year.

The bill authorizes the DEO to adopt rules to administer the grant program.

Local Technology Planning Teams

Current law requires the Office to create local technology planning teams or partnerships, the membership of which consists of representatives of education, health care, private business, agriculture, economic development organizations, local government, and tourism. Current law does not provide a specific purpose or goal for these teams. The bill adds language that targets the teams' work to unserved and underserved communities—especially fiscally constrained counties. The bill outlines the following duties for the teams:

- Work with rural communities to help them understand their current service availability;
- Locate unserved and underserved businesses or residents;
- Identify assets that may be used to further deploy broadband;
- Build partnerships with broadband service providers;
- Identify opportunities to increase the use and deployment of broadband in the community; and
- Be proactive in fiscally constrained counties to identify and provide assistance with applications for federal broadband grants.

Miscellaneous

Legislative Findings

The bill updates the legislative findings to state that Florida's sustainable adoption of broadband Internet service is essential to all its residents, rather than beneficial to specific entities.

Definitions

The bill adds a definition of the term "unserved" to mean a geographic area of Florida in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a speed of 25/3 Mbps—the speed used by the FCC to define sufficient broadband Internet.

The bill also amends the definition of "underserved" to mean a geographic area of Florida in which there is no internet service provider that offers a connection to the Internet with a capacity for transmission at a speed of 100/10 Mbps. This is higher than any current definition of broadband.

Public Records

The bill adds language that clarifies that any information that is already confidential or exempt from public disclosure under ch. 119, F.S., when held by the DEO retains that confidentiality or exemption when given to the DEO by a broadband service provider pursuant to s. 364.0135, F.S.

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[47] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[48]

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that Florida agencies must provide access to its public records.[49] The Legislature may exempt specific types of public records from public access requirements;[50] the exemption must state with specificity the public necessity that justifies the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[51] For example, s. 288.075(3) and (4), F.S., make trade secrets held by an economic development agency and proprietary confidential business information held by an economic development agency, respectively, confidential and exempt from s. 119.071(1), F.S.

[47] Art. I, s. 24(a), Fla. Const.
[48] *Id*.
[49] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[50] Art. I, s. 24(c), Fla. Const.
[51] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

Effective Date

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create a new public records exemption or expand an existing exemption.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may ultimately help to provide more affordable broadband Internet service to Florida's communities by increasing related infrastructure and identifying funding sources to subsidize other related costs. The bill will benefit eligible providers by assisting them to expand their services.

C. Government Sector Impact:

The DEO estimates that to hire a vendor and complete project setup for the GIS mapping would cost about $1 million in Fiscal Year 2021-2022 and $500,000 recurring for yearly maintenance and updates.[52] Related to the broadband infrastructure asset mapping, the DEO estimates that to hire a vendor and complete project setup for the asset mapping would cost about $1 million in Fiscal Year 2021-2022 and $500,000 recurring for yearly

[52] Fiscal impacts attributed to DEO estimates are from DEO, *Fiscal Request – SB 1560 Broadband Internet Service* (April 5, 2021) (on file with the Senate Transportation, Tourism, and Economic Development Appropriations Subcommittee).

maintenance and updates. The bill makes the requirements for the GIS mapping and for the asset mapping subject to appropriation.

Related to the new duties that the bill prescribes to local technology planning teams, the DEO estimates a recurring cost of $100,000 to provide administrative support and cover the costs of meeting and other related expenses.

The bill does not appropriate any funds to the Broadband Opportunity Program, created in the bill to provide grants to support the growth of broadband Internet infrastructure in Florida. The bill provides that this program is subject to appropriation. At this time, no funding is provided in SB 2500 for this program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The confidentiality and public record exemption language in s. 364.0135(6), F.S., of the bill appears to reiterate current confidentiality and public record exemption language that already exist elsewhere in law. Therefore, this language appears to be duplicative and unnecessary.

VIII. Statutes Affected:

The bill substantially amends section 364.0135 of the Florida Statutes.

The bill creates the following sections of the Florida Statutes: 364.0136 and 364.0137.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The proposed committee substitute does the following:

- Removes the task force; the requirement for DEO assistance for the federal Emergency Broadband Benefit Program from the bill; and duplicative language related to public input;
- Requires the Office to develop short-term and long-term goals and strategies to increase the availability of and access to broadband Internet service in Florida; incorporate federal broadband activities that may improve Florida's broadband Internet service; and identify available federal funding for the expansion or improvement of broadband Internet service.
- Requires the Office to assist rural communities with technical and planning assistance related to broadband infrastructure.
- Makes both the GIS mapping and the broadband asset mapping subject to appropriation.

- Related to the Broadband Opportunity Grant Program:
  - Clarifies that current law related to priority to grants by the Office does not apply to the new Broadband Opportunity Grant Program;
  - Adds a political subdivision in partnership with a provider as eligible to apply;
  - Exempts a fiscally constrained county from the prohibition on awards, directly or indirectly, to governmental entities, rural electric cooperatives, or educational institutions; and the limitation on the award funding more than 50 percent of the total project costs;
  - Allows for leverage of federal funding for grants under the grant program;
  - Requires the annual report by the Office on the grant program to be submitted by October 15 for inclusion in the DEO annual report and clarifies the timeframe for the information (by fiscal year); and
  - Grants the DEO rulemaking authority for the program.

CS by Commerce and Tourism on March 15, 2021:
The CS creates the Broadband Opportunity Program to award grants to support broadband Internet infrastructure in underserved and unserved areas of Florida. The Grant Program will be administered by the Office and is subject to appropriation.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Ausley

577-02879-21 20211560c1

A bill to be entitled

An act relating to broadband Internet service; amending s. 364.0135, F.S.; revising legislative findings; defining terms; revising the duties of the Florida Office of Broadband within the Department of Economic Opportunity; requiring local technology planning teams or partnerships to work with rural communities for specified purposes; requiring the office to develop geographic information system maps in collaboration with specified entities and consistent with certain federal reporting standards by a specified date; specifying required contents of the maps; requiring the department to annually update such maps and establish a mechanism to receive and verify governmental and public input related to broadband Internet service; authorizing the department to work collaboratively with specified entities in developing the mechanism; requiring the office to develop a broadband infrastructure asset map by a specified date; specifying required contents of the map; establishing the Broadband Deployment Task Force within the office for a specified purpose; requiring the department to provide administrative and technical assistance to the task force; providing for the membership and duties of the task force; requiring the task force to submit annual progress reports to the Governor and the Legislature by a specified date; providing that certain information provided to the department from broadband service providers retains

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

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its exemption from public disclosure; creating s. 364.0136, F.S.; creating the Broadband Opportunity Program within the office; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application requirements; requiring the office to publish certain information related to grant applications and grant awards on its website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring the office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website and provide the information to the Governor and Legislature; creating s. 364.0137, F.S.; defining terms; requiring the office to establish a process to identify eligible households to receive federal Emergency Broadband Benefit Program funds under certain circumstances; providing for direct subsidy payments; providing for household participation in the program; requiring the office to provide certain information to potentially eligible households; providing an effective date.

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

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

Section 1. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of this ~~the~~ state and is essential ~~beneficial~~ for all residents of this state, libraries, schools, colleges and universities, health care providers, and community organizations.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of this ~~the~~ state by encouraging adoption and use ~~utilization~~ levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(d) "Task force" means the Broadband Deployment Task Force within the office.

(e) ~~(d)~~ "Underserved" means a geographic area of this ~~the~~ state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 ~~10~~ megabits per second downstream and at least 10 megabits ~~1 megabit~~ per second upstream.

(f) "Unserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and at least 3 megabits per second upstream.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in this ~~the~~ state. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout this ~~the~~ state.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture. The

local technology planning teams or partnerships shall work with rural communities to help the communities understand their current broadband availability, locate unserved and underserved businesses and residents, identify assets relevant to broadband deployment, build partnerships with broadband service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of broadband Internet services in the community. The teams or partnerships must be proactive in fiscally constrained counties in identifying and providing assistance with applying for federal grants for broadband Internet service.

(c) Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and

demand for, broadband Internet service in this ~~the~~ state.

(d) Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in this ~~the~~ state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of this ~~the~~ state are best positioned to benefit from federal and state broadband deployment programs.

(e) By June 30, 2022, develop geographic information system maps of broadband Internet service availability throughout this state. The office shall collaborate with broadband service providers, state agencies, local governmental entities, private businesses, educational institutions, and community organizations and leaders to develop such maps.

1. The maps must do all of the following:

a. Be consistent with the Digital Opportunity Data Collection program reporting standards established by the Federal Communications Commission.

b. Identify where broadband-capable networks exist and broadband Internet service is available to end users.

c. Identify download and upload transmission speeds made available to businesses and individuals in this state.

d. Identify gaps in broadband Internet service coverage, specifying underserved and unserved areas within those areas of this state designated as a rural area of opportunity under s. 288.0656(2).

e. Include any other mapping information already compiled by other state agencies.

f. Be updated annually.

2. Any mapping data received from another governmental entity or a contractor must be verified. Such data must be verified against the source of the data and whether such entity is able to demonstrate that it has employed a sound and reliable methodology in the collection, organization, and verification of the data it has submitted to the office. If a governmental entity enters into a valid contract with a contractor to collect broadband availability data, the entity must describe the third party providing the data as well as the methodology used to collect, organize, and verify the availability data provided.

3. The office must establish a mechanism to receive and verify public input which identifies locations in which broadband Internet service is not available, including locations in which broadband Internet service is provided at data transmission speeds below the standard established by the Federal Communications Commission for broadband Internet service. Upon verification, the board shall adjust its geographic information system maps to reflect information received from the public. In developing and implementing this mechanism, the office may work in collaboration with, and receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations.

(f) By June 30, 2022, develop a broadband infrastructure asset map that includes, but is not limited to:

1. State and federal assets, including, but not limited to, municipally or city-owned towers that may be used by providers; rights-of-way that may be made available for easier and less

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expensive access to burying or stringing fiber optic cable; public transportation corridors; capital projects that may be used as an opportunity to lay new fiber optic conduit for future activation; and federal E-rate funding commitments; and

2. Community-owned land and infrastructure, including, but not limited to, land that may be leased and utility poles that may be used to expand broadband networks.

(g) Administer the Broadband Opportunity Program established in s. 364.0136.

(5) BROADBAND DEPLOYMENT TASK FORCE.—The Broadband Deployment Task Force, a task force as defined in s. 20.03(8), is established within the department to support and provide recommendations to the office for the deployment of broadband Internet service throughout this state, including, but not limited to, rural buildout and urban adoption strategies. The department shall provide administrative and technical assistance to the task force in the performance of its duties. The task force shall operate in a manner consistent with s. 20.052.

(a) The task force shall be composed of the following members, who must be appointed by September 1, 2021, and who must have an interest and significant expertise in broadband Internet services:

1. One member from each of the following state agencies, who shall be appointed by his or her agency head: the Department of Agriculture and Consumer Services, the Department of Management Services, the Department of Transportation, the Department of Education, the Department of Health, and the Office of Technology and Information Services.

2. One member from the Florida Association of Counties as a

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representative of underserved or unserved rural communities, who is recommended by the association and appointed by the executive director.

3. One member from the Florida League of Cities as a representative of underserved or unserved rural communities, who is recommended by the league and appointed by the executive director.

4. Two members of the public who are appointed by the Governor, including one member who resides in an underserved area of this state and one member who resides in an unserved area of this state.

5. One member from each of the following segments of the broadband industry, who shall be appointed by the Governor: a wireless provider, a wireline provider, a broadband satellite provider, a cable provider, a rural local exchange carrier, and a competitive local exchange carrier.

(b) Any vacancy on the task force must be filled in the same manner as the original appointment.

(c) The task force shall:

1. Identify any available federal funding sources for the expansion or improvement of broadband Internet services in this state.

2. Identify any gaps in broadband Internet service coverage for any area of this state.

3. Develop strategies to expand broadband Internet service to any area of this state designated as a rural area of opportunity, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the

public to support broadband Internet service in such areas.

4. Develop an urban adoption strategy to address areas of this state which have broadband Internet service, but where such service is not affordable.

5. Identify specific projects that will accomplish the deployment of broadband Internet service throughout this state, including grants provided through the rural infrastructure fund pursuant to s. 288.0655(2)(b).

6. Coordinate with the Cabinet, state agencies, and other governmental entities with oversight in broadband Internet activities or potential funding opportunities.

7. Recommend outreach strategies and partnerships for maximum use of the federal Emergency Broadband Benefit Program within the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and regulations adopted thereunder.

(d) The task force shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 30, 2022, and each year thereafter.

(6) CONFIDENTIALITY.—Any information that is confidential or exempt from public disclosure under chapter 119 when in the possession of the department retains its status as confidential or exempt from disclosure under chapter 119 when provided by a broadband service provider under this section.

(7)~~(5)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 2. Section 364.0136, Florida Statutes, is created to read:

364.0136 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the Florida Office of Broadband within the Department of Economic Opportunity to award grants to applicants who seek to expand broadband Internet service to unserved and underserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be subject to appropriation.

(2) Grants awarded under this section shall fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. State funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Indian tribes.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity, a rural electric cooperative or its broadband affiliate, or an educational institution or affiliate to provide broadband

Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved or underserved area.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include all of the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure which is proposed.

(c) Evidence demonstrating the unserved or underserved nature of the project area.

(d) The number of households and businesses which would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (7).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website,

from each grant application submitted, the proposed unserved or underserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge must contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge, and the provider does not fulfill its commitment to provide

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broadband Internet service in the unserved or underserved area, the office may not consider another challenge from the provider for the next two grant application cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(7)(a) In evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss which are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from residents, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved and underserved households and businesses;

8. Leverage greater amounts of funding for a project from private sources; or

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9. Demonstrate consistency with the strategic plan adopted under s. 364.0135.

(b) The office must endeavor to award grants to qualified applications serving all regions of this state.

(8)(a) The office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of $5 million.

(9) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(10) By January 1, 2023, and each year thereafter, the office shall publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives all of the following information:

(a) A list of all grant applications received during the previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous year and the results of those challenges.

Section 3. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband assistance funds.—

(1) For purposes of this section, the term:

(a) "Broadband service provider" means a provider of broadband Internet access service in this state.

(b) "Federal broadband program" means the Emergency Broadband Benefit Program within the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and regulations adopted thereunder.

(2) In order to assist participating broadband service providers in identifying potential recipients for broadband assistance funds under the federal broadband program, the Florida Office of Broadband, as created in s. 364.0135, must establish a process to quickly identify potential eligible households to receive such funds.

(3) An eligible broadband service provider that participates in and receives funds under the federal broadband

program must provide direct subsidy payments by providing monthly discounts for eligible households as set forth in the federal broadband program. A provider may not disqualify a household because a member of the household has any past or present arrearages with a broadband provider. Such discounts may be no more than the standard rate for an Internet service offering and associated equipment, in an amount equal to that set forth in the federal broadband program.

(4) To be eligible for direct subsidy payments, an eligible household must demonstrate low income. Such eligible households include those in which at least one member of the household is eligible for the National School Lunch Program or the School Breakfast Program, as provided in s. 595.402, has experienced a substantial loss of income since February 29, 2020, has received a federal Pell Grant, is eligible for the federal Lifeline program, or meets participation requirements for a service provider's existing low-income or COVID-19 program, subject to any other eligibility requirements required by the Federal Communications Commission.

(5) Where possible, the office shall provide potentially eligible households with notice of their potential eligibility to receive financial assistance under the federal broadband program and shall also direct the members of those households to other state or federal resources that may provide assistance with debt relief.

Section 4. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

Subject: Committee Agenda Request

Date: April 12, 2021

I respectfully request that **Senate Bill #1560**, relating to Broadband Internet Service, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

This bill works to comprehensively address unserved and underserved areas of the state, especially rural areas, to ensure broadband is widely available. Additionally, the legislation creates a task force comprised of subject matter experts to assist with these complex broadband issues.

Loranne Ausley

Senator Loranne Ausley
Florida Senate, District 3

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1580
Bill Number (if applicable)

703658
Amendment Barcode (if applicable)

Topic BROADBAND SERVICES

Name Chris Doolin

Job Title GOVT Relations Consultant

Address 1018 Thomasville Rd.
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850 508-5492

Email cdoolin@doolinandassoc.com

Speaking: ☑ For ☑ Against ☑ Information

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

Representing SMALL COUNTY COALITION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

1560
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Broadband Internet

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street
Tallahassee Fl 32301
City *State* *Zip*

Phone 850-321-9386

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

SB 1560
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scala

Job Title Associate Director of Public Policy

Address 100 South Monroe Street
Street

Phone (850) 922-4300

Tallahassee FL 32301
City *State* *Zip*

Email jscala@fl-counties.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1574
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Citizens Property Insurance Corporation
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1574 revises Citizens Property Insurance Corporation (Citizens or corporation) eligibility criteria, rates, assessment surcharges on Citizens' policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill defines "primary residence" to mean the dwelling that the insured represented as their permanent home on the insurance application or otherwise to the corporation.

The bill limits application of the Citizens "glide path," which prevents rate increases of greater than 10 percent, by applying the glide path to only Citizens personal lines residential policies issued on or before January 1, 2022, on residential properties used as the primary residence with a dwelling replacement cost of less than $700,000 or single-unit condominiums with a dwelling and contents replacement cost of less than $700,000.

The bill provides that Citizens policyholders become ineligible for Citizens personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens premium would be on the property. Under current law, Citizens policyholders remain eligible unless they receive an offer

of comparable coverage less than the current Citizens premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

The bill increases the maximum surcharge that may be levied on Citizens' policyholders if Citizens projects a deficit in one of its accounts to: 20 percent of premium if Citizens has one million policyholders but less than 1.5 million policyholders; and 25 percent of premium if Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explains surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than $700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of $700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than 15 percent more than the premium for Citizens coverage.

The bill also:

- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to s. 627.3517, F.S., and reenacts and makes conforming changes to s. 627.3518, F.S.

The bill does not impact state revenue or expenditures.

The bill takes effect January 1, 2022.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[3] The

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

Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.[4] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens currently offers three policy types: Personal Lines Accounts, Commercial Lines Accounts and Coastal.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.[5]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[6]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[7]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[8] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[9]

Current Policies

As of February 28, 2021, Citizens reports 552,340 policies in-force with a total exposure of $150,498,489,611.[10] The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

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[4] Section 627.351(6)(c)4.a., F.S.
[5] *See* s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Mar. 24, 2021).
[6] *Id.*
[7] *Id.*
[8] Section 10, ch. 2013-60, L.O.F.
[9] Section 627.3518(2)-(3), F.S.
[10] Citizens Property Insurance, *About Us, Snapshot, February 28, 2021*, https://www.citizensfla.com/-/20210228-policies-in-force (last visited Mar. 28, 2021).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multi-peril (PR-M)	417,152	101,117,610,386	830,762,252
Coastal	Personal Residential Multi-peril (PR-M)	71,958	15,117,007,309	185,808,533
Coastal	Personal Residential Wind-Only (PR-W)	58,163	23,726,750,884	145,934,626
Coastal	Commercial Residential Multi-peril (CR-M)	125	631,877,883	2,910,767
Coastal	Commercial Residential Wind-Only (CR-W)	1,805	4,590,853,279	25,745,969
Coastal	Commercial Non-Residential Multi-peril (CNR-M)	25	20,269,100	181,093
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,407	1,945,320,260	23,429,973
CLA	Commercial Residential Multi-peril (CR-M)	566	3,208,005,710	12,309,859
CLA	Commercial Non-Residential Multi-peril (CNR-M)	139	140,794,800	880,037
	Total	552,340	150,498,489,611	1,227,963,109

Source: Citizens Property Insurance[11]

These numbers do not reflect policies tagged for takeout via Citizens' Depopulation Program but still serviced by Citizens.[12] Citizens' policy count grew by more than 100,000 in 2020 with 2,000-3,000 new policies written each week. At this rate, Citizens estimates an additional 100,000 policies by year end 2021.[13]

Citizens Glide Path Rates

From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[14] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private

[11] *Id.*
[12] *Id.*
[13] Citizens Property Insurance Corporation, *2021 Rate Kit, Executive Summary, Rate Structure Discussion*, https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967 (last visited Mar. 26, 2021).
[14] Section 627.351(6)(n)6., F.S.

reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are the major determinants of insurance rates.[15] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[16] Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[17] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[18] Citizens may impose three assessment tiers and their sequence is as follows:[19]

Citizens Policyholder Surcharge:

Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[20]

Regular Assessment:

If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[21] This assessment is not levied against Citizens' policyholders.

Emergency Assessment:

Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the

[15] Citizens Property Insurance Corporation, *2021 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967 (last visited Mar. 26, 2021).
[16] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[17] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums. Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[18] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[19] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, Assessment Tiers, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[20] Sections 627.351.(6)(b)3.(i)(I) and 627.351.(6)(c)21., F.S. *See also*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[21] Section 627.351.(6)(b)3.a., F.S.

corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[22]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the Office of Insurance Regulation (OIR) and are set out in Citizens' underwriting manuals.[23]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more. [24] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[25]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[26] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[27] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[28]

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[22] Section 627.351(6)(b)3.d., F.S.
[23] *See Revised Underwriting Manuals*, Citizens Property Insurance Corporation, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited March 12, 2021).
[24] Section 627.351(6)(c)5., F.S.
[25] Section 627.351(6)(c)5., F.S.
[26] Section 627.351(6)(a)3., F.S.
[27] Section 627.351(6)(a)3.d., F.S.
[28] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Mar. 25, 2021). *See also* Section 627.351(6)(a)3.d., F.S.

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[29] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[30] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[31]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.[32] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[33]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[34] Florida Rule of Judicial Administration 2.420 governs public access to judicial

[29] Section 627.351(6)(q)3.a., F.S.
[30] Chapter 2016-229, L.O.F.
[31] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.
[32] FLA. CONST. art. I, s. 24(a).
[33] *Id*.
[34] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2021&DocumentType=The%20Rules%20Of%20The%20House%20of%20Representatives&FileName=2020-2022%20House%20Rules%20-%20%20Edition%201.pdf (last visited Mar. 26, 2021).

branch records.[35] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 626.916(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b. these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

III. Effect of Proposed Changes:

Section 1 revises s. 627.021, F.S., to revise the scope of the Rating Law under ch. 627, F.S., to state the chapter does apply to surplus lines coverage placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., when "specifically stated to apply."

Section 2 defines "primary residence" to mean the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation and makes a number of revisions to s. 627.351, F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation).

Surcharge Levied on Citizens' Policyholders for Projected Account Deficits

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' Board of Governors determines Citizens has a projected deficit. The 15 percent cap is replaced with an escalating cap for Citizens' policy holders, based upon the total number of Citizens' policyholders if:

- Citizens has less than one million policyholders, the premium surcharge cap is 15 percent per account.
- Citizens has at least one million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account.
- Citizens has at least 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

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

Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums

The bill revises s. 627.351(6)(c)5.a., F.S., to state a residential policyholder is ineligible to renew a policy with Citizens if such policyholder can obtain comparable coverage from an authorized insurer for less than, or equal to, 15 percent more than the actuarially sound Citizens' renewal premium would be for the risk. Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

Limitations on Commissions

In proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

Glide Path Eligibility

The bill revises s. 627.351(6)(n)6., F.S., to create new requirements to remain eligible for the 10 percent rate increase cap under Citizens' glide path provision. To continue to qualify for the glide path, the coverage, must:

- Be a personal residential property used as a primary residence;
- Be a policy initially issued before January 1, 2022; and
- Cover homestead personal residential property that has a dwelling replacement cost below $700,000, or, if a single condominium unit has a combined dwelling and contents replacement cost below $700,000.

These provisions take effect on or after January 1, 2022.

Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans

The bill revises. 627.351(6)(q)3.d., F.S., to establish a new program where eligible surplus lines insurers may participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure that the insurer:

- Maintains surplus of $50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;[36]

[36] The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outline any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;[37]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;[38]
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

[37] This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.
[38] The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of $700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of $700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than 15 percent higher than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below $700,000 or a single condominium unit with a combined dwelling and contents replacement cost below $700,000. Such policyholders would maintain eligibility for coverage with Citizens.

Underwriting and Confidential Claim Files

The bill revises an existing public records exemption[39] under s. 626.916(1)(x)2., F.S., to allow authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

Section 3 of the bill makes technical changes to s. 627.3517, F.S.

Section 4 of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)-(7), F.S., to implement revisions made by **Section 2** of the bill above.

Section 5 specifies an effective date of January 1, 2022 for the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[39] Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises surcharge limits Citizens Property Insurance Corporation (Citizens) may charge its policyholders when a Citizens' account shortfall is projected. In addition, the bill authorizes a new surcharge on Citizens' policyholders when a legal expense deficit exists. These additional authorized surcharges, may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' policyholders.

Provisions of the bill revising glide path eligibility may also lead to increased premiums, at least in the short term, for some Citizens' policyholders whose policies no longer qualify for the 10 percent rate increase cap. However, private market insurers seeking to write coverage on such policies will benefit from not having to compete on price with Citizens' coverage for which the glide path suppresses an actuarially sound rate.

The bill provides Citizens' policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens' premium would be on the property. This will result in ineligibility for some Citizens' policyholders as competitive market rates may be at a much higher rate than the customer currently pays under Citizens. For example, if a Citizens' premium subject to the glide path is $2,000 but the actuarially sound premium for that property is $2,500, the policyholder would be ineligible for Citizens coverage upon receiving an offer of coverage that is not more than 15 percent higher than the actuarially sound premium. In this example, the offered premium could not exceed $2,875, which represents a 43.75 percent premium increase.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers due to increased competition.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral

Management and to make regular filings with the Office of Insurance Regulation. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens' eligibility criteria and ratemaking should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments. Citizens will collect an actuarially sound premium on all new business after July 1, 2021, which will benefit Citizens' financial status, and reduce the likelihood of deficits and associated surcharges and assessments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.021 and 627.351.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 of the Florida Statutes.

IX. Additional Information:

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

PCS (274232) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The committee substitute:

- Defines "primary residence" to mean the "dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation."
- Removes language establishing a legal surcharge for new policies and subsequent renewals.
- Replaces the phrase "owner occupied" with the newly defined "primary residence" in regards to Citizens' policy eligibility and glide-path eligibility.

CS by Banking and Insurance on March 16, 2021:
The committee substitute revises a bill provision creating new requirements for an insurance policy to remain eligible for the 10 percent rate increase cap under Citizens Property Insurance Corporation's (Citizens) glide path provision. Under the original bill, to continue to qualify for the glide path, the policy must meet certain guidelines, including that it cover homestead personal residential property. The committee substitute

deletes the homestead provision and replaces it with the property needing to be owner-occupied and makes a conforming change in in the bill for this revised provision.

The committee substitute also revises a requirement in the original bill regarding qualifications for a surplus lines insurer to participate in a Citizens depopulation, take-out, or keep-out program. The requirement that the insurer maintain "a financial strength rating of A- or higher by A.M. Best Company" is replaced in the committee substitute with a more general requirement that the insurer "have a superior, exceptional, or comparable financial strength rating by a rating agency acceptable to" the Office of Insurance Regulation.

B. Amendments:

None.

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

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; defining the term "primary residence"; revising conditions for eligibility for coverage with the corporation to require a certain minimum premium; specifying a limit for agent commission rates; revising the application of annual rate increase limits to certain policies issued by the corporation; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks offered coverage from qualified surplus lines insurers; authorizing information from underwriting files and confidential claims files to be released by the corporation to

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specified entities considering writing or underwriting risks insured by the corporation under certain circumstances; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; making technical changes; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S., and reenacting subsections (6) and (7), relating to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program, to incorporate the amendments made to s. 627.351, F.S., in references thereto; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks

commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (b), (c), (n), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate

accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only

policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines

account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral~~,~~ which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and

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(II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph

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d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a

projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines

agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and

expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation

insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, which funds shall be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium shall be levied.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million policyholders, a surcharge of 20 percent of the premium shall be levied.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium shall be levied.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the

following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a

basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(II) "Primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

(III) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement,

clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(I) ~~(II)~~ "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

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

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

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into

between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized

insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment

of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The

Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

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

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to

3-year terms and may serve for consecutive terms.

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

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

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal~~ from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium under subparagraph (n)1. for personal residential properties that are not the insured's primary residence. If the risk is not able to obtain such offer, the risk is eligible for

a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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

policy written.

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

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

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

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

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

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from

the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

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

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

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on

the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

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

7. Must provide that if premium and investment income for

an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

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

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

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

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

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

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal

through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

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

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular

assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

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

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

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

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

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

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

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

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The

corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant~~,~~ which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

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

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER

INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

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

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

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

22. The corporation shall pay a producing agent of record a reasonable commission not to exceed the average of commissions paid in the preceding year by the 20 admitted insurers writing the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, if ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it

writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering a personal residential property that is used as the primary residence of the insured which has a dwelling replacement cost less than $700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than $700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation before January 1, 2022.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such

certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within

or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~ not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly

discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the

producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form

executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from sub-sub-sub-subparagraph (D); and

(F) A copy of the United States trust account agreement, if applicable.

This sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services. The surplus lines insurer shall submit to the office, along with the initial deposit, an accounting of the policies assumed and the amount of unearned premium for such

policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) Surplus lines brokers representing a surplus lines insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent in advance stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation shall give the offer of coverage from the authorized insurer

priority.

(VI)(A) When offered comparable coverage from a qualified surplus lines insurer no greater than 15 percent higher than the premium charged by the corporation, a risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation.

(B) When offered coverage from a qualified surplus lines insurer, a risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by

the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon

written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt <u>includes</u> ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation <u>are</u> ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),

Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized

insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured’s or applicant’s underwriting or claims file to the same

extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s.

627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk

apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Subsection (5) of section 627.3518, Florida Statutes, is amended, and paragraph (a) of subsection (6) and paragraph (a) of subsection (7) of that section are reenacted, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant or a personal lines risk at renewal is received from an authorized insurer through the program, and the premium offered exceeds the eligibility thresholds specified ~~threshold contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. ~~In the event an offer of coverage for a~~

~~personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation.~~ Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such

expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 5. This act shall take effect January 1, 2022.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1574
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Citizens Property Insurance Corporation
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1574 revises Citizens Property Insurance Corporation (Citizens or corporation) eligibility criteria, rates, assessment surcharges on Citizens' policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill defines "primary residence" to mean the dwelling that the insured represented as their permanent home on the insurance application or otherwise to the corporation.

The bill limits application of the Citizens "glide path," which prevents rate increases of greater than 10 percent, by applying the glide path to only Citizens personal lines residential policies issued on or before January 1, 2022, on residential properties used as the primary residence with a dwelling replacement cost of less than $700,000 or single-unit condominiums with a dwelling and contents replacement cost of less than $700,000.

The bill provides that Citizens policyholders become ineligible for Citizens personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens premium would be on the property. Under current law, Citizens policyholders remain eligible unless they receive an offer

of comparable coverage less than the current Citizens premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

The bill increases the maximum surcharge that may be levied on Citizens' policyholders if Citizens projects a deficit in one of its accounts to: 20 percent of premium if Citizens has one million policyholders but less than 1.5 million policyholders; and 25 percent of premium if Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explains surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than $700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of $700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than 15 percent more than the premium for Citizens coverage.

The bill also:

- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to s. 627.3517, F.S., and reenacts and makes conforming changes to s. 627.3518, F.S.

The bill does not impact state revenue or expenditures.

The bill takes effect January 1, 2022.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[3] The

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

Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.[4] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens currently offers three policy types: Personal Lines Accounts, Commercial Lines Accounts and Coastal.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.[5]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[6]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[7]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[8] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[9]

Current Policies

As of February 28, 2021, Citizens reports 552,340 policies in-force with a total exposure of $150,498,489,611.[10] The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

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[4] Section 627.351(6)(c)4.a., F.S.
[5] *See* s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Mar. 24, 2021).
[6] *Id.*
[7] *Id.*
[8] Section 10, ch. 2013-60, L.O.F.
[9] Section 627.3518(2)-(3), F.S.
[10] Citizens Property Insurance, *About Us, Snapshot, February 28, 2021*, https://www.citizensfla.com/-/20210228-policies-in-force (last visited Mar. 28, 2021).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multi-peril (PR-M)	417,152	101,117,610,386	830,762,252
Coastal	Personal Residential Multi-peril (PR-M)	71,958	15,117,007,309	185,808,533
Coastal	Personal Residential Wind-Only (PR-W)	58,163	23,726,750,884	145,934,626
Coastal	Commercial Residential Multi-peril (CR-M)	125	631,877,883	2,910,767
Coastal	Commercial Residential Wind-Only (CR-W)	1,805	4,590,853,279	25,745,969
Coastal	Commercial Non-Residential Multi-peril (CNR-M)	25	20,269,100	181,093
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,407	1,945,320,260	23,429,973
CLA	Commercial Residential Multi-peril (CR-M)	566	3,208,005,710	12,309,859
CLA	Commercial Non-Residential Multi-peril (CNR-M)	139	140,794,800	880,037
	Total	552,340	150,498,489,611	1,227,963,109

Source: Citizens Property Insurance[11]

These numbers do not reflect policies tagged for takeout via Citizens' Depopulation Program but still serviced by Citizens.[12] Citizens' policy count grew by more than 100,000 in 2020 with 2,000-3,000 new policies written each week. At this rate, Citizens estimates an additional 100,000 policies by year end 2021.[13]

Citizens Glide Path Rates

From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[14] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private

[11] *Id.*
[12] *Id.*
[13] Citizens Property Insurance Corporation, *2021 Rate Kit, Executive Summary, Rate Structure Discussion*, https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967 (last visited Mar. 26, 2021).
[14] Section 627.351(6)(n)6., F.S.

reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are the major determinants of insurance rates.[15] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[16] Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[17] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[18] Citizens may impose three assessment tiers and their sequence is as follows:[19]

Citizens Policyholder Surcharge:

Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[20]

Regular Assessment:

If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[21] This assessment is not levied against Citizens' policyholders.

Emergency Assessment:

Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the

[15] Citizens Property Insurance Corporation, *2021 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967 (last visited Mar. 26, 2021).
[16] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[17] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums. Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[18] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[19] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, Assessment Tiers, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[20] Sections 627.351.(6)(b)3.(i)(I) and 627.351.(6)(c)21., F.S. *See also*, https://www.citizensfla.com/assessments (last visited Mar. 26, 2021).
[21] Section 627.351.(6)(b)3.a., F.S.

corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[22]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the Office of Insurance Regulation (OIR) and are set out in Citizens' underwriting manuals.[23]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more. [24] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[25]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[26] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[27] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[28]

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[22] Section 627.351(6)(b)3.d., F.S.
[23] *See Revised Underwriting Manuals*, Citizens Property Insurance Corporation, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited March 12, 2021).
[24] Section 627.351(6)(c)5., F.S.
[25] Section 627.351(6)(c)5., F.S.
[26] Section 627.351(6)(a)3., F.S.
[27] Section 627.351(6)(a)3.d., F.S.
[28] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Mar. 25, 2021). *See also* Section 627.351(6)(a)3.d., F.S.

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[29] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[30] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[31]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.[32] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[33]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[34] Florida Rule of Judicial Administration 2.420 governs public access to judicial

[29] Section 627.351(6)(q)3.a., F.S.
[30] Chapter 2016-229, L.O.F.
[31] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.
[32] FLA. CONST. art. I, s. 24(a).
[33] *Id*.
[34] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2021&DocumentType=The%20Rules%20Of%20The%20House%20of%20Representatives&FileName=2020-2022%20House%20Rules%20-%20%20Edition%201.pdf (last visited Mar. 26, 2021).

branch records.[35] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 626.916(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b. these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

III. Effect of Proposed Changes:

Section 1 revises s. 627.021, F.S., to revise the scope of the Rating Law under ch. 627, F.S., to state the chapter does apply to surplus lines coverage placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., when "specifically stated to apply."

Section 2 defines "primary residence" to mean the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation and makes a number of revisions to s. 627.351, F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation).

Surcharge Levied on Citizens' Policyholders for Projected Account Deficits

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' Board of Governors determines Citizens has a projected deficit. The 15 percent cap is replaced with an escalating cap for Citizens' policy holders, based upon the total number of Citizens' policyholders if:

- Citizens has less than one million policyholders, the premium surcharge cap is 15 percent per account.
- Citizens has at least one million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account.
- Citizens has at least 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

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

Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums

The bill revises s. 627.351(6)(c)5.a., F.S., to state a residential policyholder is ineligible to renew a policy with Citizens if such policyholder can obtain comparable coverage from an authorized insurer for less than, or equal to, 15 percent more than the actuarially sound Citizens' renewal premium would be for the risk. Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

Limitations on Commissions

In proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

Glide Path Eligibility

The bill revises s. 627.351(6)(n)6., F.S., to create new requirements to remain eligible for the 10 percent rate increase cap under Citizens' glide path provision. To continue to qualify for the glide path, the coverage, must:

- Be a personal residential property used as a primary residence;
- Be a policy initially issued before January 1, 2022; and
- Cover homestead personal residential property that has a dwelling replacement cost below $700,000, or, if a single condominium unit has a combined dwelling and contents replacement cost below $700,000.

These provisions take effect on or after January 1, 2022.

Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans

The bill revises. 627.351(6)(q)3.d., F.S., to establish a new program where eligible surplus lines insurers may participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure that the insurer:

- Maintains surplus of $50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;[36]

[36] The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outline any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;[37]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;[38]
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

[37] This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.
[38] The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of $700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of $700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than 15 percent higher than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below $700,000 or a single condominium unit with a combined dwelling and contents replacement cost below $700,000. Such policyholders would maintain eligibility for coverage with Citizens.

Underwriting and Confidential Claim Files

The bill revises an existing public records exemption[39] under s. 626.916(1)(x)2., F.S., to allow authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

Section 3 of the bill makes technical changes to s. 627.3517, F.S.

Section 4 of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)-(7), F.S., to implement revisions made by **Section 2** of the bill above.

Section 5 specifies an effective date of January 1, 2022 for the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[39] Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises surcharge limits Citizens Property Insurance Corporation (Citizens) may charge its policyholders when a Citizens' account shortfall is projected. In addition, the bill authorizes a new surcharge on Citizens' policyholders when a legal expense deficit exists. These additional authorized surcharges, may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' policyholders.

Provisions of the bill revising glide path eligibility may also lead to increased premiums, at least in the short term, for some Citizens' policyholders whose policies no longer qualify for the 10 percent rate increase cap. However, private market insurers seeking to write coverage on such policies will benefit from not having to compete on price with Citizens' coverage for which the glide path suppresses an actuarially sound rate.

The bill provides Citizens' policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens' premium would be on the property. This will result in ineligibility for some Citizens' policyholders as competitive market rates may be at a much higher rate than the customer currently pays under Citizens. For example, if a Citizens' premium subject to the glide path is $2,000 but the actuarially sound premium for that property is $2,500, the policyholder would be ineligible for Citizens coverage upon receiving an offer of coverage that is not more than 15 percent higher than the actuarially sound premium. In this example, the offered premium could not exceed $2,875, which represents a 43.75 percent premium increase.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers due to increased competition.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral

Management and to make regular filings with the Office of Insurance Regulation. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens' eligibility criteria and ratemaking should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments. Citizens will collect an actuarially sound premium on all new business after July 1, 2021, which will benefit Citizens' financial status, and reduce the likelihood of deficits and associated surcharges and assessments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.021 and 627.351.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Defines "primary residence" to mean the "dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation."
- Removes language establishing a legal surcharge for new policies and subsequent renewals.
- Replaces the phrase "owner occupied" with the newly defined "primary residence" in regards to Citizens' policy eligibility and glide-path eligibility.

CS by Banking and Insurance on March 16, 2021:
The committee substitute revises a bill provision creating new requirements for an insurance policy to remain eligible for the 10 percent rate increase cap under Citizens Property Insurance Corporation's (Citizens) glide path provision. Under the original bill, to continue to qualify for the glide path, the policy must meet certain guidelines, including that it cover homestead personal residential property. The committee substitute

deletes the homestead provision and replaces it with the property needing to be owner-occupied and makes a conforming change in in the bill for this revised provision.

The committee substitute also revises a requirement in the original bill regarding qualifications for a surplus lines insurer to participate in a Citizens depopulation, take-out, or keep-out program. The requirement that the insurer maintain "a financial strength rating of A- or higher by A.M. Best Company" is replaced in the committee substitute with a more general requirement that the insurer "have a superior, exceptional, or comparable financial strength rating by a rating agency acceptable to" the Office of Insurance Regulation.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Brandes

597-02917-21 20211574c1

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; requiring the corporation to levy an annual legal expenses surcharge; revising conditions for eligibility for coverage with the corporation to require a certain minimum premium; specifying a limit for agent commission rates; revising the application of annual rate increase limits to certain policies issued by the corporation; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks offered coverage from qualified surplus lines insurers; authorizing information from underwriting files and confidential claims files to be released by the corporation to specified entities considering writing or underwriting risks insured by the corporation under certain circumstances; specifying

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

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that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; making technical changes; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S., and reenacting subsections (6) and (7), relating to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program, to incorporate the amendments made to s. 627.351, F.S., in references thereto; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus

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lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (b), (c), (n), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive,

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multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is

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insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within

Port Canaveral~~,~~ which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the

accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion

that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be

recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays

the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency

assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject

lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, which funds shall be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium shall be levied.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million policyholders, a surcharge of 20 percent of the premium shall be levied.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium shall be levied.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

4. After accounting for the rate limitations specified in subparagraph (n)6., any remaining deficit in legal expenses must be recovered through an annual Citizens policyholder legal expenses surcharge against all policyholders of the corporation. The surcharge must be levied as a uniform percentage of the premium for the policy. The surcharge is payable upon issuance of a new policy by the corporation and upon each subsequent renewal of the policy. The surcharge is not considered premium

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and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge must be treated as failure to pay premium.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms

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that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the

inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

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

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

under the agreement.

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning

eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected

recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning

annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

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

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office

of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

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

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

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal~~ from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the

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corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium under subparagraph (n)1. for personal residential properties that are not owner-occupied. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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corporation; or

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

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

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

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

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

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

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk

is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

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

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

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The

corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as

not being an offer of coverage from an authorized insurer at the insurer's approved rate.

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

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

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

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

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

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

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

the board of governors.

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

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

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

13. Must provide that, with respect to the coastal account,

any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial

nonresidential property coverage within this ~~the~~ state.

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

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

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

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

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

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

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

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

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

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant~~,~~ which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

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

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN

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PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

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

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

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

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

22. The corporation shall pay a producing agent of record a reasonable commission not to exceed the average of commissions paid in the preceding year by the 20 admitted insurers writing the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider

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the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, if ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate

filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering an owner-occupied personal residential property that has a dwelling replacement cost less than $700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than $700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation and the dwelling was determined by the corporation to be owner-occupied before July 1, 2021.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation

writes.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the

corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~ not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new

and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or

a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from sub-sub-sub-subparagraph (D); and

(F) A copy of the United States trust account agreement, if applicable.

This sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation

shall remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services. The surplus lines insurer shall submit to the office, along with the initial deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) Surplus lines brokers representing a surplus lines insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent in advance

stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation shall give the offer of coverage from the authorized insurer priority.

(VI)(A) When offered comparable coverage from a qualified surplus lines insurer no greater than 15 percent higher than the premium charged by the corporation, a risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation.

(B) When offered coverage from a qualified surplus lines insurer, a risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided

herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a

public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her

own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any

exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property

insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Subsection (5) of section 627.3518, Florida Statutes, is amended, and paragraph (a) of subsection (6) and paragraph (a) of subsection (7) of that section are reenacted, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant or a personal lines risk

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at renewal is received from an authorized insurer through the program, and the premium offered exceeds the eligibility thresholds specified ~~threshold contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. ~~In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation.~~ Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer

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participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 5. This act shall take effect January 1, 2022.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 7, 2021

I respectfully request that **Senate Bill # 1574**, relating to Citizens Property Insurance Corporation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1592
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; and Senator Burgess and others
SUBJECT:	Broadband Internet Infrastructure
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Imhof	Imhof	RI	**Favorable**
2.	Bruno	Babin	FT	**Fav/CS**
3.	Bruno	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1592 provides broadband providers access for attachments to utility poles of municipal electric utilities at a promotional rate of $1 per attachment per pole from July 1, 2021 to July 1, 2024 when serving unserved or underserved broadband Internet customers. All such attachments must follow the higher of the safety standards in the National Electrical Safety Code or the standards set by the utility. The promotional rate is available after application and can be lost if unserved or underserved customers are not provided with broadband Internet access within 12 months of the attachments being made. A utility may not increase the fees charged to broadband providers for pole attachments made between July 1, 2021 and July 31, 2022.

The bill requires municipal electric utilities to identify customers who are unserved or underserved with broadband Internet access to the Office of Broadband. They are further required to disclose pole attachments made at the promotional rate.

The bill directs the Office of Broadband to work with rural communities to identify underserved and unserved communities and leverage resources to help those communities access broadband Internet. The Office of Broadband is directed to provide assistance to fiscally restrained counties to identify and apply for federal grants.

The bill establishes guidelines for cost-sharing when a utility pole must be replaced due to an attachment between the utility and the broadband provider.

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenue.

The bill takes effect July 1, 2021.

II. Present Situation:

Pole Attachments

Utility poles can be configured to disburse services to customers including electrical power, telephone, cable television, broadband, and wireless service.[1] Typically, communication services are attached at a level on the pole below the electrical supply lines.[2]

Utility poles may be installed and owned by different kinds of utilities, such electrical providers or telecommunications providers.[3,4] Utility pole owners can charge others to attach another service to the owners' pole.[5] Pole attachments are regulated either federally by the Federal Communications Commission (FCC) or at the state level.[6] As of March 19, 2020, 23 states have certified to the FCC that they regulate rates, terms, and conditions for pole attachments.[7] Florida is not among these states and is subject to FCC oversight for investor-owned electric utilities.[8]

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.[9] Municipally-owned utility rates and revenues are regulated by their city commission.[10] The PSC has limited jurisdiction over municipally-owned electric utilities.[11]

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[1] Florida Public Service Commission, "What's on a Utility Pole?" available at http://www.psc.state.fl.us/ConsumerAssistance/UtilityPoleDescriptions (last visited April 19, 2021).
[2] *Id.*
[3] The term "utility" is defined as: "…any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State," and the term State is defined as "any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof." 47 U.S.C. s. 224 (1996).
[4] *See* News-Press, "FPL, AT&T battle over utility bills," available at https://www.news-press.com/story/news/newswire/2019/08/01/florida-power-light-fpl-at-t-battle-over-utility-bills/1887655001/ (last visited April 19, 2021).
[5] *Id.*
[6] *See* American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations Issue Brief*, available at https://www.publicpower.org/system/files/documents/January%202021%20-%20Federal%20Pole%20Attachment%20Regulations.pdf (last visited April 19, 2021).
[7] *Id.*
[8] *Id.*
[9] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited April 19, 2021).
[10] *Id*.
[11] Florida Public Service Commission, *2020 FPSC Annual Report*, p.13, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited April 19, 2021).

There are 34 municipal electric companies in Florida[12] and 33 of those municipal electric utilities are represented by the Florida Municipal Electric Association.[13] These companies serve over three million Floridians.[14]

Municipally-owned utilities are specifically exempt from FCC oversight under the Pole Attachment Act passed in 1978.[15]

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2 creates s. 364.0137, F.S., to provide the requirements for broadband provider attachments to municipal electric utility poles.

The bill provides legislative findings that there is a need for increased availability of broadband Internet access in Florida, especially in areas that do not have access to acceptable broadband Internet speeds or to Internet broadband at all.

The bill defines the following terms:

- "Broadband provider" means a person or entity who provides fixed broadband service.
- "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second for downloading and at least 3 megabits per second for uploading.
- "Underserved" means that retail access to the Internet is not available at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.
- "Unserved" means that retail access to the Internet is not available at speeds of at least 10 megabits per seconds for downloading and 1 megabit per second for uploading.
- "Wireline attachment" means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

The bill provides that each municipal utility must provide broadband providers with access to any utility pole it owns for the purpose of providing service to unserved or underserved ends users within the utility's service area. From July 1, 2021, to July 1, 2024, a municipal electrical utility will provide such attachments at a promotional rate of $1 per attachment per pole. A broadband provider who wishes to make attachments at the promotional rate must submit an application to the utility and to the Office of Broadband, including maps and descriptions of which underserved or unserved users will be served by the attachments. A utility will report to the Office of Broadband all connections made at the promotional rate along with any information available as to which of its customers do or do not have access to broadband Internet.

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[12] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited April 19, 2021).
[13] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited April 19, 2021).
[14] *Id.*
[15] Pub. L. No. 95-234, 224, 92 Stat. 33 (1978).

The bill provides that any broadband provider that uses the promotional rate must make all reasonable efforts to provide broadband service to the identified underserved or unserved customers identified in the application. If the broadband provider is unable to provide service to those customers within 12 months, the broadband provider may be required to pay the prevailing rate for those attachments.

The bill directs that wireline attachments that are subject to the promotional rate must conform to all other terms and conditions of existing attachment agreements between a municipally-owned electric utility and a broadband provider. If no agreement exists, the parties have 90 days to enter such agreement.

The bill provides that the local technology planning teams within the Office of Broadband shall work with rural communities to help determine availability, locate unserved and underserved customers, and take other steps to further encourage expansion on broadband Internet access.

The bill provides that all attachments must comply with the National Electrical Safety Code or other, higher standards for the public health, safety and welfare if set by the municipal electrical utility.

The bill directs that if a municipal electrical utility is required to replace a pole due to a broadband provider's attachment, the utility may require reimbursement for reasonable and nondiscriminatory costs minus any positive salvage value of the pole. The utility may only require pole replacement if necessary to comply with safety and engineering standards, and may not charge a broadband provider to correct existing violations, to bring a pole into compliance with changed standards, or poles at the end of their useful lives. "Useful life" is defined as 30 years for a wood utility pole and 50 years for all other utility poles, including concrete, steel, or iron poles.

The bill provides that a municipal electrical utility may not increase the fees charged to broadband providers for pole attachments made between July 1, 2021 and July 31, 2022.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) Art. VII, s. 18 of Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates

requirements do not apply to laws having an insignificant fiscal impact[16, 17] which for Fiscal Year 2021-2022, is forecast at approximately $2.2 million or less.[18]

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenues. Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed CS/CS/SB 1592. Staff estimates an indeterminate impact to municipal utility revenues.

B. Private Sector Impact:

Broadband service providers may see an adjustment in the pole attachment fees paid to municipal electric utilities for installation of attachments to the utilities' poles. Broadband service providers will be guaranteed access for pole attachment purposes when providing service to underserved or unserved broadband Internet users.

[16] FLA. CONST. art. VII, s. 18(d).
[17] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact at p. 1, (September 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited April 19, 2021).
[18] Based on the Demographic Estimating Conference's April 1, 2021, estimated population, adopted on March 13, 2021. The conference packet is *available* at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited April 19, 2021).

C. Government Sector Impact:

Municipal utilities may see an adjustment in the amount of pole attachment fees received from broadband service providers for installation of attachments to the utilities' poles. Municipal utilities will not be able to refuse pole attachments by broadband service providers providing service to underserved or unserved broadband Internet users.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 212.08 of the Florida Statutes.

The bill creates section 364.0137 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriation on April 19, 2021:
The committee substitute:

- Contains a legislative finding that there is a need for increased broadband internet access throughout Florida.
- Defines the terms "broadband provider", "broadband service", "underserved", "unserved", and "wireline attachment".
- Creates a promotional period from July 1, 2021 to July 1, 2024 during which a municipal utility must charge $1 per attachment per pole per year upon application by a broadband provider to the municipal utility and the Office of Broadband.
    - If the broadband provider is unable to provide broadband service to identified unserved or underserved customers within 12 months the broadband provider may be required to pay the prevailing rate on the attachments identified to provide those customers with broadband.
    - The attachments subject to the promotional rate must follow all other terms and conditions of the agreement between the utility and the broadband provider and if no agreement exists, the parties have 90 days to create one.
- Requires the Office of Broadband to work with rural communities to locate unserved and underserved communities and take steps to establish broadband connections in those communities.

- Requires all attachments to comply with standards in the National Electrical Safety Code or nondiscriminatory standards set by the municipal utility which are in excess of the National Electrical Safety code.
- Sets shared responsibility for cost sharing when a pole must be replaced to accept an attachment.
- Freezes rates charged by municipal electrical utilities to broadband providers from July 1, 2021 to July 31, 2021.
- Provides an effective date of July 1, 2021.

CS by Finance and Tax on March 31, 2021:
The committee substitute:

- Narrows the sales tax exemption by including only purchases and leases of qualifying equipment (excluding sales) and by excluding items such as real estate, office equipment, certain facilities, and vehicles.
- Adds definitions for "central office," "headend," "qualifying equipment," and "hub," which definitions are used to limit the exemption to certain equipment located at certain locations.
- Narrows the types of services that qualify as "Internet Access Service" by limiting Internet Access Service to certain upload and download speeds.
- Allows broadband providers and municipal electric utilities to enter agreements and set costs consistent with 47 U.S.C. s. 224 and rules created pursuant to it or as otherwise agreed.
- Outlines the attachment specifications a utility may require broadband providers to follow.
- Creates two processes for broadband providers to follow to attach their equipment to utilities' poles including a stream-lined process known as "Florida one-touch, make-ready" or "FOTMR."
- Clarifies the definition of "attachment" and defines the terms "communication space," "make-ready work," "simple make-ready work," "complex make-ready work," "redundant pole", and "larger order." These definitions are used in the attachment process.
- Outlines certain rights and responsibilities for utilities and broadband providers in regards to indemnification, inspections, audits, repairs, rent, and overlashing.
- Provides emergency rule making authority to the Department of Revenue.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 132 - 311

and insert:

4. A provider of communications services or Internet access services that receives an exemption under this paragraph must make investments in and improvements to its broadband services and equipment in this state in an amount equal to or greater than the exemption. The provider must annually provide to the Office of Broadband within the Department of Economic

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Opportunity a report listing the investments and improvements made in each tax year of the provider in which the provider claims an exemption pursuant to this paragraph.

5. As used in this paragraph, the term:

a. "Central office" means the location where telephone subscribers' lines are joined to switching equipment to connect subscribers to each other, locally and long distance. Central office equipment includes, but is not limited to, switches, cable distribution frames, and batteries.

b. "Communications services" has the same meaning as in s. 202.11(1).

c. "Headend" means the primary location in a communications provider's network which receives television programming signals through satellite antennae or fiber optic cables for distribution to the customer premises through a distribution network. Headend equipment includes, but is not limited to, computer-based electronic equipment that receives programming signals and uses prescribed processes to combine, amplify, and convert the programming signals and transmit them through the distribution network. The headend processes and combines signals for distribution to hubs or directly to customer premises. In most cases, the headend also serves as a distribution hub for the fiber optic transfer nodes closest to the headend. The term also includes a super headend, which processes all incoming programming signals and transmits them to regional headends or directly to hubs.

d. "Hub" means the secondary location in a communications provider's network which is connected to the headend by a fiber optic or other cable. A hub may contain electronic equipment

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that processes, converts, and transmits signals through the distribution network, and can serve a large number of business and residential communities.

e. "Internet access service" has the same meaning as in s. 202.11(6) and only applies to services that provide access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

f. "Provider of communications services or Internet access services" includes a dealer as defined in s. 202.11(2), a provider of Internet access service, and any member of an affiliated group as defined in s. 202.37(1)(c)2.

g. "Qualifying equipment" means equipment, machinery, software, or other infrastructure used to provide communications services or Internet access services and located within a central office, headend, or hub operated by a provider of communications services or Internet access services.

Section 3. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband service infrastructure.—

(1) The Legislature finds that just, reasonable, and nondiscriminatory rates, terms, and conditions for the access and use of municipal electric utility poles by broadband service providers is essential to deploy, upgrade, and maintain broadband service to residents of this state. It is critical that municipal electric utility pole access and use rates are just, reasonable, nondiscriminatory, and fully compensatory, which may be achieved under the federal framework applicable to utility poles owned and operated by investor-owned utilities.

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The terms and conditions associated with the access and use of utility poles must be consistent with 47 U.S.C. s. 224, the Communications Act of 1934, as amended, and the regulations of the Federal Communications Commission as those regulations existed on July 1, 2021, except as authorized by this section and agreed to by the parties.

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

(a) "Attachment" means a wire or cable affixed to a utility pole or structure in the communications space or in a duct, conduit, or right-of-way owned or controlled by a municipal electric utility.

(b) "Broadband provider" means a person who provides fixed, terrestrial broadband service. The term includes a person who provides or offers additional services to the public in addition to broadband service.

(c) "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction.

(d) "Communications space" means the lower usable space on a utility pole which is typically reserved for low-voltage communications equipment.

(e) "Complex make-ready work" means transfers and work within the communications space which would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. The term includes any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless service

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providers, and any work involving the space above the safety space as defined in the National Electrical Safety Code.

(f) "Larger order" means a pole attachment application requesting access to a number of poles greater than the lesser of 300 poles or 0.5 percent of a municipal electric utility's poles, and up to the lesser of 3,000 poles or 5 percent of the municipal electric utility's poles. For purposes of determining whether a request is a larger order, a municipal electric utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(g) "Make-ready work" means engineering or construction activities necessary to make a pole or similar structure available for a new pole attachment or pole attachment modification, including, but not limited to, rearrangement, removal, and replacement of the pole, transfers, and other work incident thereto.

(h) "Redundant pole" means a utility pole designated for removal from which the municipal electric utility has removed its facilities and provided written notice to the broadband service provider that the provider needs to remove its facilities.

(i) "Simple make-ready work" means work in the communications space to accommodate a new pole attachment on a pole which can be conducted without any reasonable expectation of a:

1. Service outage or facility damage;

2. Need to splice an existing communications attachment; or

3. Need to relocate an existing wireless attachment.

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(j) "Utility pole" means a pole owned or controlled by a municipal electric utility which is used in whole or in part for electric distribution.

(3) To promote the deployment of broadband service to all residents, each municipal electric utility shall:

(a) Charge just, reasonable, and nondiscriminatory rates for access to any utility pole it owns or operates which do not discriminate between or among such providers and any other attaching entity, including any entity affiliated with the municipal electric utility, regardless of the services furnished. Except as provided in subsection (4), such rates may not exceed the rate calculated consistent with 47 U.S.C. 224(d) and any Federal Communications Commission regulations and decisions adopted thereunder as such regulations and decisions existed on July 1, 2021.

(b) Maintain and make available to a broadband provider all records necessary to calculate the rate it charges to the provider in accordance with paragraph (a).

(c) Provide broadband providers with access to any utility pole it owns or operates and adopt just, reasonable, and nondiscriminatory terms and conditions for such access consistent with the requirements applicable to investor-owned utilities under 47 U.S.C. s. 224 and any Federal Communications Commission regulations and decisions adopted thereunder, as such regulations and decisions existed on July 1, 2021, except as otherwise provided in this section and agreed to by the parties. Notwithstanding the foregoing:

1. If necessary to accommodate a broadband provider's new attachment, the municipal electric utility shall rearrange,

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expand, replace, or otherwise safely reengineer any utility pole upon the request of the broadband provider.

2. If the municipal electric utility is required to replace a utility pole pursuant to subparagraph 1., the municipal electric utility may require a broadband provider to reimburse reasonable costs attributable solely to the new attachment. Broadband providers may not be required to pay for the cost of utility betterment or for costs attributable to preexisting noncompliance.

(4) A municipal electric utility may require a broadband provider to enter into a pole attachment agreement to attach to a utility pole the municipal electric utility owns or operates, and the parties shall negotiate such agreements in good faith.

(a) Broadband providers and municipal electric utilities shall negotiate in good faith to adopt pole attachment agreements consistent with this section or to amend existing agreements to ensure that attachments installed after July 1, 2021, are performed consistent with the terms of this section. The parties must negotiate in good faith for at least 60 days after receipt of a written request, after which either party may petition the circuit court to determine rates, terms, and conditions for the agreements consistent with this section.

(b) At a minimum, a broadband provider shall comply with the safety and engineering standards for pole attachments specified in the National Electrical Safety Code. A municipal electric utility may adopt publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of the public health, safety, or welfare which exceed specifications in the National

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Electrical Safety Code. If a municipality has adopted or adopts such standards that exceed such specification in the National Electrical Safety Code, the broadband provider must meet the stricter standards.

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

And the title is amended as follows:

Delete lines 7 - 21

and insert:

sales and use tax; providing exceptions; providing that a provider that receives the exemption must make investments in and improvements to its broadband services and equipment equal to or greater than the amount of the exemption; defining terms; creating s. 364.0137, F.S.; providing legislative findings; defining terms; requiring municipal electric utilities to ensure that their broadband provider rates and fees meet certain requirements and to make certain records available to broadband providers, provide access to their utility poles, and establish just and reasonable terms and conditions for broadband provider attachments; providing a process for a municipal electric utility and a broadband provider to enter into pole attachment agreements; requiring broadband providers to comply with safety and engineering standards for pole attachments which meet certain minimum requirements; providing an

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2. Section 364.0137, Florida Statutes, is created to read:

364.0137 Attachment of broadband facilities to municipal electric utility poles.—

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(1) The Legislature finds that there is a need for increased availability of broadband Internet access throughout this state, particularly in areas where residents do not have access to acceptable Internet download and upload speeds, or any access at all. The lack of Internet connectivity and widespread broadband availability is detrimental to the growth of the economy, access to telehealth, and educational opportunities. The federal government has provided vast resources for private cable and other broadband providers to expand the deployment of broadband infrastructure in areas where Internet access and broadband service are inadequate or nonexistent.

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

(a) "Broadband provider" means a person or an entity who provides fixed broadband service.

(b) "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per seconds for downloading and at least 3 megabits per second for uploading.

(c) "Underserved" means that retail access to the Internet is not available at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading.

(d) "Unserved" means that retail access to the Internet is not available at speeds of at least 10 megabits per seconds for downloading and 1 megabit per second for uploading.

(e) "Wireline attachment" means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole.

(3) From July 1, 2021, to July 1, 2024, a municipal electric utility shall provide a broadband provider with a

promotional rate of $1 per wireline attachment per pole per year for any new attachment necessary to make service available to an unserved or underserved end user within the municipal electric utility's service territory during such time period.

(a) A broadband provider that wishes to make wireline attachments subject to the promotional rate shall submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved or underserved end users and therefore qualify for the promotional rate under this subsection, together with such information necessary to identify which unserved or underserved end users within the municipal electric utility's service territory will have access to broadband service as a result. The broadband provider shall also submit a copy of such application and plan simultaneously to the Office of Broadband within the Department of Economic Opportunity.

(b) A municipal electric utility shall report to the Office of Broadband which connections on which utility poles were made available to broadband providers subject to the promotional rate, together with any information available to it regarding which of its municipal electric utility customers do and do not have access to broadband service and whether they are unserved or underserved.

(c) A broadband provider who makes an application to attach under the promotional rate shall make all reasonable efforts to make broadband service available to the unserved or underserved municipal electric utility customers identified in the application. If the broadband provider fails to make broadband

service available to those customers within 12 months, the broadband provider may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers.

(d) Except to the extent provided in this section, wireline attachments subject to the promotional rate must conform to all other terms and conditions of existing pole attachment agreements between the broadband provider and the municipal electric utility. If no such agreement exists, the parties have 90 days to enter into a pole attachment agreement for all other terms and conditions of attachment.

(4) The local technology planning teams within the Office of Broadband shall work with rural communities to help the communities determine their current broadband availability, locate unserved and underserved customers, identify assets relevant to broadband deployment, build partnerships with broadband service providers, and identify opportunities to leverage assets and reduce barriers to the deployment of public and private broadband service in the community. In fiscally constrained counties, the teams or partnerships must be proactive in identifying and providing assistance with applying for federal grants for broadband service.

(5) All wireline attachments must comply, at a minimum, with the safety and engineering standards for pole attachments specified in the National Electrical Safety Code. A municipal electric utility may adopt publicly available, reasonable, and nondiscriminatory safety and engineering standards for the protection of the public health, safety, or welfare which exceed specifications in the National Electrical Safety Code. If a

municipality has adopt or adopts such standards that exceed such specification in the national Electrical Safety Code, the broadband provider must meet the stricter standards.

(6) If the municipal electric utility is required to replace a utility pole due to a broadband provider's attachment, the municipal electric utility may require, as a condition of pole attachment, a broadband provider to reimburse all reasonable and nondiscriminatory costs attributable solely to the new attachment minus the salvage value of the removed pole, if such value is positive. The municipal electric utility may not require a utility pole to be replaced to accommodate a broadband provider's attachment except where necessary to comply with applicable engineering and safety standards. With respect to such replacement poles, if pole replacement is necessary to correct an existing violation, to bring the pole into compliance with any changes in applicable standards, or because the pole is at the end of its useful life, such replacement cost may not be charged to the broadband provider. As used in this subsection, the term "useful life" means not less than 30 years for a wood utility pole and not less than 50 years for a concrete, steel, or ductile iron pole and all other utility poles.

(7) A municipal electric utility may not increase the fees charged to broadband providers for pole attachments made between July 1, 2021, and July 31, 2022.

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

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

And the title is amended as follows:

Delete everything before the enacting clause

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and insert:

A bill to be entitled

An act relating to broadband Internet infrastructure; providing a short title; creating s. 364.0137, F.S.; providing legislative findings; defining terms; requiring municipal electric utilities to provide a specified promotional rate to broadband providers for wireline attachments made in unserved or underserved areas within the utility's service area; requiring the broadband provider to submit an application that meets certain requirements to receive the promotional rate; requiring municipal electric utilities to provide certain information regarding connections made available to broadband providers to the Office of Broadband within the Department of Economic Opportunity; providing requirements for the promotional rate; requiring the local technology planning teams within the office to provide support to rural communities regarding broadband service availability; requiring wireline attachments to comply with certain safety and engineering standards; authorizing a municipal electric utility to require a broadband provider to reimburse the electric utility for the replacement of utility poles under certain circumstances; defining the term "useful life"; prohibiting a municipal electric utility from increasing pole attachment fees during a specified timeframe; providing an effective date.

By the Committee on Finance and Tax; and Senators Burgess, Diaz, and Albritton

593-03645-21 20211592c1

A bill to be entitled

An act relating to broadband Internet infrastructure; providing a short title; amending s. 212.08, F.S.; exempting the purchase or lease of certain equipment by a provider of communications services or a provider of Internet access services in this state from the sales and use tax; providing exceptions; defining terms; creating s. 364.0137, F.S.; providing legislative findings; defining terms; requiring municipal electric utilities to ensure that their broadband provider rates and fees meet certain requirements, make certain records available to broadband providers, provide access to its utility poles, and establish just and reasonable terms and conditions for broadband provider attachments; providing a process for a municipal electric utility and a broadband provider to enter into pole attachment agreements; prohibiting municipal electric utilities from prohibiting a broadband provider from using certain techniques and equipment if used in accordance with certain safety standards; providing an application process and timelines for pole access between a municipal electric utility and a broadband provider; authorizing a broadband provider seeking a new pole attachment to invoke the Florida one-touch, make-ready process; providing requirements for such process; authorizing a municipal electric utility to make periodic inspections of a broadband provider's attachments; requiring the broadband provider to

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593-03645-21 20211592c1

reimburse the municipal electric utility for certain costs relating to such inspections; authorizing a municipal electric utility to conduct audits of such attachments according to a specified timeframe; requiring advanced written notice of such inspections or audits; providing for the removal of pole attachments within a specified timeframe upon unresolved disputes; prohibiting a municipal electric utility from charging additional rent or requiring prior approval or applications for overlashes; requiring any billed costs to be commercially reasonable, nondiscriminatory, and sufficiently detailed; authorizing municipal electric utilities and broadband providers to seek any available remedies; authorizing the Department of Revenue to adopt emergency rules; providing that such rules are effective for a specified timeframe and may be renewed; providing an effective date.

WHEREAS, although this state is a national leader in private sector broadband investment, including billions of dollars invested by existing service providers, estimates show that as many as 804,000 residents lack access to the services, particularly in rural areas where the cost to deploy facilities is significantly higher than in more densely populated areas, and

WHEREAS, the lack of advanced communication capabilities, broadband facilities, and services in certain areas deprives residents of access to opportunities, and

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WHEREAS, the Legislature finds that it is in the public interest of this state to encourage private-sector investment in broadband deployment and upgrades, encourage greater participation and access for all residents, and remove regulatory and economic barriers to such investment, and

WHEREAS, the Legislature finds that it is in the public interest of this state to encourage and facilitate the development of and investment in broadband facilities to advance Florida's economic competitiveness, create job opportunities, enhance health care, and enhance educational advancement, and

WHEREAS, the Legislature finds that reasonable rates, terms, and conditions for access and use of municipal utility poles by broadband service providers are essential for the deployment, upgrade, and maintenance of broadband service, and

WHEREAS, it is critical that such access rates, terms, and conditions be reasonable and fully compensatory, as approved by the federal pole attachment regime imposed by the Communications Act of 1934, as amended, 47 U.S.C. s. 224, and the rules and regulations of the Federal Communications Commission governing utilities whose pole attachments are regulated under federal law, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Florida Broadband Deployment Act of 2021."

Section 2. Paragraph (ppp) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and

storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ppp) *Equipment purchased or leased in this state by a provider of communications services or a provider of Internet access services.—*

1. The purchase or lease of qualifying equipment by a provider of communications services or Internet access services is exempt from the tax imposed by this chapter.

2. The exemption provided by this paragraph does not apply to the purchase or lease of any of the following:

a. Real property;

b. Improvements to real property;

c. Office furniture and fixtures;

d. General office equipment and machinery that is not used to provide communications services or Internet access services;

e. Vehicles;

f. Customer premise equipment; or

g. Facilities used to distribute signals beyond the central office, headend, or hub facilities, including fiber optic, coaxial, or other transmission cables; amplifiers; taps; and customer drops.

3. The exemption provided by this paragraph does not apply to the tax levied by s. 212.031.

4. As used in this paragraph, the term:

a. "Central office" means the location where telephone subscribers' lines are joined to switching equipment to connect subscribers to each other, locally and long distance. Central office equipment includes, but is not limited to, switches, cable distribution frames, and batteries.

b. "Communications services" has the same meaning as in s. 202.11(1).

c. "Headend" means the primary location in a communications provider's network which receives television programming signals through satellite antennae or fiber optic cables for distribution to the customer premises through a distribution network. Headend equipment includes, but is not limited to, computer-based electronic equipment that receives programming

signals and uses prescribed processes to combine, amplify, and convert the programming signals and transmit them through the distribution network. The headend processes and combines signals for distribution to hubs or directly to customer premises. In most cases, the headend also serves as a distribution hub for the fiber optic transfer nodes closest to the headend. The term also includes a super headend, which processes all incoming programming signals and transmits them to regional headends or directly to hubs.

d. "Hub" means the secondary location in a communications provider's network which is connected to the headend by a fiber optic or other cable. A hub may contain electronic equipment that processes, converts, and transmits signals through the distribution network, and can serve a large number of business and residential communities.

e. "Internet access service" has the same meaning as in s. 202.11(6) and only applies to services that provide access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

f. "Provider of communications services or Internet access services" includes a dealer as defined in s. 202.11(2), a provider of Internet access service, and any member of an affiliated group as defined in s. 202.37(1)(c)2.

g. "Qualifying equipment" means equipment, machinery, software, or other infrastructure used to provide communications services or Internet access services and located within a central office, headend, or hub operated by a provider of communications services or Internet access services.

Section 3. Section 364.0137, Florida Statutes, is created to read:

364.0137 Broadband service infrastructure.—

(1) The Legislature finds that just, reasonable, and nondiscriminatory rates, terms, and conditions for the access and use of municipal electric utility poles by broadband service providers is essential to deploy, upgrade, and maintain broadband service to residents of this state. It is critical that municipal electric utility pole access and use rates are just, reasonable, nondiscriminatory, and fully compensatory, which may be achieved under the federal framework applicable to utility poles owned and operated by investor-owned utilities. The terms and conditions associated with the access and use of utility poles must be consistent with 47 U.S.C. s. 224, the Communications Act of 1934, as amended, and the regulations of the Federal Communications Commission as those regulations existed on July 1, 2021, except as authorized by this section and agreed to by the parties.

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

(a) "Attachment" means a wire or cable affixed to a utility pole or structure in the communications space or in a duct, conduit, or right-of-way owned or controlled by a municipal electric utility.

(b) "Broadband provider" means a person who provides fixed, terrestrial broadband service. The term includes a person who provides or offers additional services to the public in addition to broadband service.

(c) "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits

per second in the downstream direction and at least 3 megabits per second in the upstream direction.

(d) "Communications space" means the lower usable space on a utility pole which is typically reserved for low-voltage communications equipment.

(e) "Complex make-ready work" means transfers and work within the communications space which would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. The term includes any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless service providers, and any work involving the space above the safety space as defined in the National Electrical Safety Code.

(f) "Larger order" means a pole attachment application requesting access to a number of poles greater than the lesser of 300 poles or 0.5 percent of a municipal electric utility's poles, and up to the lesser of 3,000 poles or 5 percent of the municipal electric utility's poles. For purposes of determining whether a request is a larger order, a municipal electric utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(g) "Make-ready work" means engineering or construction activities necessary to make a pole or similar structure available for a new pole attachment or pole attachment modification, including, but not limited to, rearrangement, removal, and replacement of the pole, transfers, and other work incident thereto.

(h) "Redundant pole" means a utility pole designated for removal from which the municipal electric utility has removed its facilities and provided written notice to the broadband service provider that the provider needs to remove its facilities.

(i) "Simple make-ready work" means work in the communications space to accommodate a new pole attachment on a pole which can be conducted without any reasonable expectation of a:

1. Service outage or facility damage;

2. Need to splice an existing communications attachment; or

3. Need to relocate an existing wireless attachment.

(j) "Utility pole" means a pole owned or controlled by a municipal electric utility which is used in whole or in part for electric distribution.

(3) To promote the deployment of broadband service to all residents, each municipal electric utility shall:

(a) Charge just, reasonable, and nondiscriminatory rates for access to any utility pole it owns or operates which do not discriminate between or among such providers and any other attaching entity, including any entity affiliated with the municipal electric utility, regardless of the services furnished. Except as provided in subsection (4), such rates may not exceed the rate calculated consistent with 47 U.S.C. 224(d) and any Federal Communications Commission regulations and decisions adopted thereunder as such regulations and decisions existed on July 1, 2021.

(b) Maintain and make available to a broadband provider all records necessary to calculate the rate it charges to the

provider in accordance with paragraph (a).

(c) Provide broadband providers with access to any utility pole it owns or operates and adopt just, reasonable, and nondiscriminatory terms and conditions for such access consistent with the requirements applicable to investor-owned utilities under 47 U.S.C. s. 224 and any Federal Communications Commission regulations and decisions adopted thereunder, as such regulations and decisions existed on July 1, 2021, except as otherwise provided in this section and agreed to by the parties. Notwithstanding the foregoing:

1. If necessary to accommodate a broadband provider's new attachment, the municipal electric utility shall rearrange, expand, replace, or otherwise safely reengineer any utility pole upon the request of the broadband provider.

2. If the municipal electric utility is required to replace a utility pole pursuant to subparagraph 1., the municipal electric utility may require a broadband provider to reimburse reasonable costs attributable solely to the new attachment. Broadband providers may not be required to pay for the cost of utility betterment or for costs attributable to preexisting noncompliance.

(4) A municipal electric utility may require a broadband provider to enter into a pole attachment agreement to attach to a utility pole the municipal electric utility owns or operates, and the parties shall negotiate such agreements in good faith.

(a) Broadband providers and municipal electric utilities shall negotiate in good faith to adopt pole attachment agreements consistent with this section or to amend existing agreements to ensure that attachments installed after July 1,

2021, are performed consistent with the terms of this section. The parties must negotiate in good faith for at least 60 days after receipt of a written request, after which either party may petition the circuit court to determine rates, terms, and conditions for the agreements consistent with this section.

(b) A municipal utility may not require a broadband provider to comply with any utility pole attachment specifications except as provided in this section.

1. A municipal electric utility may adopt publicly available, reasonable, and nondiscriminatory safety and engineering standards for the protection of public health, safety, or welfare applicable to attachments to the municipal electric utility's poles.

2. Safety and engineering standards adopted pursuant to this section may not exceed the specifications in the National Electrical Safety Code, applicable fire safety codes, or any building code or publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of public health, safety, or welfare adopted before the broadband provider filed a utility pole attachment application.

(5) If a broadband provider does not request to use one-touch, make-ready procedures pursuant to subsection (6), or if such procedures are unavailable due to the nature of the make-ready work required to accommodate a broadband provider's attachment, a municipal electric utility and broadband provider shall conduct the pole access process as provided under this subsection.

(a) An application is deemed complete if the municipal

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electric utility does not respond within 10 business days or if the response does not specify any reasons why the application is incomplete. Preconstruction surveys and engineering must be completed within 45 days or within 60 days for larger orders.

(b) If a municipal electric utility grants a pole attachment application that requires make-ready work, the municipal electric utility shall identify any make-ready work necessary to accommodate the proposed pole attachment, on a pole-by-pole basis if requested, along with a cost estimate, within 15 days after the date of approval of the pole attachment application. A municipal electric utility may withdraw an outstanding estimate beginning 15 days after the estimate is presented except that such time must be tolled during any good faith negotiation concerning the estimate cost or timing.

(c) Upon receipt of payment of the estimate, a municipal electric utility shall immediately notify in writing all known entities with existing attachments which may be affected by the make-ready work.

(d)1. Except as provided in paragraph (e), make-ready work must be commenced within 20 business days after the date the applicant made payment for the make-ready work estimate, and must be completed in a timely manner, at a reasonable cost, and as reasonably practicable, but not later than:

a. For applications requesting attachment to the lesser of 300 poles or 0.5 percent of the electric utility's poles in any 30-day period, 30 days or 90 days for attachments above the communications space.

b. For larger orders, 75 days or 105 days for attachments above the safety space.

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2. If an application seeks attachment to a number of poles exceeding a larger order, the parties shall negotiate a reasonable timeframe for completion of the make-ready work covered by the application.

(e) A municipal electric utility may deviate from the timelines set forth in paragraph (d) if the parties otherwise agree in their pole attachment agreement, or for good and sufficient cause that renders it infeasible to complete the make-ready work within the time limits set forth in this section, including incidents of natural disasters and emergencies.

(f) If a municipal electric utility or any existing attachers fail to complete a survey necessary to the review of an application or to complete make-ready work within the times specified in this section, a broadband provider may hire a contractor to perform such survey or make-ready work.

(g) A new attacher shall provide the affected municipal electric utility and existing attachers with advance notice of not less than 5 days of the impending make-ready work and within 15 days after completion of make-ready work on a particular pole. The municipal electric utility and affected existing attachers shall inspect the make-ready work within 90 days after receipt of notice.

(h) The new attacher shall notify an affected utility or existing attacher immediately if make-ready work damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or an existing attacher. Upon notice or discovery of damage or noncompliance caused by the new attacher, the utility

or existing attacher may either:

1. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

2. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(6) A broadband provider seeking a new pole attachment may elect to invoke the Florida one-touch, make-ready (FOTMR) process pursuant to this subsection.

(a) Any FOTMR pole attachment application must identify the make-ready work to be performed and must state that the make-ready work required for every utility pole in the application does not require anything more than simple make-ready work. It is the responsibility of the broadband provider to ensure that the make-ready work requested in an attachment application is simple make-ready work and not complex make-ready work.

(b) A municipal electric utility shall review a new FOTMR pole attachment application for completeness. An application is deemed complete if the municipal electric utility does not respond within 10 business days after receipt of the application or if the response does not specify any reasons why the application is incomplete.

(c) A municipal electric utility shall review a completed application requesting FOTMR and respond to the applicant either granting or denying an application within 15 days after the municipal electric utility's receipt of a complete application or 30 days after for a larger order.

(d) The municipal electric utility or an existing attacher

may object in writing to the applicant's designation that certain aspects of the work required is simple make-ready work. If the municipal electric utility or existing attacher reasonably objects, then the work is deemed complex make-ready work and the FOTMR process is not available to the broadband provider and the application must be processed under the standard make-ready provisions.

(e) The new attacher is responsible for coordinating all surveys as part of the FOTMR process and shall use a qualified contractor as set forth in this section. The new attacher shall make commercially reasonable efforts to provide at least 3 business days advance notice to the municipal electric utility and existing attachers to allow them to be present for any surveys performed in advance of the FOTMR application.

(f) If the new attacher's application is approved and if it has provided 15 days prior written notice of the date, time and nature of the make-ready work to the affected municipal electric utility and existing attaching entities, the new attacher may proceed with the make-ready work using a qualified contractor.

(g) The new attacher shall notify any affected municipal electric utility or existing attaching entity immediately if the make-ready work performed damages any equipment or facilities of the municipal electric utility or of an existing attaching entity. Upon receiving notice from the applicant, the municipal electric utility or existing attaching entity may each make the decision to:

1. Complete any necessary remedial work and bill the applicant for the actual costs incurred related to fixing the damage or outage; or

2. Require the applicant to fix the damage or outage at its expense immediately following the notice from the municipal electric utility or any existing attacher.

(h) The new attacher shall notify the municipal electric utility and existing attachers within 15 days after the make-ready work is completed on a particular pole, and the municipal electric utility and existing attachers shall have 90 days after receipt of the notice to inspect the make-ready work at the new attacher's cost. The municipal electric utility and existing attaching entities may complete any necessary remedial work and bill the applicant for the actual cost incurred or require the applicant the fix the damage or code violations at its expense within 14 days after notice from the pole owner or existing attaching entity.

(7)(a) A municipal electric utility may make periodic inspections of a broadband provider's attachments, using its own employees or contractors, and such broadband provider shall reimburse the municipal electric utility for the actual and reasonable expense of such inspections, but only for the costs of inspecting the poles on which the broadband provider is found to be in violation of the National Electrical Safety Code or publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of public health, safety, or welfare permitted by this section.

(b) No more frequently than once every 5 years, a municipal electric utility may conduct an audit of a broadband provider's attachments, with the reasonable cost of the audit of the broadband provider's attachments to be borne by the broadband

provider. If the results of the pole audit show attachments to poles by the broadband service provider not previously authorized by the municipal electric utility, such poles must be added to the next annual rent invoice and the municipal electric utility may require the broadband service provider to pay up to 5 years' back rent for attachments to all such poles not previously authorized as required by the agreement in effect at the time of the attachment.

(c) The municipal electric utility shall give a broadband provider reasonable advance written notice of such audits or inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

(8) If a municipal electric utility pole owner and any attacher cannot reach an agreement or have a dispute related to facilities attached to a redundant pole:

(a) A broadband service provider must remove its pole attachments from a redundant pole within 120 calendar days after receipt of written or electronic notice consistent with industry standards from the pole owner requesting such removal which notice includes the pole number, physical address, and GIS coordinates of such pole.

(b) If a broadband service provider fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause, the pole owner or its agent may transfer or relocate the pole attachment to a new pole at the noncompliant attaching entity's expense or, if no new pole exists because the municipal electric utility has relocated its facilities underground, remove the

pole attachment and store the attached facility for 60 days.

(c) The broadband service provider shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability for direct damage and personal injury caused by the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner except to the extent of the municipal electric utility's negligence or willful misconduct.

(9) Municipal electric utilities may not charge additional rent or require prior approval or applications for a broadband provider that overlashes its existing wires on a pole. Municipal electric utilities may require up to 15 days' advance notice of planned overlashing. A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with National Electrical Safety Code and publicly available, reasonable, and nondiscriminatory municipal electric utility safety and engineering standards for the protection of public health, safety, or welfare permitted by this section.

(10) Municipal electric utilities and broadband providers are responsible for their own costs related to utility poles and attachments, except as specifically provided herein. Any costs billed in connection with pole attachments must be commercially reasonable and nondiscriminatory, and must include sufficient detail to enable the billed party to verify the accuracy and reasonableness of the costs. A municipal electric utility that provides broadband shall impute to itself the costs of providing such services, and charge any affiliate, subsidiary, or associate company engaged in the provision of such services, an equal amount to the pole attachment rate for which such company

would be liable under this section.

(11) A municipal electric utility or broadband provider may seek any available remedies at law or equity for violations of this section. In all cases involving this section, and to the extent not otherwise provided by this section, the court shall give effect to the provisions and intent of 47 U.S.C. s. 224 and any Federal Communications Commission rules, regulations, or decisions adopted thereunder, as such existed on July 1, 2021, or as authorized by this section.

Section 4. (1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming a law and expires July 1, 2022.

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

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #1592**, relating to Broadband Internet Infrastructure, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1592
Bill Number (if applicable)

Topic Broadband Internet Infrastructure

Amendment Barcode (if applicable)

Name Brewster Bevis

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

1592
Bill Number (if applicable)

430276
Amendment Barcode (if applicable)

Topic Broadband

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Email ryan@psmfl.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Municipal Electric Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1606
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Rodriguez and others
SUBJECT:	Victims of Communism
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.	Candelaria	McVaney	GO	**Fav/CS**
3.	Hrdlicka	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1606 establishes November 7, Victims of Communism Day, as a legal and public holiday. The bill's recitals describe the human costs and suffrage that victims of communism have endured. The bill provides that the Legislature shall observe a moment of silence in observance of the victims of communism on the final day of each regular legislative session.

Beginning in the 2022-2023 school year, high students enrolled in the United States Government class as required by s. 1003.4282, F.S., must receive at least 45 minutes of instruction on "Victims of Communism Day."

The bill has an effective date of July 1, 2021.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days in Florida. Legal holidays are listed in s. 683.01, F.S., while ss. 683.04 – 683.333, F.S., establish special observance days.

Section 683.01, F.S., enumerates legal holidays, which are also public holidays, under Florida law. This section also provides that if any legal holiday falls on a Sunday, the next following Monday is deemed a public holiday.[1] Florida currently has 21 legal holidays:

- Sunday, the first day of each week;
- New Year's Day, January 1;
- Birthday of Martin Luther King, Jr., January 15;
- Birthday of Robert E. Lee, January 19;
- Lincoln's Birthday, February 12;
- Susan B. Anthony's Birthday, February 15;
- Washington's Birthday, the third Monday in February;
- Good Friday;
- Pascua Florida Day, April 2;
- Confederate Memorial Day, April 26;
- Memorial Day, the last Monday in May;
- Birthday of Jefferson Davis, June 3;
- Flag Day, June 14;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Columbus Day and Farmers' Day, the second Monday in October;
- Veterans' Day, November 11;
- General Election Day;
- Thanksgiving Day, the fourth Thursday in November;
- Christmas Day, December 25; and
- Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same.

Under s. 683.02, F.S., whenever a contract is to be performed in the state and reference is made to "legal holidays," the term includes the holidays designated in s. 683.01, F.S., and any other holidays designed in law. Alternatively, a legal holiday designation does not necessarily make a day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for the employees of all state branches and agencies.[2] Likewise, the court system does not necessarily use the legal holidays described in s. 683.01, F.S., while computing time frames for matters in civil and criminal procedure.[3]

Unlike legal holidays, special observances, as provided in ss. 683.04 – 683.333, F.S., do not directly affect the definition of "legal holidays" in contracts. Special observance days may apply throughout the state or they may be limited to particular counties. For example, "Gasparilla Day"[4] is a legal holiday observed only in Hillsborough County, while "Bill of Rights Day,"[5] if issued by the Governor, is observed throughout the state.

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[1] Section 683.01(2), F.S. The most recent added holiday was Flag Day, added during the 1990 legislative session.
[2] Section 110.117(1), F.S., establishes the following paid holidays: New Year's Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving; and Christmas Day.
[3] *See R.J. Reynolds Tobacco Co. v. Kenyon*, 826 So.2d 370 (Fla. 2nd DCA 2002); *see also State v. Garber*, 726 So.2d 338 (Fla. 5th DCA 1999).
[4] Section 683.08, F.S.
[5] Section 683.25, F.S.

Communism

Communism is a political and economic philosophy that aims to replace private property and a profit-based economy with public ownership and communal control of the major means of production and society's natural resources. Communism is a form of socialism. Modern communism grew out of the socialist movement in 19th-century Europe. Critics blamed capitalism for the unfavorable and often-hazardous conditions of workers during the Industrial Revolution. As leaders of this socialist movement, Karl Marx and his associate, Friedrich Engels, established the modern definition of communism in their widely circulated pamphlet, The Communist Manifesto.[6]

One explicit facet of the communist theory is that the proletariat (the social class whose only economic asset is their own labor) would capture political power, abolish private property ownership, and take the private property of the bourgeoisie (the social class who own the capital or means of production). Communism postulates that the taking and abolishment of private property by the proletariat would result in shared ownership of the means of production, ushering the world into a communal economic and societal utopia with equality for all.[7]

However, before reaching this utopia, the communist theory suggests that the taking and abolishment of private property will result in a dictatorship of the proletariat. Marx claimed that communism entailed the withering away of the state and that the dictatorship of the proletariat would be a transition phase between the abolishment of capitalism and the establishment of communism.[8] Engels wrote that the only way to achieve the utopia was for 'society' to openly and directly take over the means of production that have outgrown all control, but that of society as a whole. In the communist view, total state-ownership of property is a likely occurrence and a positive sign that a society is progressing toward a communist utopia.[9] As a practical matter, communist movements throughout history have been unable to transition out of State control and dictatorship into the utopia of equality promised by communism and instead devolved into State tyranny and democide.[10]

Bolshevik Revolution

The Bolshevik Revolution, also known as the October Revolution, was the second of two revolutions in Russia in 1917. The Bolshevik Revolution was a socialist-led revolution in Russia against the Duma provisional government. The coup began on November 7, 1917, when the Bolsheviks led the forces into Petrograd, then the capital of Russia. The Bolsheviks occupied government buildings and other locations across Petrograd. The coup led to the Russian Civil War and eventually the creation of the Soviet Union. The event inspired and ignited communist

[6] Encyclopedia Britannica, *Communism*, *available at*: https://www.britannica.com/topic/communism (last visited April 13, 2021).
[7] Engels, Friedrich, *Principles of Communism, No. 4 – "How did the proletariat originate?"* (1847).
[8] Encyclopedia Britannica, *Dictatorship of the Proletariat, available at*: https://www.britannica.com/topic/dictatorship-of-the-proletariat (last visited April 13, 2021).
[9] Engels, Friedrich, *Socialism: Utopian and Scientific, Part III Historical Materialism* (1880).
[10] Democide is "the intentional killing of an unarmed or disarmed person by government agents acting in their authoritative capacity and pursuant to government policy or high command." *See* Harff, Barbara, The Journal of Interdisciplinary History, *Review: Death by Government by R. J. Rummel*, 27 (1):117-119 (1996).

movements across Europe.[11] However, the results of the revolution was not the expected dictatorship of the majority class of proletarians, but instead was one of a political party that claimed to represent proletarian interests.[12]

Victims of Communism

Although living under communism may cause victimization in all areas of life, the absolute use of State power over the individual is easily characterized by the intentional State-sanctioned killing of civilians. One researcher compiled data from 1900 to 1987 related to State-sanctioned killings to provide a metric to consider when reflecting on the victims of communism.[13]

This researcher concluded that the Soviet Union appears to have directly caused the most significant number of victims. The Soviet Union is approximately responsible for the deaths of over 61 million people. "Stalin himself is responsible for almost 43,000,000 of these. Most of the deaths, around 39,000,000, are due to lethal forced labor in gulag and transit thereto."[14] The researcher found that Communist China and the People's Republic of China (PRC) have caused the second most deaths. Communist China (1923 – 1949) was responsible for about 3.5 million and the PRC (1949 – present) was responsible for an additional 35.2 million.[15]

Of the data compiled, the researcher concluded that the most deadly of all communist countries in this century was Cambodia under the Khmer Rouge. Pol Pot and his regime likely killed about 2 million Cambodians from April 1975 through December 1978 out of a population of around 7 million – calculated annually, about 8 percent of the population died each year. During this time, the odds of an average Cambodian surviving Pol Pot's rule was slightly over two to one.[16]

In sum, from 1900 to 1987, communist dictators and regimes were responsible for the death of approximately 110,000,000 individuals.[17] In 1993, Congress made similar findings and authorized a national memorial to honor victims of communism.[18] In addition to death, Congress found that "the imperialist regimes of international communism have brutally suppressed the human rights, national independence, religious liberty, intellectual freedom, and cultured life of the peoples of over 40 captive nations." The purpose of the memorial is to permanently honor the sacrifices of these victims "so that never again will nations and peoples allow so evil a tyranny to terrorize the world." The Victims of Communism Memorial Foundation was created in response as an educational, research, and human rights nonprofit organization.[19]

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[11] History, *The Russian Revolution*, *available at*: https://www.history.com/topics/russia/russian-revolution (last visited April 13, 2021). Despite occurring in November, the event is commonly known as the "October Revolution" because at the time Russia still used the Julian calendar.
[12] Encyclopedia Britannica, *Dictatorship of the Proletariat*.
[13] Rummel, R.J., *How Many Did Communist Regimes Murder?* (Nov. 1993) *available at:* https://www.hawaii.edu/powerkills/COM.ART.HTM (last visited April 13, 2021).
[14] *Id*.
[15] *Id*. at Table 1.
[16] *Id*.
[17] *Id*.
[18] Pub. Law No. 103-199, s. 905 (1993).
[19] Victims of Communism Memorial Foundation, *About*, *available at*: https://victimsofcommunism.org/about/ (last visited April 14, 2021).

Victims of Communism Day

The first national Victims of Communism Day was November 7, 2017. Currently, three states have officially recognized November 7 as Victims of Communism Day and ten other states currently have legislation filed to follow suit.[20]

Requirements for a Standard High School Diploma

Beginning with students entering grade 9, receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum. Of the 24 required credits, three credits must be social studies. A student must earn one credit in United States History, one-half credit in Economics, and one-half credit in United States Government.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 683.01, F.S., to establish November 7, Victims of Communism Day, as a legal and public holiday. Pursuant to s. 683.02, F.S., this holiday will be included as a holiday in any reference to "legal holidays" made by a contract meant to be performed in the state.

Section 2 provides that the Legislature shall observe a moment of silence in observance of the victims of communism on the final day of each regular legislative session.

Section 3 provides that beginning in the 2022-2023 school year, high school students enrolled in the United States Government class as defined in s. 1003.4282, F.S., must receive at least 45 minutes of instruction on Victims of Communism Day. Instruction includes topics such as Mao Zedong, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin and the Russian Revolution, Ho Chi Minh in Vietnam, and Nicolas Maduro in Venezuela and how the victims suffered under these regimes through suppression of speech, poverty, starvation, migration, and systematic lethal violence against civilians.

Section 4 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

[20] Victims of Communism Memorial Foundation, *Victims of Communism Memorial Day*, *available at*: https://victimsofcommunism.org/programs/memory/voc-day/ (last visited April 14, 2021).
[21] Section 1003.4282, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 683.01 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 24, 2021:
The CS provides that beginning in the 2022-2023 school year, high school students enrolled in the United States Government class as required by s. 1003.4282, F.S., must receive at least 45 minutes of instruction on "Victims of Communism Day."

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability; and Senators Rodriguez, Garcia, Hutson, and Rodrigues

585-03333-21 20211606c1

A bill to be entitled

An act relating to victims of communism; amending s. 683.01, F.S.; establishing November 7 as the Victims of Communism legal holiday; requiring the Legislature to annually observe a moment of silence in observance of the victims of communism; requiring high school students in a United States Government course to receive certain instruction on "Victims of Communism Day"; providing an effective date.

WHEREAS, over 100 years have passed since the Bolshevik Revolution in Russia and the formation of the first communist government under Vladimir Lenin, leading to decades of oppression and violence under communist regimes throughout the world, and

WHEREAS, based on the economic philosophies of Karl Marx, communism has proven incompatible with the ideals of liberty, prosperity, and dignity of human life and has given rise to such infamous totalitarian dictators as Joseph Stalin, Mao Zedong, Hồ Chí Minh, and Pol Pot, and

WHEREAS, communist regimes worldwide have killed more than 100 million people and subjected countless others to exploitation and unspeakable atrocities, with victims representing many different ethnicities, creeds, and backgrounds, and

WHEREAS, through false promises of equality and liberation, communist regimes have systematically robbed their own citizens of the rights of freedom of worship, freedom of speech, and freedom of association through coercion, brutality, and fear,

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

585-03333-21 20211606c1

and

WHEREAS, many victims of communism were persecuted as political prisoners for speaking out against these regimes, and others were killed in genocidal state-sponsored purges of undesirable groups, and

WHEREAS, in addition to violating basic human rights, communist regimes have suppressed intellectual freedom, cultural life, and self-determination movements in more than 40 nations, NOW, THEREFORE,

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

Section 1. Present paragraphs (q) through (u) of subsection (1) of section 683.01, Florida Statutes, are redesignated as paragraphs (r) through (v), respectively, and a new paragraph (q) is added to that subsection, to read:

683.01 Legal holidays.—

(1) The legal holidays, which are also public holidays, are the following:

(q) Victims of Communism Day, November 7.

Section 2. The Legislature shall, on the final day of each regular legislative session, observe a moment of silence in observance of the victims of communism.

Section 3. Beginning in the 2022-2023 school year, high school students enrolled in the United States Government class required by s. 1003.4282, Florida Statutes, must receive at least 45 minutes of instruction on "Victims of Communism Day" on topics such as Mao Zedong in China, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin

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

and the Russian Revolution, Ho Chi Minh in Vietnam, and Nicolas Maduro in Venezuela and how the victims suffered under these regimes through suppression of speech, poverty, starvation, migration, and systemic lethal violence against civilians.

Section 4. This act shall take effect July 1, 2021.

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill #1606**, relating to Victims of Communism, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1606

Meeting Date *Bill Number (if applicable)*

Topic VICTIMS OF COMMUNISM

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title

Address PO Box 122 Phone 305 608 4300

Street

TALLAHASSEE FL 32302 Email

City *State* *Zip*

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

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

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1616 (479650)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Brodeur
SUBJECT:	Agency Contracts for Commodities and Contractual Services
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1616 revises several provisions of the part I of chapter 287, Florida Statutes, related to public procurement. The bill requires the Secretary of Management Services, rather than the Department of Management Services (DMS), make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

The bill provides that each agency contract must include authorization for the agency to inspect certain financial and programmatic records of the contractor relevant to the performance of the contract.

The bill requires an agency that issues a request for quote for contractual services for any state term contract with 25 vendors or fewer to issue a request to *all* approved vendors. For state term contracts with more than 25 vendors, the agency must issue a request to a minimum of 25 approved vendors.

The bill provides for the immediate disqualification from state term contract eligibility for a firm or individual who has been removed from the source of supply or placed on the convicted vendor list or the discriminatory vendor list.

The bill changes the electronic posting requirement for single source contracting from seven to 15 days and to require agencies report – on a quarterly basis – to the DMS each instance in which the agency entered into a single source purchase contract. The DMS is required to report such information to the Governor and the Legislature no later than January 1, 2022, and each January thereafter.

The bill restricts an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.

This bill amends the provision governing an agency's designation of a contract manager to prohibit a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned. The bill provides for primary responsibilities of a contract manager.

Current law requires the Chief Financial Officer provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two ($35,000). The bill requires the Chief Financial Officer to evaluate this training every five years.

Current law requires a contract manager who is responsible for contracts over $100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training to be completed within six months. The bill provides that in addition to the training provided under current law, such a contract manager must also complete the accountability in contracts and grant management training. The DMS is responsible for disseminating the training and certification requirements for certified contract managers and is required to evaluate the training every five years.

The bill provides that a contract manager who is responsible for contracts in excess of $10 million annually, in addition to completing the accountability in contracts and grant management training and the contract management training and certification requirements, must possess at least five years of experience managing contracts in excess of $5 million annually.

The bill permits a designated contract administrator to also serve as the contract manager for contracts less than $500,000 annually, if he or she has completed the required training. For contracts in excess of $500,000 annually, the contact administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of $195,000 (category four threshold), the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought. The bill specifies that a negotiation *team* conduct negotiations during a competitively sealed reply procurement. For a competitively procured contract in excess of $1 million in any fiscal year, the negotiation team must include a certified contract negotiator.

Current law provides that for contracts in excess of $10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies

that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the training and certification requirements for certified contract negotiators. The bill provides for certification renewal and qualification requirements for certification. The DMS must evaluate such training every five years.

The bill provides that, beginning July 1, 2022, any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors.

The bill requires a head of an agency to establish a four person "continuing oversight team" for each contractual services contract in excess of $5 million. The bill requires the teams to meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance; and requires the team to provide written notice to the agency head, the DMS, the Office of Policy and Budget within the Executive Office of the Governor, and the legislative appropriations committees in certain instances.

The bill provides that a contract may not contain a nondisclosure clause exempting certain information.

The bill provides that a vendor who is placed on the suspended vendor list is disqualified from bidding on or renewing a contract with the state and provides a mechanism for a vendor to petition for removal from the suspended vendor list.

The bill requires each agency inspector general to complete a risk based compliance audit of all contracts executed by the agency for the preceding three fiscal years and requires the audit to identify and evaluate any trend in vendor preference.

The bill makes conforming statutory changes.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[1]

[1] Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive

The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[2] The agency head of the DMS is the "Secretary of Management Services" who is appointed by the Governor, subject to confirmation by the Florida Senate, and serves at the pleasure of the Governor.[3]

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreement authorizing a state agency to make purchases under such contract.[4] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the following purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S.:

- Category one: $20,000.
- Category two: $35,000.
- Category three: $65,000.
- Category four: $195,000.
- Category five: $325,000.

Written Agreements for Procurements Exceeding $35,000

Every procurement for contractual services in excess of the threshold amount in category two, $35,000, with certain exceptions[5], must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.[6] The provisions and conditions must, where applicable, include, but are not limited to a provision:

- That bills for fees or other compensation for services or expenses are to be submitted in detail sufficient for a proper preaudit and postaudit thereof.[7]
- That bills for travel expenses are to be submitted in accordance with statutory procedures.[8]
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from provisions governing the inspection and copying of public records.[9]

branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges."

[2] *See* ss. 287.032 and 287.042, F.S.

[3] Section 20.22(1), F.S.

[4] Section 287.042(16), F.S.

[5] Excepting providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the Workers' Compensation Law.

[6] Section 287.058(1), F.S.

[7] Section 287.058(1)(a), F.S.

[8] Section 287.058(1)(b), F.S., referring to s. 112.061, F.S., and providing further that a state agency may establish rates lower than the maximum provided in that statute.

[9] Section 287.058(1)(c), F.S., referring to Art. I, § 24(a), Fla. Const., and s. 119.07(1), F.S.

- Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.[10]
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment; each deliverable must be directly related to the scope of work and specify a performance measure, that is, the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.[11]
- Specifying the criteria and the final date by which such criteria must be met for completion of the contract.[12]
- Specifying that the contract may be renewed for a period that may not exceed three years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply; specifying that costs for the renewal may not be charged; and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.[13]
- Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.[14]
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the State regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.[15]

The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of $35,000.[16,17] Unless otherwise provided in the General Appropriations Act (GAA) or the substantive bill implementing the GAA, the Chief Financial Officer (CFO) may waive these requirements for services, which are included in law for procurement of commodities or contractual services.[18] A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.[19]

Each public agency contract for services must authorize the public agency to inspect the:

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.

[10] Section 287.058(1)(d), F.S.
[11] Section 287.058(1)(e), F.S.
[12] Section 287.058(1)(f), F.S.
[13] Section 287.058(1)(g), F.S., noting, however, that exceptional purchase contracts pursuant to ss. 287.057(3)(a), and 287.057(3)(c), F.S., may not be renewed. *See* Florida Dept. of Highway Safety and Motor Vehicles v. National Safety Com'n, Inc., 75 So. 3d 298 (Fla. 1st DCA 2011) (The purpose of the statute allowing state procurement contracts to include a renewal provision is to exempt the parties from the competitive bidding process for a limited time if they are mutually satisfied with the agreement; it does not guarantee any vendor the right to continue to do business with the State beyond the original term of the contract.).
[14] Section 287.058(1)(h), F.S.
[15] Section 287.058(1)(i), F.S.
[16] There is an exception in the case of a valid emergency as certified by the agency head.
[17] Section 287.058(2), F.S.
[18] Section 287.058(5), F.S.
[19] Section 287.058(6), F.S.

- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met. [20]

The contract must require the contractor to provide the records, papers, and documents requested by the public agency within 10 business days after the request is made.[21]

Contract Renewals

Current law allows contracts for commodities or contractual services to be renewed for a period that does not exceed three years or the term of the original contract, whichever is longer.[22] Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.[23] A renewal contract may not include any compensation for costs associated with the renewal, is contingent upon satisfactory performance evaluations by the agency, and is subject to the availability of funds.[24]

If a contract amendment results in a longer contract term or increased payments, an agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding $10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[25] The written report must be submitted at least 90 days before execution of the renewal or amendment.

Alternate Contract Sources

The DMS must evaluate contracts let by the Federal Government, another state, or a political subdivision for commodities or contractual services, often referred to as alternate contract sources to determine if the contracts are cost-effective and in the best interest of the state. If the DMS makes such determination in writing, then an agency may make purchases under the contract.[26]

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users[27] to purchase commodities and contractual services from purchasing agreements and state term contracts[28] procured by the DMS.

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[20] Section 216.1366(1), F.S.
[21] Section 216.1366(2), F.S.
[22] Section 287.57(13), F.S.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Section 287.042(16), F.S.; *see* Agency Alternate Contract Source (ACS) Requests, available at *https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/agency_alternate_contract_source_acs_requests*.
[27] Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the Department of Management Services (DMS) pursuant to rule to purchase from state term contracts or to use the online procurement system.
[28] Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term or condition than that provided in the state term contract is available.[29] The use of a request for quote does not constitute a decision subject to protest.[30] Rule 60A-1.043, F.A.C., requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than category one ($20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.[31]

Competitive-Solicitation

With certain exceptions,[32] the procurement of commodities or contractual services in excess of category two, $35,000, requires agencies to use a competitive solicitation process.[33] Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.[34] Agencies may use a variety of methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, including:

- Single source contracts,[35] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,[36] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,[37] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,[38] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

Contract Evaluations and Negotiations

For a contract in excess of $195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[39] In

[29] Section 287.056(2), F.S.
[30] Section 287.056(2), F.S.
[31] Rule 60A-1.043, F.A.C.
[32] Section 287.057(3)(e), F.S.
[33] Section 287.057(1), F.S.
[34] *Id.*
[35] Section 287.057(3)(c), F.S.
[36] Section 287.057(1)(a), F.S.
[37] Section 287.057(1)(b), F.S.
[38] Section 287.057(1)(c), F.S.
[39] Section 287.057(16)(a), F.S.

addition, the agency head must appoint three people[40] to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[41]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator [42] in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.[43] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.[44]

Qualifications for Contract Managers and Contract Negotiators

Section 287.057(14), F.S., provides that for each contractual services contract, the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for category two ($35,000) must complete training in accountability in contracts and grant management conducted by the CFO.[45]

Each contract manager responsible for contracts in excess of $100,000 annually must complete training in contract management and become a certified contract manager.[46] The DMS must establish and disseminate the requirements for certification which include completing the training conducted by the CFO for accountability and grant management. All agency contract

[40] Section 287.057(16)(b), F.S., provides that if the value of the contract is in excess of $1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of $10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.

[41] Section 287.057(16)(a)2., F.S.

[42] Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for Florida certified contract negotiator (FCCN) Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

[43] Section 287.057(16)(b), F.S.

[44] *Id.*

[45] Section 287.057(14)(a), F.S.

[46] Section 287.057(14)(b), F.S.

managers must become certified within 24 months after establishment of the training and certification requirements by the DMS and the Department of Financial Services (DFS).

Each agency must designate at least one employee to serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the DMS.[47]

For a contract in excess of the threshold amount for category four ($195,000) the agency head must appoint:

- At least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[48]
- At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[49]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon the DMS' rules.[50] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

Project Management Professional

Section 287.076, F.S., authorizes the DMS to implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute.[51] The Project Management Institute has stringent requirements for individuals to earn and maintain certification.[52] Subject to annual appropriations, the DMS, in consultation with entities subject to this part, shall identify personnel to participate in this training based on requested need and ensure that each agency is represented. The DMS may remit payment for this training on behalf of all participating personnel.

[47] Section 287.057(15), F.S.
[48] Section 287.057(16)(a)1., F.S.
[49] Section 287.057(16)(a)2., F.S.
[50] *See* Rule 60A-1.041, F.A.C.
[51] *See* Project Management Institute, available at https://www.pmi.org/ (last visited Mar. 4, 2021).
[52] DMS, *Project Management Professional*, https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/project_management_professional (last visited Mar. 11, 2021).

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.[53] Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.[54]

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of $35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.[55]

Vendor Lists and Removal of Any Source of Supply

Based on the vendor registration process as set out in s. 287.042, F.S., and Rule 60A-1.006, F.A.C., the DMS maintains a vendor list. Section 287.042(1)(b), F.S., authorizes the DMS to remove from its vendor list "any source of supply" – any vendor – which fails to fulfill any of its duties specified in a contract. Rule 60A-1.006, F.A.C., prescribes a three step process for removing a vendor or source of supply. The agency must provide written notice of the nature of the vendor's failure to perform and provide time certain (more than 10 days) for correcting the failure. Unless the vendor corrects its failure to perform or the agency determines the failure is legally excusable, the agency must find the vendor in default and issue a second notice stating (i) the reasons for default; (ii) that the agency will reprocure or has reprocured the commodities or services, and (iii) the amount of the reprocurement if known. The defaulting vendor is ineligible for award of a contract by the agency until the agency is reimbursed by the defaulting vendor for all reprocurement costs.[56] The defaulting vendor must be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list. An agency is required to provide a copy of all default actions to the DMS for removal from its vendor list.

The DMS maintains the following lists of vendors who have been removed for cause:
- Suspended Vendor List;[57]
- Convicted Vendor List;[58]
- Discriminatory Vendor List;[59]

[53] In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. *See* Department of Management Services (DMS), *Vendor Resources, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited Feb. 23, 2021).
[54] DMS, *Vendor Resources, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited Feb. 23, 2021).
[55] *Id.*
[56] Rule 60A-1.006(3)(c), F.A.C., provides that reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.
[57] Rule 60A-1.006(2), F.A.C., (vendors that have been removed for failing to fulfill any of its duties specified in a State contract).
[58] Section 287.133, F.S.
[59] Section 287.134(1)(c), F.S.

- Scrutinized List of Prohibited Companies;[60,61] and
- Vendor Complaint List.[62]

Suspended Vendor List

The suspended vendor list[63] includes vendors that have been removed from the vendor list for "failing to fulfill any of its duties specified in a contract with the State."[64] Currently, the DMS has five vendors on the suspended vendor list: (1) Building Maintenance of America, LLC d/b/a Florida Building Maintenance; (2) Club Tex, Inc.; (3) Correctional Consultants; (4) iColor Printing and Mailing, Inc.; and (5) Visual Image Design Firm, LLC.[65]

Convicted Vendor List

The convicted vendor list comprises the names and addresses of those who have been disqualified from the public contracting and purchasing process due to the conviction of a public entity crime.[66] A vendor who has been placed on the convicted vendor list following a conviction may not submit a bid, proposal, or reply on a contract to provide goods or services to a public entity, and a public entity may not accept any bid, proposal, or reply from, award any contract to, or contract any business with a vendor on the convicted vendor list.[67]

After receiving information that a vendor has been convicted of a public entity crime, the DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, the DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list and of the vendors' legal rights. If the vendor does not request an administrative hearing, the DMS must enter a final order placing the vendor on the convicted vendor list.[68]

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[60] Section 287.135, F.S.
[61] There are currently 78 companies on the scrutinized list of prohibited companies. No companies were added to the scrutinized list in the fourth quarter of 2020.
[62] DMS tracks formal complaints issued to vendors by state agencies which is provided to agencies to assist in determining vendor responsibility pursuant to s. 287.057(1-3), F.S. There are currently no vendors on the vendor complaint list. DMS, *Vendor Complaint List*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list (last visited Mar. 16, 2021).
[63] DMS, *Vendor Registration and Vendor Lists*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited Feb. 23, 2021).
[64] Section 287.042, F.S.; *See* Rule 60A-10.006, F.A.C.
[65] DMS, *Suspended Vendor List*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list (last visited Apr. 2, 2021).
[66] Section 287.133, F.S.; Section 287.133(1)(f), F.S., defines the term "public entity" to mean the State of Florida, any of its departments or agencies, or any political subdivision. Section 287.133(1)(g) defines "public entity crime" to mean a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
[67] Section 281.133(2)(b), F.S.
[68] Section 287.133(2)(e), F.S.

A disqualified vendor may to petition for removal no sooner than six months after being placed on the convicted vendor list.[69] Since 2016, five vendors have petitioned not to be placed on the convicted vendor list. Currently, there is one vendor on the convicted vendor list, Calixte, Jacques A. (Haitian American Association Against Cancer, Inc.).

Discriminatory Vendor List

The discriminatory vendor list consists of the names and addresses of any vendor that has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.[70] Currently, there are no vendors on the discriminatory vendor list.

Chief Financial Officer and Department of Financial Services

As provided in the constitution,[71] the CFO is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[72] The CFO is a member of the Governor's cabinet,[73] must reside at the seat of government of Florida, and must hold office in a room in the Capitol.[74]

The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.[75] The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.[76] In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.[77]

The CFO also serves as the head of the DFS.[78] The DFS consists of the following divisions:

- The Division of Accounting and Auditing.
- The Division of Consumer Services.
- The Division of Funeral, Cemetery, and Consumer Services.

[69] Section 287.133(2)(f), F.S.
[70] Section 287.134(3)(e), F.S.
[71] FLA. CONST. Art. IV, s.4(c).
[72] Section 17.001, F.S.
[73] FLA. CONST. Art. IV, s.4(a).
[74] Section 17.02, F.S.
[75] Section 17.03(1), F.S.
[76] Section 17.03(3), F.S.
[77] Section 17.03(4), F.S.
[78] Section 20.121, F.S.

- The Division of Insurance Agent and Agency Services.
- The Division of Investigative and Forensic Services.[79]
- The Division of Public Assistance Fraud.
- The Division of Rehabilitation and Liquidation.
- The Division of Risk Management.
- The Division of State Fire Marshal.
- The Division of Treasury.[80]
- The Division of Unclaimed Property.
- The Division of Workers' Compensation.
- The Division of Administration.
- The Office of Insurance Consumer Advocate.

Agency Inspectors General

Section 20.55, F.S., establishes an office of inspector general in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty of each inspector general to:

- Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs;[81]
- Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of those measures and standards to the Executive Office of the Governor;[82]
- Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary;[83]
- With specified exception,[84] provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency; [85]
- Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;[86]

[79] This division functions as a criminal justice agency for purposes of ss. 943.045-943.08. The division may conduct investigations within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required. The division includes the following bureaus and office: (1) The Bureau of Forensic Services; (2) The Bureau of Fire, Arson and Explosives Investigations; (3) The Office of Fiscal Integrity; (4) The Bureau of Insurance Fraud; and (5) The Bureau of Workers' Compensation Fraud.
[80] This division includes a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan for state employees.
[81] Section 20.055(2)(a), F.S.
[82] Section 20.055(2)(b), F.S.
[83] Section 20.055(2)(c), F.S.
[84] When the inspector general does not possess the qualifications required by s. 20.055(4), F.S., the director of auditing shall conduct such audits.
[85] Section 20.055(2)(d), F.S.
[86] Section 20.055(2)(e), F.S.

- Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action;[87]
- Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication;[88]
- Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact;[89]
- Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities;[90] and
- Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[91]

Each inspector general reports to and is under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.[92] An inspector general may be removed from office by the agency head.[93] The agency head or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.[94]

To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office must possess qualifications specified by statute.[95] In carrying out the auditing duties and responsibilities of this act, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency and conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of its findings.[96] Each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[97] Except as otherwise provided, each inspector general must, no later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.[98]

[87] Section 20.055(2)(f), F.S.
[88] Section 20.055(2)(g), F.S.
[89] Section 20.055(2)(h), F.S.
[90] Section 20.055(2)(i), F.S.
[91] Section 20.055(2)(j), F.S.
[92] Section 20.055(3)(b), F.S.
[93] Section 20.055(3)(c), F.S.
[94] Section 20.055(3)(d), F.S.
[95] Section 20.055(4), F.S.
[96] Section 20.055(5), F.S.
[97] Section 20.055(6), F.S.
[98] Section 20.055(7)(a), F.S.

III. Effect of Proposed Changes:

Section 1 reenacts s. 216.1366, F.S.,[99] and removes the July 1, 2021, termination date to require each agency contractor services to include authorization for the agency to inspect certain records of the contractor. These records include both financial and programmatic records, papers, and documents of the contractor directly related to the performance of the contract and that are deemed necessary by the agency to monitor the performance of the contract. The contract must require the contractor to provide such records, papers, and documents requested by the agency within 10 business days after the request is made.

Section 2 amends s. 287.042, F.S., to require the Secretary of Management Services to make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

Section 3 amends s. 287.056, F.S., to require that when an agency issues a request for quote for contractual services for a state term with 25 vendors or fewer, the agency *must* issue a request for quote to *all vendors* approved to provide that contractual service. For any contract with more than 25 vendors, the agency must issue a request for quote to a minimum of 25 vendors approved to provide such contractual services.

This section also provides for the immediate disqualification from state term contract eligibility of a firm or individual who has been placed on the suspended vendor list pursuant to s. 287.1351, F.S., or placed on a disqualified vendor list pursuant to s. 287.133, F.S. (removal based upon public entity crime), or s. 287.134, F.S. (removal based on discriminatory practices).

Section 4 amends s. 287.057, F.S., to change the electronic posting requirement for single source contracting from seven to 15 days. This section requires agencies to report, on a quarterly basis, to the Department of Management Services (DMS) each instance in which the agency entered into a single source purchase contract. Such report is to be in a manner and form prescribed by the DMS. The DMS is required to report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

This section provides that a state agency as defined in s. 287.012, F.S.,[100] may not initiate a competitive solicitation for a product or service if the completion of the competitive solicitation would require a change in law or change to the agency's budget (other than a transfer authorized in law) unless the initiation of the competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.[101] This prohibition does

[99] Section 106 of ch. 2020-114, Laws of Florida, created s. 216.1366, F.S., in order to implement the appropriation of funds in the special categories, contracted services, and expenses categories of the 2020-2021 General Appropriations Act.
[100] Section 287.012(1), F.S., defines "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[101] This provision has been part of the implementing bill for the General Appropriations Act for the past five years (2020-114(98), 2019-116(106), 2018-10(79), and 2017-71(52)).

not apply to a competitive solicitation when the agency head certifies that a valid emergency exists.

This section amends the provision governing an agency's designation of a contract manager to clarify that the contract manager works as a liaison *between* the contractor *and the agency,* and prohibits a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned.

This section sets forth the following primary responsibilities of a contract manager:
- Participating in the solicitation development and review of contract documents;
- Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and to keep timely records of findings;
- Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract; and
- Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

Current law provides that the Chief Financial Officer (CFO) provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two ($35,000). The bill requires the CFO to evaluate this training every five years.

Current law requires a contract manager responsible for contracts in excess of $100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training be completed within six months of a contract manager being assigned responsibility of qualifying contracts. Additionally, the bill requires a contract manager to complete the accountability in contracts and grant management training. The DMS is required to evaluate such training every five years to assess its effectiveness and update the training curriculum.

This section provides that a contract manager responsible for contracts in excess of $10 million annually must, in addition to the accountability in contracts and grant management training, and the training in contract management and certification, also possess at least five years of experience managing contracts in excess of $5 million annually.

Current law requires a contract administrator be designated to maintain a contract file and financial information on all contractual services contracts. The bill permits a contract administrator to also serve as the contract manager for contracts less than $500,000 annually, if he or she has completed the required training. For contracts in excess of $500, 000 annually, the contract administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of $195,000, the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought, and a *negotiation team* of at least three persons is to conduct negotiations during a competitive sealed reply procurement. In addition, a negotiation team for a competitively

procured contract in excess of $1 million in any fiscal year must include a certified contract negotiator.

Current law provides that for contracts in excess of $10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the certification and training requirements for certified contract negotiators. The bill specifies that the training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and appropriately involved in the procurement process. The DMS must evaluate such training every five years to assess its effectiveness and update the training curriculum.

A certified contract negotiator is required to complete training every five years for certification renewal. This section specifies that the qualification requirements for certification must include:

- At least 12 months experience as a purchasing agent, contract manager, or contract administrator for an agency or local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff.
- Experience during the preceding five years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government negotiated procurements.

In addition, this section requires any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors, and training must commence no later than July 1, 2022.

This section requires a head of an agency to establish a continuing oversight team for each contractual services contract in excess of $5 million after the award of such contract. The agency head must appoint at least four persons to the continuing oversight team, with one being the certified contract manager. If the value of the contract is in excess of $10 million, at least one member must possess at least five years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of $20 million, the continuing oversight team must consist of at least five persons, at least one member must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

For contracts in excess of $5 million, each continuing oversight team is required to meet at least quarterly. For contracts in excess of $10 million, each continuing oversight team must meet at

least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

This section requires that within 30 days after formation of the continuing oversight team, an initial meeting between the continuing oversight team and representatives of the contractor must convene to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to explain the role of the continuing oversight team, contract manager, and contract administrator.

The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the team's questions within 10 business days of receiving the written questions. The questions and responses must be included in the contract file.

This section requires the continuing oversight team to provide written notification to:

- The agency head and the DMS of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of successful completion of the contract.
- The agency head, the DMS, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least $5 million.
- The agency head, the DMS, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of $10 million or greater.

Section 5 amends s. 287.058, F.S., to prohibit a contract from containing a nondisclosure clause prohibiting a contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

Section 6 creates s. 287.1351, F.S., regarding suspended vendors and state contracts. The bill prohibits a vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts from submitting a bid, proposal, or reply to an agency or enter into or renew a contract to provide goods or services to an agency after its placement on the suspended vendor list. An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor that is on the suspended vendor list until the vendor has been removed from such list and returned to the vendor list by the DMS. The bill defines the term "vendor" as a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

This section requires an agency to notify the DMS of any vendor that has met the grounds for suspension and must provide documentation to the DMS evidencing the vendor's default or other grounds for suspension. The DMS must review the submitted documentation and decide whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. The bill requires the DMS to notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing, as well as the applicable procedures and time requirements for any such hearing. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the DMS. If a vendor does not request an administrative hearing, the DMS must enter a final order removing the vendor from the vendor list.

This section provides that, within 21 days after receipt of the notice of intent, a vendor may file with the DMS a petition for a formal hearing to challenge the decision. If a vendor does not file a petition in a timely manner, it is deemed to have waived its right to a hearing and the DMS's decision to remove the vendor from the list becomes final agency action.

This section provides that if a vendor is placed on the suspended vendor list, the vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. A proceeding on the petition must be conducted in accordance with ch. 120, F.S., and an Administrative Law Judge (ALJ) may remove a vendor from the suspended vendor list if the ALJ determines it would be in the public interest. In determining whether removal from the list would be in the public interest, the ALJ may consider whether the suspended vendor has prepared a corrective action plan to address the original grounds for default or failure to fulfill the terms and conditions of the contract, reimbursed the agency for any reprocurement costs, or provided additional evidence that the vendor has taken other remedial action.

If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing for at least nine months after the date of denial. However, the DMS may petition for the suspended vendor's removal before the expiration period if, in the DMS's discretion, the removal of the vendor from the suspended list would be in the public's interest.

Section 7 amends s. 287.136, F.S., to require, beginning October 1, 2021, and every three years thereafter, each agency inspector general to complete a risk-based compliance audit of all contract documents executed by the agency for the preceding three fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the Secretary of Management Services, and the Governor.

Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16 amends ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351, F.S., respectively, to make conforming changes.

Section 17 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private firm or individual may experience an indeterminate fiscal impact if such party is disqualified from state term contract eligibility upon removal from the vendor list as specified within the bill.

C. Government Sector Impact:

The bill will have an indeterminate negative fiscal impact on state government expenditures related to additional workload for:

- Additional contract performance reporting before executing a contract renewal or amendment due to lowering the reporting threshold;
- A potential increase in the number of vendors responding to RFQs for contractual services; and
- Expanding contract monitoring through continuing oversight teams and by requiring an agency inspector general to perform additional contract auditing.

The Department of Management Services (DMS) will incur additional costs related to workload for establishing and disseminating certification and training requirements for certified contract negotiators, for performing training evaluations every five years, and for maintain and administering the suspended vendor list.

Additionally, the six-month time limitation imposed on training for a contract manager responsible for contracts in excess of $100,000 annually will likely require the DMS to expend additional resources to ensure timely training.

The Department of Financial Services may also incur nominal additional costs associated with specified training evaluation every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 43.16, 215.971, 216.1366, 287.042, 287.056, 287.057, 287.0571, 287.058, 287.136, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351.

This bill creates the following section of the Florida Statutes: 287.1351.

IX. Additional Information:

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

PCS (479650) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Revises the requirements related to requests for quotes for contractual services available on state term contract. Specifically, the CS provides that if there are 25 or fewer approved vendors on the state term contract, then the agency must issue a request for quote to all approved vendors. If there are more than 25 approved vendors, then the agency must issue the request for quote to at least 25 of the approved vendors on the state term contract.
- Increases certain contract thresholds that trigger certain oversight by the continuing oversight team.
- Includes a statutory reference to the definition of “agency".

CS by Governmental Oversight and Accountability on March 24, 2021:
The CS:

- Adds language to reenact s. 216.1366, F.S., and remove the July 1, 2021, termination date, to require each agency contract for services to include authorization for the agency to inspect certain records of the contractor.
- Adds the requirement prohibiting an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.
- Revises the requirement that an agency issuing a request for quote for commodities or contractual services issue the request to *all* approved vendors to require a request for quote issued for *contractual services* be issued to all approved vendors if there are fewer than 100 approved vendors and to at least 100 of the approved vendors when there are more than 100 approved vendors.
- Adds the requirement that Department of Management Services (DMS) to report certain single source contract information received by agencies to the Governor and Legislature by a specified date.
- Removes the requirement that a contract manager who is responsible for contracts in excess of $10 million annually be a Project Management Professional and instead requires such person to meet certain experience thresholds.
- Increases the threshold for when a contract administrator may also serve as a contract manager from a contract value of $250,000 to a contract value of $500,000.
- Specifies that for contracts in excess of $195,000 that the evaluation is performed *independently,* and removes language regarding an evaluation *team*.
- Revises the experience requirements for qualification for certification as a contract negotiator, to require experience during the preceding five years in leading at least two, instead of three, federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three, instead of five, federal, state, or local government-negotiated procurements.
- Adds the requirement that supervisors of contract administrators or contract or grant managers must complete training within a specified period.
- Alters the membership requirements meeting requirements for the continuing oversight team (e.g., requires one member be the *certified* contract manager, rather than the contract manager; and removes the requirement that for contracts over $5 million that one member must be a Project Management Professional and instead imposes an experience threshold).
- Provides more specificity for the notice requirements for the continuing oversight team.
- Adds the requirement that a contract may not contain a nondisclosure clause exempting certain information.
- Adds new language addressing the process for suspending vendors and provides that vendors who are in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts is disqualified from bidding on or renewing a contract with the state.
- Adds language providing a mechanism whereby a vendor placed on the suspended vendor list may petition for removal.
- Revises the requirement that each agency inspector general complete a compliance audit of all contracts executed by the agency every three years to completing a risk based compliance audit of all contracts executed by the agency.

- Makes conforming changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment

Delete lines 183 - 378
and insert:
(4)(a) An agency may not initiate a competitive solicitation for a product or service if the completion of such competitive solicitation would:
1. Require a change in law; or
2. Require a change to the agency's original approved budget as defined in s. 216.011, other than a transfer

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authorized in s. 216.292(2) or (3), unless the initiation of such competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.

(b) This subsection does not apply to a competitive solicitation for which the agency head certifies that a valid emergency exists.

(14) ~~(13)~~ Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be renewed must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (3)(a) and (c) may not be renewed. With the exception of subsection (11) ~~(10)~~, if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding $5 ~~$10~~ million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and

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the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(15)(a) ~~(14)~~ For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and to serve as a liaison between ~~with~~ the contractor and the agency. The contract manager may not be an individual who has been employed within the previous 5 years by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

3. Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract.

4. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

5. Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

(b) ~~(a)~~ Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall evaluate such training every 5 years to assess its effectiveness and update

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the training curriculum. The Chief Financial Officer shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services.

(c) ~~(b)~~ Each contract manager who is responsible for contracts in excess of $100,000 annually must, in addition to the accountability in contracts and grant management training required in paragraph (b) and within 6 months after being assigned responsibility for such contracts, complete training in contract management and become a certified contract manager. The department is responsible for establishing and disseminating the training and certification requirements for certified contract managers. Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. A certified contract manager must complete training every 5 years for certification renewal ~~requirements for certification which include completing the training conducted by the Chief Financial Officer for accountability in contracts and grant management~~. Training and certification must be coordinated by the department, and the training must be conducted jointly by the department and the Department of

519034

Financial Services. The department shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum ~~Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial Services~~.

(d) Each contract manager who is responsible for contracts in excess of $10 million annually must, in addition to the training required in paragraph (b) and the training and certification required in paragraph (c), possess at least 5 years of experience managing contracts in excess of $5 million annually.

(16) ~~(15)~~ Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of $500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of $500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17)(a) ~~(16)(a)~~ For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

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1. At least three persons to independently evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b)1. If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be ~~certified as~~ a certified contract negotiator ~~based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator~~.

2. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for

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certified contract negotiators. Training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal. Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later

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than July 1, 2022.

(26)(a) For each contractual services contract in excess of $5 million, the agency head shall establish a continuing oversight team after the contract has been awarded. The agency head shall appoint at least four persons, one of whom must be the certified contract manager, to the continuing oversight team. If the value of the contractual services contract is in excess of $10 million, at least one of the persons on the continuing oversight team must possess at least 5 years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of $20 million, the continuing oversight team must consist of at least five persons, and at least one of the persons on the continuing oversight team must be from an agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be agency employees and must

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 822 and 823
insert:

Section 17. Statewide inventory.—

(1) The Department of Management Services shall prepare an inventory of all state-owned motor vehicles, maintenance facilities, and fuel depots. By December 31, 2021, the department shall submit the inventory to the Governor, the President of the Senate, and the Speaker of the House of

Representatives.

(2) The inventory must provide, at a minimum, all of the following:

(a) Entity of ownership of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(b) Entity of possession of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(c) Estimated annual operating and other costs of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(d) Number of full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot.

(e) Physical address for the location of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(3) Each state agency and state university shall provide any information requested by the Department of Management Services necessary for the completion of the inventory.

Section 18. Centralized fleet and fleet operations management.—

(1) The Department of Management Services shall create, administer, and maintain a centralized management system for the state-owned motor vehicle fleet, maintenance facilities, and fuel depots.

(2) The Department of Management Services shall consolidate under a centralized system the management of existing state-owned motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance

facility and fuel depot.

(3) Each state agency and state university shall provide any information requested by the Department of Management Services necessary for consolidating under the centralized system the management of existing state-owned motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot.

Section 19. Privatization of fleet management.—The Department of Management Services shall contract with a vendor or contractor for privatizing the centralized management and operation of the state-owned motor vehicle fleet, motor vehicle acquisitions, maintenance facilities, and fuel depots. Any data that relates to the contract must be stored in at least one common format approved by the department, and such data remains the property of the department. Any vehicle-monitoring hardware installed in a state-owned motor vehicle must be commercially available and may not be proprietary to the vendor or contractor.

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

And the title is amended as follows:

Delete line 89

and insert:

to changes made by the act; requiring the Department of Management Services to prepare an inventory of all state-owned motor vehicles, maintenance facilities, and fuel depots; requiring the department to submit

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the inventory to the Governor and the Legislature by a specified date; specifying requirements for the inventory; requiring state agencies and state universities to provide certain information requested by the department; requiring the department to create, administer, and maintain a centralized management system for the motor vehicle fleet, maintenance facilities, and fuel depots; requiring the department to consolidate the management of existing motor vehicles, maintenance facilities, fuel depots, and certain full-time equivalent and other personal services positions; requiring state agencies and state universities to provide certain information requested by the department; requiring the department to contract with a vendor or contractor for a specified purpose; requiring that data relating to such contract be stored in at least one common format approved by the department; providing that such data remains the property of the department; specifying requirements for motor vehicle-monitoring hardware installed in a state-owned motor vehicle; providing an effective

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 822 and 823
insert:

Section 17. The Department of Management Services shall conduct a study evaluating fleet management options to identify potential savings. The results of the study must be provided in a written report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2022.

902520

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 89
and insert:
to changes made by the act; requiring the Department of Management Services to conduct a study evaluating fleet management options to identify any potential savings; requiring the department to submit a report to the Legislature by a specified date; providing an effective

576-03930-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to agency contracts for commodities and contractual services; reenacting and amending s. 216.1366, F.S.; abrogating the scheduled expiration of provisions relating to certain public agency contracts for services; amending s. 287.042, F.S.; providing that the Department of Management Services may enter into an agreement authorizing an agency to make purchases under certain contracts if the Secretary of Management Services makes a certain determination; amending s. 287.056, F.S.; providing that an agency must issue a request for quote to certain approved vendors when it issues certain requests for quote for contractual services; providing for the disqualification of certain firms or individuals from state term contract eligibility; amending s. 287.057, F.S.; revising the period of time during which an agency must electronically post a description of certain services in certain circumstances; requiring an agency to periodically report certain actions to the department in a specified manner and form; requiring the department to annually report certain information to the Governor and the Legislature by a specified date; prohibiting an agency from initiating a competitive solicitation in certain circumstances; providing applicability; revising the maximum value of

576-03930-21

certain contracts that may not be renewed or amended by state agency before submitting a written report to the Governor and the Legislature; requiring the agency to designate a contract manager to serve as a liaison between the contractor and the agency; prohibiting certain individuals from serving as a contract manager; providing the responsibilities of a contract manager; requiring the Chief Financial Officer to evaluate certain training at certain intervals; requiring that certain contract managers complete training and certification within a specified timeframe; requiring the department to establish and disseminate certain training and certification requirements; requiring the department to evaluate certain training at certain intervals; requiring certain contract managers to possess certain experience in managing contracts; authorizing a contract administrator to also serve as a contract manager in certain circumstances; providing that evaluations of proposals and replies must be conducted independently; providing for specified teams to conduct certain negotiations; requiring a Project Management Professional to provide guidance based on certain qualifications; providing qualification requirements for contract negotiator certification; requiring supervisors of contract administrators or contract and grant managers meeting certain criteria to complete training within a specified period; providing that the department is responsible for

establishing and disseminating supervisor training by a certain date; providing for a continuing oversight team in certain circumstances; providing requirements for continuing oversight team members and meetings; requiring a continuing oversight team to provide notice of certain deficiencies and changes in contract scope to certain entities; amending s. 287.058, F.S.; prohibiting a contract document for certain contractual services from containing a certain nondisclosure clause; creating s. 287.1351, F.S.; defining the term "vendor"; prohibiting certain vendors from submitting bids, proposals, or replies to, or entering into or renewing any contract with, an agency; prohibiting an agency from accepting a bid, proposal, or reply from, or entering into a contract with, a suspended vendor until certain conditions are met; requiring an agency to notify the department of, and provide certain information regarding, any such vendors; requiring the department to review any vendor reported by an agency; requiring the department to notify a vendor of any intended removal from the vendor list; specifying administrative remedies and applicable procedures for an affected vendor; requiring the department to place certain vendors on the suspended vendor list; authorizing the removal of a suspended vendor from the suspended vendor list in accordance with specified procedures; specifying requirements and limitations; amending s. 287.136, F.S.; requiring each agency inspector general to

complete certain audits of executed contracts at certain intervals; amending ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Notwithstanding the expiration date in section 106 of chapter 2020-114, Laws of Florida, section 216.1366, Florida Statutes, is reenacted and amended to read:

216.1366 Contract terms.—

(1) In order to preserve the interest of the state in the prudent expenditure of state funds, each public agency contract for services entered into or amended on or after July 1, 2020, shall authorize the public agency to inspect the:

(a) Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.

(b) Programmatic records, papers, and documents of the contractor which the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.

(2) The contract shall require the contractor to provide such records, papers, and documents requested by the public agency within 10 business days after the request is made.

~~(3) This section expires July 1, 2021.~~

Section 2. Subsection (16) of section 287.042, Florida

Statutes, is amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(16) To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined by the Secretary of Management Services in writing to be cost-effective and ~~in~~ the best value to ~~interest of~~ the state, to enter into a written agreement authorizing an agency to make purchases under such contract.

Section 3. Subsection (2) of section 287.056, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

287.056 Purchases from purchasing agreements and state term contracts.—

(2) Agencies and eligible users may use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. The purpose of a request for quote is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. If an agency issues a request for quote for contractual services for any contract with 25 vendors or fewer, the agency must issue a request for quote to all vendors approved to provide such contractual services. For any contract with more than 25 vendors, the agency must issue a request for quote to a minimum of 25 vendors approved to provide such contractual services. Use of a request for quote does not constitute a decision or

intended decision that is subject to protest under s. 120.57(3).

(4) A firm or individual placed on the suspended vendor list pursuant to s. 287.1351 or placed on a disqualified vendor list pursuant to s. 287.133 or s. 287.134 is immediately disqualified from state term contract eligibility.

Section 4. Present subsections (4) through (16) and (17) through (23) of section 287.057, Florida Statutes, are redesignated as subsections (5) through (17) and (19) through (25), respectively, new subsections (4) and (18) and subsection (26) are added to that section, and paragraph (c) of subsection (3) and present subsections (13) through (16) of that section are amended, to read:

287.057 Procurement of commodities or contractual services.—

(3) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(c) Commodities or contractual services available only from a single source may be excepted from the competitive-solicitation requirements. If an agency believes that commodities or contractual services are available only from a single source, the agency shall electronically post a description of the commodities or contractual services sought for at least 15 ~~7~~ business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services

described. If it is determined in writing by the agency, after reviewing any information received from prospective vendors that the commodities or contractual services are available only from a single source, the agency shall provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3). Each agency shall report all such actions to the department on a quarterly basis in a manner and form prescribed by the department, and the department shall report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

(4) A state agency as defined in s. 287.012 may not initiate a competitive solicitation for a product or service if the completion of such competitive solicitation would:

(a) Require a change in law; or

(b) Require a change to the agency's budget other than a transfer authorized in s. 216.292(2) or (3), unless the initiation of such competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.

(c) This subsection does not apply to a competitive solicitation for which the agency head certifies that a valid emergency exists.

(14) ~~(13)~~ Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed

by the parties. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be renewed must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (3)(a) and (c) may not be renewed. With the exception of subsection (11) ~~(10)~~, if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding $5 ~~$10~~ million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(15)(a) ~~(14)~~ For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and serve as a liaison between ~~with~~ the contractor and the agency. The contract manager may not be an individual who has been employed, within the previous 5 years, by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

3. Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract.

4. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

5. Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

(b) ~~(a)~~ Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum. The Chief Financial Officer shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services.

(c) ~~(b)~~ Each contract manager who is responsible for contracts in excess of $100,000 annually must, in addition to the accountability in contracts and grant management training

required in paragraph (b) and within 6 months after being assigned responsibility for such contracts, complete training in contract management and become a certified contract manager. The department is responsible for establishing and disseminating the training and certification requirements for certified contract managers. Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. A certified contract manager must complete training every 5 years for certification renewal ~~requirements for certification which include completing the training conducted by the Chief Financial Officer for accountability in contracts and grant management~~. Training and certification must be coordinated by the department, and the training must be conducted jointly by the department and the Department of Financial Services. The department shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum ~~Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial Services~~.

(d) Each contract manager who is responsible for contracts in excess of $10 million annually must, in addition to the training required in paragraph (b) and the training and

certification required in paragraph (c), possess at least 5 years of experience managing contracts in excess of $5 million annually.

(16) ~~(15)~~ Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of $500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of $500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17)(a) ~~(16)(a)~~ For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. At least three persons to independently evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b)1. If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be ~~certified as~~ a certified contract

negotiator ~~based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator~~.

2. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for certified contract negotiators. Training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal. Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual

services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later than July 1, 2022.

(26)(a) For each contractual services contract in excess of $5 million, the agency head of an agency as defined in s. 287.012 shall establish a continuing oversight team after the contract has been awarded. The agency head shall appoint at least four persons, one of whom must be the certified contract manager, to the continuing oversight team. If the value of the contractual services contract is in excess of $10 million, at least one of the persons on the continuing oversight team must possess at least 5 years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of $20 million, the continuing oversight team must consist of at least five persons, and at

least one of the persons on the continuing oversight team must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and must collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

(b)1. For contracts in excess of $5 million, each continuing oversight team must meet at least quarterly.

2. For contracts in excess of $10 million, each continuing oversight team must meet at least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

(c)1. Within 30 days after the formation of the continuing oversight team, the continuing oversight team must convene an initial meeting with representatives of the contractor to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to provide an explanation of the role of the continuing oversight team, contract manager, and contract administrator.

2. The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each

meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the team's questions within 10 business days after receiving the written questions. The questions and responses must be included in the contract file.

(d) The continuing oversight team must notify, in writing:

1. The agency head and the department of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of the successful completion of the contract.

2. The agency head, the department, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least $5 million.

3. The agency head, the department, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of $10 million or greater.

Section 5. Subsection (7) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.—

(7) A contract may not contain a nondisclosure clause that

prohibits the contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

Section 6. Section 287.1351, Florida Statutes, is created to read:

287.1351 Suspended vendors; state contracts.—

(1) As used in this section, the term "vendor" means a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

(2)(a) A vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts may not submit a bid, proposal, or reply to an agency or enter into or renew a contract to provide any goods or services to an agency after its placement, pursuant to this section, on the suspended vendor list.

(b) An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor on the suspended vendor list until such vendor has been removed from the suspended vendor list and returned to the vendor list maintained by the department pursuant to s. 287.042(1)(a) and (b) and the vendor has reimbursed the agency for any reprocurement costs.

(3) An agency shall notify the department of any vendor that has met the grounds for suspension described in paragraph (2)(a). The agency must provide documentation to the department evidencing the vendor's default or other grounds for suspension.

The department shall review the documentation provided and determine whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. If good cause exists, the department must notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing and the applicable procedures and time requirements for any such hearing. If the vendor does not request an administrative hearing, the department must enter a final order removing the vendor from the vendor list. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the department.

(4) Within 21 days after receipt of the notice of intent, the vendor may file with the department a petition for a formal hearing pursuant to ss. 120.569 and 120.57 to challenge the department's decision to remove the vendor from the vendor list. A vendor that fails to timely file a petition in accordance with this subsection is deemed to have waived its right to a hearing, and the department's decision to remove the vendor from the vendor list becomes final agency action.

(5)(a) The department shall place any vendor removed from the vendor list pursuant to this section on the suspended vendor list. One year or more after entry of the final order of its suspension, a suspended vendor may file a petition with the department for removal from the suspended vendor list. The proceeding on the petition must be conducted in accordance with chapter 120. The vendor may be removed from the suspended vendor list if the administrative law judge determines that removal from the list would be in the public interest. In determining

whether removal from the list would be in the public interest, the administrative law judge may consider, but is not limited to, whether the suspended vendor has prepared a corrective action plan that addresses the original grounds for default or failure to fulfill the terms and conditions of the contract, reimbursed the agency for any reprocurement costs, or provided additional evidence that the vendor has taken other remedial action.

(b) If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing on removal for a period of at least 9 months after the date of the denial. The department may petition for the suspended vendor's removal before the expiration of such period if, in the department's discretion, the department determines that removal from the suspended vendor list would be in the public interest.

Section 7. Section 287.136, Florida Statutes, is amended to read:

287.136 Audit of executed contract documents.—

(1) After execution of a contract, the Chief Financial Officer shall perform audits of the executed contract document and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services.

(a) ~~(1)~~ At the conclusion of the audit, the Chief Financial Officer's designee shall discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head.

(b) ~~(2)~~ Within 30 days after receipt of the final audit

report, the agency head shall submit to the Chief Financial Officer or designee his or her written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

(2) Beginning October 1, 2021, and every 3 years thereafter, each agency inspector general shall complete a risk-based compliance audit of all contracts executed by the agency for the preceding 3 fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the secretary of the Department of Management Services, and the Governor.

Section 8. Subsection (1) of section 43.16, Florida Statutes, is amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(1) There is hereby created a Justice Administrative Commission, with headquarters located in the state capital. The necessary office space for use of the commission shall be furnished by the proper state agency in charge of state buildings. For purposes of the fees imposed on agencies pursuant to s. 287.057(24) ~~s. 287.057(22)~~, the Justice Administrative Commission shall be exempt from such fees.

Section 9. Paragraph (a) of subsection (2) of section 215.971, Florida Statutes, is amended to read:

215.971 Agreements funded with federal or state assistance.—

(2) For each agreement funded with federal or state

financial assistance, the state agency shall designate an employee to function as a grant manager who shall be responsible for enforcing performance of the agreement's terms and conditions and who shall serve as a liaison with the recipient or subrecipient.

(a)1. Each grant manager who is responsible for agreements in excess of the threshold amount for CATEGORY TWO under s. 287.017 must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management.

2. Effective December 1, 2014, each grant manager responsible for agreements in excess of $100,000 annually must complete the training and become a certified contract manager as provided under s. 287.057(15) ~~s. 287.057(14)~~. All grant managers must become certified contract managers within 24 months after establishment of the training and certification requirements by the Department of Management Services and the Department of Financial Services.

Section 10. Paragraph (a) of subsection (3) of section 287.0571, Florida Statutes, is amended to read:

287.0571 Business case to outsource; applicability.—

(3) This section does not apply to:

(a) A procurement of commodities and contractual services listed in s. 287.057(3)(d) and (e) and (23) ~~(21)~~.

Section 11. Paragraph (b) of subsection (4) of section 295.187, Florida Statutes, is amended to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(4) VENDOR PREFERENCE.—

(b) Notwithstanding s. 287.057(12) ~~s. 287.057(11)~~, if a veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit bids, proposals, or replies for procurement of commodities or contractual services which are equal with respect to all relevant considerations, including price, quality, and service, the state agency shall award the procurement or contract to the business having the smallest net worth.

Section 12. Paragraph (a) of subsection (1) of section 394.47865, Florida Statutes, is amended to read:

394.47865 South Florida State Hospital; privatization.—

(1) The Department of Children and Families shall, through a request for proposals, privatize South Florida State Hospital. The department shall plan to begin implementation of this privatization initiative by July 1, 1998.

(a) Notwithstanding s. 287.057(14) ~~s. 287.057(13)~~, the department may enter into agreements, not to exceed 20 years, with a private provider, a coalition of providers, or another agency to finance, design, and construct a treatment facility having up to 350 beds and to operate all aspects of daily operations within the facility. The department may subcontract any or all components of this procurement to a statutorily established state governmental entity that has successfully contracted with private companies for designing, financing, acquiring, leasing, constructing, and operating major privatized state facilities.

Section 13. Paragraph (b) of subsection (2) and subsection (3) of section 402.7305, Florida Statutes, are amended to read:

402.7305 Department of Children and Families; procurement of contractual services; contract management.—

(2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

(b) When it is in the best interest of a defined segment of its consumer population, the department may competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider. The department must ensure that all providers that participate in the treatment or service system meet all applicable statutory, regulatory, service quality, and cost control requirements. If other governmental entities or units of special purpose government contribute matching funds to the support of a given system of treatment or service, the department shall formally request information from those funding entities in the procurement process and may take the information received into account in the selection process. If a local government contributes matching funds to support the system of treatment or contracted service and if the match constitutes at least 25 percent of the value of the contract, the department shall afford the governmental match contributor an opportunity to name an employee as one of the persons required by s. 287.057(17) ~~s. 287.057(16)~~ to evaluate or negotiate certain contracts, unless the department sets forth in writing the reason why the inclusion would be contrary to the best interest of the state. Any employee so named by the governmental match contributor shall qualify as one of the persons required by s. 287.057(17) ~~s. 287.057(16)~~. A governmental entity or unit of special purpose government may not name an employee as one of

the persons required by s. 287.057(17) ~~s. 287.057(16)~~ if it, or any of its political subdivisions, executive agencies, or special districts, intends to compete for the contract to be awarded. The governmental funding entity or contributor of matching funds must comply with all procurement procedures set forth in s. 287.057 when appropriate and required.

(3) CONTRACT MANAGEMENT REQUIREMENTS AND PROCESS.—The Department of Children and Families shall review the time period for which the department executes contracts and shall execute multiyear contracts to make the most efficient use of the resources devoted to contract processing and execution. Whenever the department chooses not to use a multiyear contract, a justification for that decision must be contained in the contract. Notwithstanding s. 287.057(15) ~~s. 287.057(14)~~, the department is responsible for establishing a contract management process that requires a member of the department's Senior Management or Selected Exempt Service to assign in writing the responsibility of a contract to a contract manager. The department shall maintain a set of procedures describing its contract management process which must minimally include the following requirements:

(a) The contract manager shall maintain the official contract file throughout the duration of the contract and for a period not less than 6 years after the termination of the contract.

(b) The contract manager shall review all invoices for compliance with the criteria and payment schedule provided for in the contract and shall approve payment of all invoices before their transmission to the Department of Financial Services for

payment.

(c) The contract manager shall maintain a schedule of payments and total amounts disbursed and shall periodically reconcile the records with the state's official accounting records.

(d) For contracts involving the provision of direct client services, the contract manager shall periodically visit the physical location where the services are delivered and speak directly to clients receiving the services and the staff responsible for delivering the services.

(e) The contract manager shall meet at least once a month directly with the contractor's representative and maintain records of such meetings.

(f) The contract manager shall periodically document any differences between the required performance measures and the actual performance measures. If a contractor fails to meet and comply with the performance measures established in the contract, the department may allow a reasonable period for the contractor to correct performance deficiencies. If performance deficiencies are not resolved to the satisfaction of the department within the prescribed time, and if no extenuating circumstances can be documented by the contractor to the department's satisfaction, the department must terminate the contract. The department may not enter into a new contract with that same contractor for the services for which the contract was previously terminated for a period of at least 24 months after the date of termination. The contract manager shall obtain and enforce corrective action plans, if appropriate, and maintain records regarding the completion or failure to complete

corrective action items.

(g) The contract manager shall document any contract modifications, which shall include recording any contract amendments as provided for in this section.

(h) The contract manager shall be properly trained before being assigned responsibility for any contract.

Section 14. Subsection (2) of section 408.045, Florida Statutes, is amended to read:

408.045 Certificate of need; competitive sealed proposals.—

(2) The agency shall make a decision regarding the issuance of the certificate of need in accordance with the provisions of s. 287.057(17) ~~s. 287.057(16)~~, rules adopted by the agency relating to intermediate care facilities for the developmentally disabled, and the criteria in s. 408.035, as further defined by rule.

Section 15. Subsection (42) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(42) Notwithstanding the provisions of s. 287.057(24) ~~s. 287.057(22)~~ that require all agencies to use the online procurement system developed by the Department of Management Services, the department may continue to use its own online system. However, vendors utilizing such system shall be prequalified as meeting mandatory requirements and qualifications and shall remit fees pursuant to s. 287.057(24) ~~s. 287.057(22)~~, and any rules implementing s. 287.057.

Section 16. Paragraph (e) of subsection (6) of section

627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24) ~~s. 287.057(22)~~, the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057, except for resolution of bid protests for which the board would serve as the agency head.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's

decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual

agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings; the division's applicable bond requirements do not apply. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the

solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The board, acting as agency head, shall consider the recommended order of an administrative law judge in a public meeting and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

Section 17. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1616
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Brodeur
SUBJECT:	Agency Contracts for Commodities and Contractual Services
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1616 revises several provisions of the part I of chapter 287, Florida Statutes, related to public procurement. The bill requires the Secretary of Management Services, rather than the Department of Management Services (DMS), make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

The bill provides that each agency contract must include authorization for the agency to inspect certain financial and programmatic records of the contractor relevant to the performance of the contract.

The bill requires an agency that issues a request for quote for contractual services for any state term contract with 25 vendors or fewer to issue a request to *all* approved vendors. For state term contracts with more than 25 vendors, the agency must issue a request to a minimum of 25 approved vendors.

The bill provides for the immediate disqualification from state term contract eligibility for a firm or individual who has been removed from the source of supply or placed on the convicted vendor list or the discriminatory vendor list.

The bill changes the electronic posting requirement for single source contracting from seven to 15 days and to require agencies report – on a quarterly basis – to the DMS each instance in which the agency entered into a single source purchase contract. The DMS is required to report such information to the Governor and the Legislature no later than January 1, 2022, and each January thereafter.

The bill restricts an agency from initiating a competitive solicitation that would require a change in law or change to the agency's original approved budget, unless specifically authorized.

This bill amends the provision governing an agency's designation of a contract manager to prohibit a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned. The bill provides for primary responsibilities of a contract manager.

Current law requires the Chief Financial Officer provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two ($35,000). The bill requires the Chief Financial Officer to evaluate this training every five years.

Current law requires a contract manager who is responsible for contracts over $100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training to be completed within six months. The bill provides that in addition to the training provided under current law, such a contract manager must also complete the accountability in contracts and grant management training. The DMS is responsible for disseminating the training and certification requirements for certified contract managers and is required to evaluate the training every five years.

The bill provides that a contract manager who is responsible for contracts in excess of $10 million annually, in addition to completing the accountability in contracts and grant management training and the contract management training and certification requirements, must possess at least five years of experience managing contracts in excess of $5 million annually.

The bill permits a designated contract administrator to also serve as the contract manager for contracts less than $500,000 annually, if he or she has completed the required training. For contracts in excess of $500,000 annually, the contact administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of $195,000 (category four threshold), the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought. The bill specifies that a negotiation *team* conduct negotiations during a competitively sealed reply procurement. For a competitively procured contract in excess of $1 million in any fiscal year, the negotiation team must include a certified contract negotiator.

Current law provides that for contracts in excess of $10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies

that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the training and certification requirements for certified contract negotiators. The bill provides for certification renewal and qualification requirements for certification. The DMS must evaluate such training every five years.

The bill provides that, beginning July 1, 2022, any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors.

The bill requires an agency to establish a four person "continuing oversight team" for each contractual services contract in excess of $5 million. The bill requires the teams to meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance; and requires the team to provide written notice to the agency head, the DMS, the Office of Policy and Budget within the Executive Office of the Governor, and the legislative appropriations committees in certain instances.

The bill provides that a contract may not contain a nondisclosure clause exempting certain information.

The bill provides that a vendor who is placed on the suspended vendor list is disqualified from bidding on or renewing a contract with the state and provides a mechanism for a vendor to petition for removal from the suspended vendor list.

The bill requires each agency inspector general to complete a risk based compliance audit of all contracts executed by the agency for the preceding three fiscal years and requires the audit to identify and evaluate any trend in vendor preference.

The bill requires the DMS to conduct a study evaluating fleet management options to identify potential savings, of which, the results must be provided in a written report to the President of the Senate and Speaker of the House of Representatives by January 1, 2022.

The bill makes conforming statutory changes.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[1] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[2] The agency head of the DMS is the "Secretary of Management Services" who is appointed by the Governor, subject to confirmation by the Florida Senate, and serves at the pleasure of the Governor.[3]

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreement authorizing a state agency to make purchases under such contract.[4] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the following purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S.:

- Category one: $20,000.
- Category two: $35,000.
- Category three: $65,000.
- Category four: $195,000.
- Category five: $325,000.

Written Agreements for Procurements Exceeding $35,000

Every procurement for contractual services in excess of the threshold amount in category two, $35,000, with certain exceptions[5], must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.[6] The provisions and conditions must, where applicable, include, but are not limited to a provision:

- That bills for fees or other compensation for services or expenses are to be submitted in detail sufficient for a proper preaudit and postaudit thereof.[7]

[1] Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges."
[2] *See* ss. 287.032 and 287.042, F.S.
[3] Section 20.22(1), F.S.
[4] Section 287.042(16), F.S.
[5] Excepting providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the Workers' Compensation Law.
[6] Section 287.058(1), F.S.
[7] Section 287.058(1)(a), F.S.

- That bills for travel expenses are to be submitted in accordance with statutory procedures.[8]
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from provisions governing the inspection and copying of public records.[9]
- Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.[10]
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment; each deliverable must be directly related to the scope of work and specify a performance measure, that is, the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.[11]
- Specifying the criteria and the final date by which such criteria must be met for completion of the contract.[12]
- Specifying that the contract may be renewed for a period that may not exceed three years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply; specifying that costs for the renewal may not be charged; and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.[13]
- Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.[14]
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the State regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.[15]

The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of $35,000.[16,17] Unless otherwise provided in the General Appropriations Act (GAA) or the substantive bill implementing the GAA, the Chief Financial Officer (CFO) may waive these requirements for services, which are included in law for procurement of commodities or contractual services.[18] A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services,

[8] Section 287.058(1)(b), F.S., referring to s. 112.061, F.S., and providing further that a state agency may establish rates lower than the maximum provided in that statute.
[9] Section 287.058(1)(c), F.S., referring to Art. I, § 24(a), Fla. Const., and s. 119.07(1), F.S.
[10] Section 287.058(1)(d), F.S.
[11] Section 287.058(1)(e), F.S.
[12] Section 287.058(1)(f), F.S.
[13] Section 287.058(1)(g), F.S., noting, however, that exceptional purchase contracts pursuant to ss. 287.057(3)(a), and 287.057(3)(c), F.S., may not be renewed. *See* Florida Dept. of Highway Safety and Motor Vehicles v. National Safety Com'n, Inc., 75 So. 3d 298 (Fla. 1st DCA 2011) (The purpose of the statute allowing state procurement contracts to include a renewal provision is to exempt the parties from the competitive bidding process for a limited time if they are mutually satisfied with the agreement; it does not guarantee any vendor the right to continue to do business with the State beyond the original term of the contract.).
[14] Section 287.058(1)(h), F.S.
[15] Section 287.058(1)(i), F.S.
[16] There is an exception in the case of a valid emergency as certified by the agency head.
[17] Section 287.058(2), F.S.
[18] Section 287.058(5), F.S.

performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.[19]

Each public agency contract for services must authorize the public agency to inspect the:

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.
- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met. [20]

The contract must require the contractor to provide the records, papers, and documents requested by the public agency within 10 business days after the request is made.[21]

Contract Renewals

Current law allows contracts for commodities or contractual services to be renewed for a period that does not exceed three years or the term of the original contract, whichever is longer.[22] Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.[23] A renewal contract may not include any compensation for costs associated with the renewal, is contingent upon satisfactory performance evaluations by the agency, and is subject to the availability of funds.[24]

If a contract amendment results in a longer contract term or increased payments, an agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding $10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[25] The written report must be submitted at least 90 days before execution of the renewal or amendment.

Alternate Contract Sources

The DMS must evaluate contracts let by the Federal Government, another state, or a political subdivision for commodities or contractual services, often referred to as alternate contract sources to determine if the contracts are cost-effective and in the best interest of the state. If the DMS makes such determination in writing, then an agency may make purchases under the contract.[26]

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[19] Section 287.058(6), F.S.
[20] Section 216.1366(1), F.S.
[21] Section 216.1366(2), F.S.
[22] Section 287.57(13), F.S.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Section 287.042(16), F.S.; *see* Agency Alternate Contract Source (ACS) Requests, available at *https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/agency_alternate_contract_source_acs_requests*.

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users[27] to purchase commodities and contractual services from purchasing agreements and state term contracts[28] procured by the DMS.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term or condition than that provided in the state term contract is available.[29] The use of a request for quote does not constitute a decision subject to protest.[30] Rule 60A-1.043, F.A.C., requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than category one ($20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.[31]

Competitive-Solicitation

With certain exceptions,[32] the procurement of commodities or contractual services in excess of category two, $35,000, requires agencies to use a competitive solicitation process.[33] Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.[34] Agencies may use a variety of methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, including:

- Single source contracts,[35] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,[36] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,[37] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,[38] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

[27] Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the Department of Management Services (DMS) pursuant to rule to purchase from state term contracts or to use the online procurement system.
[28] Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.
[29] Section 287.056(2), F.S.
[30] Section 287.056(2), F.S.
[31] Rule 60A-1.043, F.A.C.
[32] Section 287.057(3)(e), F.S.
[33] Section 287.057(1), F.S.
[34] *Id.*
[35] Section 287.057(3)(c), F.S.
[36] Section 287.057(1)(a), F.S.
[37] Section 287.057(1)(b), F.S.
[38] Section 287.057(1)(c), F.S.

Contract Evaluations and Negotiations

For a contract in excess of $195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[39] In addition, the agency head must appoint three people[40] to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[41]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator [42] in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.[43] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.[44]

Qualifications for Contract Managers and Contract Negotiators

Section 287.057(14), F.S., provides that for each contractual services contract, the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for category two ($35,000) must complete training in accountability in contracts and grant management conducted by the CFO.[45]

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[39] Section 287.057(16)(a), F.S.

[40] Section 287.057(16)(b), F.S., provides that if the value of the contract is in excess of $1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of $10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.

[41] Section 287.057(16)(a)2., F.S.

[42] Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for Florida certified contract negotiator (FCCN) Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

[43] Section 287.057(16)(b), F.S.

[44] *Id.*

[45] Section 287.057(14)(a), F.S.

Each contract manager responsible for contracts in excess of $100,000 annually must complete training in contract management and become a certified contract manager.[46] The DMS must establish and disseminate the requirements for certification which include completing the training conducted by the CFO for accountability and grant management. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the DMS and the Department of Financial Services (DFS).

Each agency must designate at least one employee to serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the DMS.[47]

For a contract in excess of the threshold amount for category four ($195,000) the agency head must appoint:

- At least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[48]
- At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[49]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon the DMS' rules.[50] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

Project Management Professional

Section 287.076, F.S., authorizes the DMS to implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute.[51] The Project Management Institute has stringent requirements for individuals to earn and maintain certification.[52] Subject to annual appropriations, the DMS, in consultation with entities subject to this part, shall identify personnel to participate in this training based on requested need and ensure that each agency is represented. The DMS may remit payment for this training on behalf of all participating personnel.

[46] Section 287.057(14)(b), F.S.
[47] Section 287.057(15), F.S.
[48] Section 287.057(16)(a)1., F.S.
[49] Section 287.057(16)(a)2., F.S.
[50] *See* Rule 60A-1.041, F.A.C.
[51] *See* Project Management Institute, available at https://www.pmi.org/ (last visited Mar. 4, 2021).
[52] DMS, *Project Management Professional*, https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/project_management_professional (last visited Mar. 11, 2021).

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.[53] Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.[54]

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of $35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.[55]

Vendor Lists and Removal of Any Source of Supply

Based on the vendor registration process as set out in s. 287.042, F.S., and Rule 60A-1.006, F.A.C., the DMS maintains a vendor list. Section 287.042(1)(b), F.S., authorizes the DMS to remove from its vendor list "any source of supply" – any vendor – which fails to fulfill any of its duties specified in a contract. Rule 60A-1.006, F.A.C., prescribes a three step process for removing a vendor or source of supply. The agency must provide written notice of the nature of the vendor's failure to perform and provide time certain (more than 10 days) for correcting the failure. Unless the vendor corrects its failure to perform or the agency determines the failure is legally excusable, the agency must find the vendor in default and issue a second notice stating (i) the reasons for default; (ii) that the agency will reprocure or has reprocured the commodities or services, and (iii) the amount of the reprocurement if known. The defaulting vendor is ineligible for award of a contract by the agency until the agency is reimbursed by the defaulting vendor for all reprocurement costs.[56] The defaulting vendor must be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list. An agency is required to provide a copy of all default actions to the DMS for removal from its vendor list.

The DMS maintains the following lists of vendors who have been removed for cause:
- Suspended Vendor List;[57]
- Convicted Vendor List;[58]
- Discriminatory Vendor List;[59]

[53] In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. *See* Department of Management Services (DMS), *Vendor Resources, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited Feb. 23, 2021).
[54] DMS, *Vendor Resources, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited Feb. 23, 2021).
[55] *Id.*
[56] Rule 60A-1.006(3)(c), F.A.C., provides that reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.
[57] Rule 60A-1.006(2), F.A.C., (vendors that have been removed for failing to fulfill any of its duties specified in a State contract).
[58] Section 287.133, F.S.
[59] Section 287.134(1)(c), F.S.

- Scrutinized List of Prohibited Companies;[60,61] and
- Vendor Complaint List.[62]

Suspended Vendor List

The suspended vendor list[63] includes vendors that have been removed from the vendor list for "failing to fulfill any of its duties specified in a contract with the State."[64] Currently, the DMS has five vendors on the suspended vendor list: (1) Building Maintenance of America, LLC d/b/a Florida Building Maintenance; (2) Club Tex, Inc.; (3) Correctional Consultants; (4) iColor Printing and Mailing, Inc.; and (5) Visual Image Design Firm, LLC.[65]

Convicted Vendor List

The convicted vendor list comprises the names and addresses of those who have been disqualified from the public contracting and purchasing process due to the conviction of a public entity crime.[66] A vendor who has been placed on the convicted vendor list following a conviction may not submit a bid, proposal, or reply on a contract to provide goods or services to a public entity, and a public entity may not accept any bid, proposal, or reply from, award any contract to, or contract any business with a vendor on the convicted vendor list.[67]

After receiving information that a vendor has been convicted of a public entity crime, the DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, the DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list and of the vendors' legal rights. If the vendor does not request an administrative hearing, the DMS must enter a final order placing the vendor on the convicted vendor list.[68]

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[60] Section 287.135, F.S.
[61] There are currently 78 companies on the scrutinized list of prohibited companies. No companies were added to the scrutinized list in the fourth quarter of 2020.
[62] DMS tracks formal complaints issued to vendors by state agencies which is provided to agencies to assist in determining vendor responsibility pursuant to s. 287.057(1-3), F.S. There are currently no vendors on the vendor complaint list. DMS, *Vendor Complaint List*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list (last visited Mar. 16, 2021).
[63] DMS, *Vendor Registration and Vendor Lists*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited Feb. 23, 2021).
[64] Section 287.042, F.S.; *See* Rule 60A-10.006, F.A.C.
[65] DMS, *Suspended Vendor List*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list (last visited Apr. 2, 2021).
[66] Section 287.133, F.S.; Section 287.133(1)(f), F.S., defines the term "public entity" to mean the State of Florida, any of its departments or agencies, or any political subdivision. Section 287.133(1)(g) defines "public entity crime" to mean a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
[67] Section 281.133(2)(b), F.S.
[68] Section 287.133(2)(e), F.S.

A disqualified vendor may to petition for removal no sooner than six months after being placed on the convicted vendor list.[69] Since 2016, five vendors have petitioned not to be placed on the convicted vendor list. Currently, there is one vendor on the convicted vendor list, Calixte, Jacques A. (Haitian American Association Against Cancer, Inc.).

Discriminatory Vendor List

The discriminatory vendor list consists of the names and addresses of any vendor that has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.[70] Currently, there are no vendors on the discriminatory vendor list.

Chief Financial Officer and Department of Financial Services

As provided in the constitution,[71] the CFO is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[72] The CFO is a member of the Governor's cabinet,[73] must reside at the seat of government of Florida, and must hold office in a room in the Capitol.[74]

The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.[75] The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.[76] In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.[77]

The CFO also serves as the head of the DFS.[78] The DFS consists of the following divisions:

- The Division of Accounting and Auditing.
- The Division of Consumer Services.
- The Division of Funeral, Cemetery, and Consumer Services.

[69] Section 287.133(2)(f), F.S.
[70] Section 287.134(3)(e), F.S.
[71] FLA. CONST. Art. IV, s.4(c).
[72] Section 17.001, F.S.
[73] FLA. CONST. Art. IV, s.4(a).
[74] Section 17.02, F.S.
[75] Section 17.03(1), F.S.
[76] Section 17.03(3), F.S.
[77] Section 17.03(4), F.S.
[78] Section 20.121, F.S.

- The Division of Insurance Agent and Agency Services.
- The Division of Investigative and Forensic Services.[79]
- The Division of Public Assistance Fraud.
- The Division of Rehabilitation and Liquidation.
- The Division of Risk Management.
- The Division of State Fire Marshal.
- The Division of Treasury.[80]
- The Division of Unclaimed Property.
- The Division of Workers' Compensation.
- The Division of Administration.
- The Office of Insurance Consumer Advocate.

Agency Inspectors General

Section 20.55, F.S., establishes an office of inspector general in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty of each inspector general to:

- Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs;[81]
- Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of those measures and standards to the Executive Office of the Governor;[82]
- Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary;[83]
- With specified exception,[84] provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency; [85]
- Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;[86]

[79] This division functions as a criminal justice agency for purposes of ss. 943.045-943.08. The division may conduct investigations within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required. The division includes the following bureaus and office: (1) The Bureau of Forensic Services; (2) The Bureau of Fire, Arson and Explosives Investigations; (3) The Office of Fiscal Integrity; (4) The Bureau of Insurance Fraud; and (5) The Bureau of Workers' Compensation Fraud.
[80] This division includes a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan for state employees.
[81] Section 20.055(2)(a), F.S.
[82] Section 20.055(2)(b), F.S.
[83] Section 20.055(2)(c), F.S.
[84] When the inspector general does not possess the qualifications required by s. 20.055(4), F.S., the director of auditing shall conduct such audits.
[85] Section 20.055(2)(d), F.S.
[86] Section 20.055(2)(e), F.S.

- Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action;[87]
- Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication;[88]
- Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact;[89]
- Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities;[90] and
- Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[91]

Each inspector general reports to and is under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.[92] An inspector general may be removed from office by the agency head.[93] The agency head or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.[94]

To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office must possess qualifications specified by statute.[95] In carrying out the auditing duties and responsibilities of this act, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency and conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of its findings.[96] Each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[97] Except as otherwise provided, each inspector general must, no later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.[98]

[87] Section 20.055(2)(f), F.S.
[88] Section 20.055(2)(g), F.S.
[89] Section 20.055(2)(h), F.S.
[90] Section 20.055(2)(i), F.S.
[91] Section 20.055(2)(j), F.S.
[92] Section 20.055(3)(b), F.S.
[93] Section 20.055(3)(c), F.S.
[94] Section 20.055(3)(d), F.S.
[95] Section 20.055(4), F.S.
[96] Section 20.055(5), F.S.
[97] Section 20.055(6), F.S.
[98] Section 20.055(7)(a), F.S.

III. Effect of Proposed Changes:

Section 1 reenacts s. 216.1366, F.S.,[99] and removes the July 1, 2021, termination date to require each agency contractor services to include authorization for the agency to inspect certain records of the contractor. These records include both financial and programmatic records, papers, and documents of the contractor directly related to the performance of the contract and that are deemed necessary by the agency to monitor the performance of the contract. The contract must require the contractor to provide such records, papers, and documents requested by the agency within 10 business days after the request is made.

Section 2 amends s. 287.042, F.S., to require the Secretary of Management Services to make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

Section 3 amends s. 287.056, F.S., to require that when an agency issues a request for quote for contractual services for a state term with 25 vendors or fewer, the agency *must* issue a request for quote to *all vendors* approved to provide that contractual service. For any contract with more than 25 vendors, the agency must issue a request for quote to a minimum of 25 vendors approved to provide such contractual services.

This section also provides for the immediate disqualification from state term contract eligibility of a firm or individual who has been placed on the suspended vendor list pursuant to s. 287.1351, F.S., or placed on a disqualified vendor list pursuant to s. 287.133, F.S. (removal based upon public entity crime), or s. 287.134, F.S. (removal based on discriminatory practices).

Section 4 amends s. 287.057, F.S., to change the electronic posting requirement for single source contracting from seven to 15 days. This section requires agencies to report, on a quarterly basis, to the Department of Management Services (DMS) each instance in which the agency entered into a single source purchase contract. Such report is to be in a manner and form prescribed by the DMS. The DMS is required to report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

This section provides that an agency,[100] may not initiate a competitive solicitation for a product or service if the completion of the competitive solicitation would require a change in law or change to the agency's original approved budget as defined in s. 216.011, F.S., (other than a transfer authorized in law) unless the initiation of the competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget

[99] Section 106 of ch. 2020-114, Laws of Florida, created s. 216.1366, F.S., in order to implement the appropriation of funds in the special categories, contracted services, and expenses categories of the 2020-2021 General Appropriations Act.
[100] Section 287.012(1), F.S., defines "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

Commission.[101] This prohibition does not apply to a competitive solicitation when the agency head certifies that a valid emergency exists.

This section amends the provision governing an agency's designation of a contract manager to clarify that the contract manager works as a liaison *between* the contractor *and the agency,* and prohibits a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned.

This section sets forth the following primary responsibilities of a contract manager:
- Participating in the solicitation development and review of contract documents;
- Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and to keep timely records of findings;
- Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract; and
- Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

Current law provides that the Chief Financial Officer (CFO) provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two ($35,000). The bill requires the CFO to evaluate this training every five years.

Current law requires a contract manager responsible for contracts in excess of $100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training be completed within six months of a contract manager being assigned responsibility of qualifying contracts. Additionally, the bill requires a contract manager to complete the accountability in contracts and grant management training. The DMS is required to evaluate such training every five years to assess its effectiveness and update the training curriculum.

This section provides that a contract manager responsible for contracts in excess of $10 million annually must, in addition to the accountability in contracts and grant management training, and the training in contract management and certification, also possess at least five years of experience managing contracts in excess of $5 million annually.

Current law requires a contract administrator be designated to maintain a contract file and financial information on all contractual services contracts. The bill permits a contract administrator to also serve as the contract manager for contracts less than $500,000 annually, if he or she has completed the required training. For contracts in excess of $500, 000 annually, the contract administrator is prohibited from serving in both capacities.

[101] This provision has been part of the implementing bill for the General Appropriations Act for the past five years (2020-114(98), 2019-116(106), 2018-10(79), and 2017-71(52)).

The bill specifies that for contracts in excess of $195,000, the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought, and a *negotiation team* of at least three persons is to conduct negotiations during a competitive sealed reply procurement. In addition, a negotiation team for a competitively procured contract in excess of $1 million in any fiscal year must include a certified contract negotiator.

Current law provides that for contracts in excess of $10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the certification and training requirements for certified contract negotiators. The bill specifies that the training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and appropriately involved in the procurement process. The DMS must evaluate such training every five years to assess its effectiveness and update the training curriculum.

A certified contract negotiator is required to complete training every five years for certification renewal. This section specifies that the qualification requirements for certification must include:

- At least 12 months experience as a purchasing agent, contract manager, or contract administrator for an agency or local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff.
- Experience during the preceding five years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government negotiated procurements.

In addition, this section requires any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors, and training must commence no later than July 1, 2022.

This section requires the agency head to establish a continuing oversight team for each contractual services contract in excess of $5 million after the award of such contract. The agency head must appoint at least four persons to the continuing oversight team, with one being the certified contract manager. If the value of the contract is in excess of $10 million, at least one member must possess at least five years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of $20 million, the continuing oversight team must consist of at least five persons, at least one member must be from an agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be agency employees and collectively have experience and knowledge in

contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

For contracts in excess of $5 million, each continuing oversight team is required to meet at least quarterly. For contracts in excess of $10 million, each continuing oversight team must meet at least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

This section requires that within 30 days after formation of the continuing oversight team, an initial meeting between the continuing oversight team and representatives of the contractor must convene to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to explain the role of the continuing oversight team, contract manager, and contract administrator.

The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the team's questions within 10 business days of receiving the written questions. The questions and responses must be included in the contract file.

This section requires the continuing oversight team to provide written notification to:

- The agency head and the DMS of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of successful completion of the contract.
- The agency head, the DMS, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least $5 million.
- The agency head, the DMS, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of $10 million or greater.

Section 5 amends s. 287.058, F.S., to prohibit a contract from containing a nondisclosure clause prohibiting a contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

Section 6 creates s. 287.1351, F.S., regarding suspended vendors and state contracts. The bill prohibits a vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts from submitting a bid, proposal, or reply to an agency or enter into or renew a contract to provide goods or services to an agency after its placement on the suspended vendor list. An agency may

not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor that is on the suspended vendor list until the vendor has been removed from such list and returned to the vendor list by the DMS. The bill defines the term "vendor" as a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

This section requires an agency to notify the DMS of any vendor that has met the grounds for suspension and must provide documentation to the DMS evidencing the vendor's default or other grounds for suspension. The DMS must review the submitted documentation and decide whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. The bill requires the DMS to notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing, as well as the applicable procedures and time requirements for any such hearing. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the DMS. If a vendor does not request an administrative hearing, the DMS must enter a final order removing the vendor from the vendor list.

This section provides that, within 21 days after receipt of the notice of intent, a vendor may file with the DMS a petition for a formal hearing to challenge the decision. If a vendor does not file a petition in a timely manner, it is deemed to have waived its right to a hearing and the DMS's decision to remove the vendor from the list becomes final agency action.

This section provides that if a vendor is placed on the suspended vendor list, the vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. A proceeding on the petition must be conducted in accordance with ch. 120, F.S., and an Administrative Law Judge (ALJ) may remove a vendor from the suspended vendor list if the ALJ determines it would be in the public interest. In determining whether removal from the list would be in the public interest, the ALJ may consider whether the suspended vendor has prepared a corrective action plan to address the original grounds for default or failure to fulfill the terms and conditions of the contract, reimbursed the agency for any reprocurement costs, or provided additional evidence that the vendor has taken other remedial action.

If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing for at least nine months after the date of denial. However, the DMS may petition for the suspended vendor's removal before the expiration period if, in the DMS's discretion, the removal of the vendor from the suspended list would be in the public's interest.

Section 7 amends s. 287.136, F.S., to require, beginning October 1, 2021, and every three years thereafter, each agency inspector general to complete a risk-based compliance audit of all contract documents executed by the agency for the preceding three fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the Secretary of Management Services, and the Governor.

Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16 amends ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351, F.S., respectively, to make conforming changes.

Section 17 requires the DMS to conduct a study evaluating fleet management options to identify potential savings, of which, the results must be provided in a written report to the President of the Senate and Speaker of the House of Representatives by January 1, 2022

Section 18 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private firm or individual may experience an indeterminate fiscal impact if such party is disqualified from state term contract eligibility upon removal from the vendor list as specified within the bill.

C. Government Sector Impact:

The bill will have an indeterminate negative fiscal impact on state government expenditures related to additional workload for:

- Additional contract performance reporting before executing a contract renewal or amendment due to lowering the reporting threshold;

- A potential increase in the number of vendors responding to RFQs for contractual services; and
- Expanding contract monitoring through continuing oversight teams and by requiring an agency inspector general to perform additional contract auditing.

The Department of Management Services (DMS) will incur additional costs related to workload for establishing and disseminating certification and training requirements for certified contract negotiators, for performing training evaluations every five years, and for maintain and administering the suspended vendor list. In addition, the DMS may incur additional workload costs related to conducting the study evaluating fleet management options identifying potential savings.

Additionally, the six-month time limitation imposed on training for a contract manager responsible for contracts in excess of $100,000 annually will likely require the DMS to expend additional resources to ensure timely training.

The Department of Financial Services may also incur nominal additional costs associated with specified training evaluation every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 43.16, 215.971, 216.1366, 287.042, 287.056, 287.057, 287.0571, 287.058, 287.136, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351.

This bill creates the following section of the Florida Statutes: 287.1351.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Revises the requirements related to requests for quotes for contractual services available on state term contract. Specifically, the CS provides that if there are 25 or fewer approved vendors on the state term contract, then the agency must issue a request for quote to all approved vendors. If there are more than 25 approved vendors, then the agency must issue the request for quote to at least 25 of the approved vendors on the state term contract.

- Increases certain contract thresholds that trigger certain oversight by the continuing oversight team.
- Specifies that an agency may not initiate a competitive solicitation that would require a change to the agency's original approved budget, unless specifically authorized.

CS by Governmental Oversight and Accountability on March 24, 2021:
The CS:

- Adds language to reenact s. 216.1366, F.S., and remove the July 1, 2021, termination date, to require each agency contract for services to include authorization for the agency to inspect certain records of the contractor.
- Adds the requirement prohibiting an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.
- Revises the requirement that an agency issuing a request for quote for commodities or contractual services issue the request to *all* approved vendors to require a request for quote issued for *contractual services* be issued to all approved vendors if there are fewer than 100 approved vendors and to at least 100 of the approved vendors when there are more than 100 approved vendors.
- Adds the requirement that Department of Management Services (DMS) to report certain single source contract information received by agencies to the Governor and Legislature by a specified date.
- Removes the requirement that a contract manager who is responsible for contracts in excess of $10 million annually be a Project Management Professional and instead requires such person to meet certain experience thresholds.
- Increases the threshold for when a contract administrator may also serve as a contract manager from a contract value of $250,000 to a contract value of $500,000.
- Specifies that for contracts in excess of $195,000 that the evaluation is performed *independently,* and removes language regarding an evaluation *team*.
- Revises the experience requirements for qualification for certification as a contract negotiator, to require experience during the preceding five years in leading at least two, instead of three, federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three, instead of five, federal, state, or local government-negotiated procurements.
- Adds the requirement that supervisors of contract administrators or contract or grant managers must complete training within a specified period.
- Alters the membership requirements meeting requirements for the continuing oversight team (e.g., requires one member be the *certified* contract manager, rather than the contract manager; and removes the requirement that for contracts over $5 million that one member must be a Project Management Professional and instead imposes an experience threshold).
- Provides more specificity for the notice requirements for the continuing oversight team.
- Adds the requirement that a contract may not contain a nondisclosure clause exempting certain information.
- Adds new language addressing the process for suspending vendors and provides that vendors who are in default on any contract with an agency or has otherwise

repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts is disqualified from bidding on or renewing a contract with the state.
- Adds language providing a mechanism whereby a vendor placed on the suspended vendor list may petition for removal.
- Revises the requirement that each agency inspector general complete a compliance audit of all contracts executed by the agency every three years to completing a risk based compliance audit of all contracts executed by the agency.
- Makes conforming changes.

B. Amendments:

None.

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

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

585-03332-21 20211616c1

A bill to be entitled

An act relating to agency contracts for commodities and contractual services; reenacting and amending s. 216.1366, F.S.; abrogating the scheduled expiration of provisions relating to certain public agency contracts for services; amending s. 287.042, F.S.; providing that the Department of Management Services may enter into an agreement authorizing an agency to make purchases under certain contracts if the Secretary of Management Services makes a certain determination; amending s. 287.056, F.S.; providing that an agency must issue a request for quote to certain approved vendors when it issues certain requests for quote for contractual services; providing for the disqualification of certain firms or individuals from state term contract eligibility; amending s. 287.057, F.S.; revising the period of time during which an agency must electronically post a description of certain services in certain circumstances; requiring an agency to periodically report certain actions to the department in a specified manner and form; requiring the department to annually report certain information to the Governor and the Legislature by a specified date; prohibiting an agency from initiating a competitive solicitation in certain circumstances; providing applicability; revising the maximum value of certain contracts that may not be renewed or amended by state agency before submitting a written report to the Governor and the Legislature; requiring the agency

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to designate a contract manager to serve as a liaison between the contractor and the agency; prohibiting certain individuals from serving as a contract manager; providing the responsibilities of a contract manager; requiring the Chief Financial Officer to evaluate certain training at certain intervals; requiring that certain contract managers complete training and certification within a specified timeframe; requiring the department to establish and disseminate certain training and certification requirements; requiring the department to evaluate certain training at certain intervals; requiring certain contract managers to possess certain experience in managing contracts; authorizing a contract administrator to also serve as a contract manager in certain circumstances; providing that evaluations of proposals and replies must be conducted independently; providing for specified teams to conduct certain negotiations; requiring a Project Management Professional to provide guidance based on certain qualifications; providing qualification requirements for contract negotiator certification; requiring supervisors of contract administrators or contract and grant managers meeting certain criteria to complete training within a specified period; providing that the department is responsible for establishing and disseminating supervisor training by a certain date; providing for a continuing oversight team in certain circumstances; providing requirements

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

for continuing oversight team members and meetings; requiring a continuing oversight team to provide notice of certain deficiencies and changes in contract scope to certain entities; amending s. 287.058, F.S.; prohibiting a contract document for certain contractual services from containing a certain nondisclosure clause; creating s. 287.1351, F.S.; defining the term "vendor"; prohibiting certain vendors from submitting bids, proposals, or replies to, or entering into or renewing any contract with, an agency; prohibiting an agency from accepting a bid, proposal, or reply from, or entering into a contract with, a suspended vendor until certain conditions are met; requiring an agency to notify the department of, and provide certain information regarding, any such vendors; requiring the department to review any vendor reported by an agency; requiring the department to notify a vendor of any intended removal from the vendor list; specifying administrative remedies and applicable procedures for an affected vendor; requiring the department to place certain vendors on the suspended vendor list; authorizing the removal of a suspended vendor from the suspended vendor list in accordance with specified procedures; specifying requirements and limitations; amending s. 287.136, F.S.; requiring each agency inspector general to complete certain audits of executed contracts at certain intervals; amending ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045,

570.07, and 627.351, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Notwithstanding the expiration date in section 106 of chapter 2020-114, Laws of Florida, section 216.1366, Florida Statutes, is reenacted and amended to read:

216.1366 Contract terms.—

(1) In order to preserve the interest of the state in the prudent expenditure of state funds, each public agency contract for services entered into or amended on or after July 1, 2020, shall authorize the public agency to inspect the:

(a) Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.

(b) Programmatic records, papers, and documents of the contractor which the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.

(2) The contract shall require the contractor to provide such records, papers, and documents requested by the public agency within 10 business days after the request is made.

~~(3) This section expires July 1, 2021.~~

Section 2. Subsection (16) of section 287.042, Florida Statutes, is amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(16) To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined by the Secretary of Management Services in writing to be cost-effective and ~~in~~ the best value to ~~interest of~~ the state, to enter into a written agreement authorizing an agency to make purchases under such contract.

Section 3. Subsection (2) of section 287.056, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

287.056 Purchases from purchasing agreements and state term contracts.—

(2) Agencies and eligible users may use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. The purpose of a request for quote is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. If an agency issues a request for quote for contractual services for any contract with 100 vendors or fewer, the agency must issue a request for quote to all vendors approved to provide such contractual services. For any contract with more than 100 vendors, the agency must issue a request for quote to a minimum of 100 vendors approved to provide such contractual services. Use of a request for quote does not constitute a decision or intended decision that is subject to protest under s. 120.57(3).

(4) A firm or individual placed on the suspended vendor list pursuant to s. 287.1351 or placed on a disqualified vendor

list pursuant to s. 287.133 or s. 287.134 is immediately disqualified from state term contract eligibility.

Section 4. Present subsections (4) through (16) and (17) through (23) of section 287.057, Florida Statutes, are redesignated as subsections (5) through (17) and (19) through (25), respectively, new subsections (4) and (18) and subsection (26) are added to that section, and paragraph (c) of subsection (3) and present subsections (13) through (16) of that section are amended, to read:

287.057 Procurement of commodities or contractual services.—

(3) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(c) Commodities or contractual services available only from a single source may be excepted from the competitive-solicitation requirements. If an agency believes that commodities or contractual services are available only from a single source, the agency shall electronically post a description of the commodities or contractual services sought for at least 15 ~~7~~ business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the agency, after reviewing any information received from prospective vendors that the commodities or contractual services are available only from

a single source, the agency shall provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3). Each agency shall report all such actions to the department on a quarterly basis in a manner and form prescribed by the department, and the department shall report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

(4) A state agency may not initiate a competitive solicitation for a product or service if the completion of such competitive solicitation would:

(a) Require a change in law; or

(b) Require a change to the agency's budget other than a transfer authorized in s. 216.292(2) or (3), unless the initiation of such competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.

(c) This subsection does not apply to a competitive solicitation for which the agency head certifies that a valid emergency exists.

(14) ~~(13)~~ Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be

renewed must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (3)(a) and (c) may not be renewed. With the exception of subsection (11) ~~(10)~~, if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding $5 ~~$10~~ million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(15)(a) ~~(14)~~ For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and serve as a liaison between ~~with~~ the contractor and the agency. The contract manager may not be an individual who has been employed, within the previous 5 years, by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

3. Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract.

4. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

5. Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

(b) ~~(a)~~ Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum. The Chief Financial Officer shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services.

(c) ~~(b)~~ Each contract manager who is responsible for contracts in excess of $100,000 annually must, in addition to the accountability in contracts and grant management training required in paragraph (b) and within 6 months after being assigned responsibility for such contracts, complete training in contract management and become a certified contract manager. The

department is responsible for establishing and disseminating the training and certification requirements for certified contract managers. Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. A certified contract manager must complete training every 5 years for certification renewal ~~requirements for certification which include completing the training conducted by the Chief Financial Officer for accountability in contracts and grant management~~. Training and certification must be coordinated by the department, and the training must be conducted jointly by the department and the Department of Financial Services. The department shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum ~~Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial Services~~.

(d) Each contract manager who is responsible for contracts in excess of $10 million annually must, in addition to the training required in paragraph (b) and the training and certification required in paragraph (c), possess at least 5 years of experience managing contracts in excess of $5 million annually.

(16)~~(15)~~ Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of $500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of $500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17)(a)~~(16)(a)~~ For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. At least three persons to independently evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b)1. If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be ~~certified as~~ a certified contract negotiator ~~based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing~~

~~those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator~~.

2. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for certified contract negotiators. Training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal. Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the

agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later than July 1, 2022.

(26)(a) For each contractual services contract in excess of $1 million, the agency head shall establish a continuing oversight team after the contract has been awarded. The agency head shall appoint at least four persons, one of whom must be the certified contract manager, to the continuing oversight team. If the value of the contractual services contract is in excess of $5 million, at least one of the persons on the continuing oversight team must possess at least 5 years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of $20 million, the continuing oversight team shall consist of at least five persons, at least one of the persons on the continuing oversight team must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and

must collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

(b)1. For contracts in excess of $1 million, each continuing oversight team must meet at least quarterly.

2. For contracts in excess of $10 million, each continuing oversight team must meet at least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

(c)1. Within 30 days after the formation of the continuing oversight team, the continuing oversight team must convene an initial meeting with representatives of the contractor to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to provide an explanation of the role of the continuing oversight team, contract manager, and contract administrator.

2. The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must

respond to the team's questions within 10 business days after receiving the written questions. The questions and responses must be included in the contract file.

(d) The continuing oversight team must notify, in writing:

1. The agency head and the department of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of the successful completion of the contract.

2. The agency head, the department, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least $5 million.

3. The agency head, the department, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of $10 million or greater.

Section 5. Subsection (7) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.—

(7) A contract may not contain a nondisclosure clause that prohibits the contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

Section 6. Section 287.1351, Florida Statutes, is created

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to read:

287.1351 Suspended vendors; state contracts.—

(1) As used in this section, the term "vendor" means a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

(2)(a) A vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts may not submit a bid, proposal, or reply to an agency or enter into or renew a contract to provide any goods or services to an agency after its placement, pursuant to this section, on the suspended vendor list.

(b) An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor on the suspended vendor list until such vendor has been removed from the suspended vendor list and returned to the vendor list maintained by the department pursuant to s. 287.042(1)(a) and (b) and the vendor has reimbursed the agency for any reprocurement costs.

(3) An agency shall notify the department of any vendor that has met the grounds for suspension described in paragraph (2)(a). The agency must provide documentation to the department evidencing the vendor's default or other grounds for suspension. The department shall review the documentation provided and determine whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. If good cause exists, the department must notify the vendor in

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writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing and the applicable procedures and time requirements for any such hearing. If the vendor does not request an administrative hearing, the department must enter a final order removing the vendor from the vendor list. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the department.

(4) Within 21 days after receipt of the notice of intent, the vendor may file with the department a petition for a formal hearing pursuant to ss. 120.569 and 120.57 to challenge the department's decision to remove the vendor from the vendor list. A vendor that fails to timely file a petition in accordance with this subsection is deemed to have waived its right to a hearing, and the department's decision to remove the vendor from the vendor list becomes final agency action.

(5)(a) The department shall place any vendor removed from the vendor list pursuant to this section on the suspended vendor list. One year or more after entry of the final order of its suspension, a suspended vendor may file a petition with the department for removal from the suspended vendor list. The proceeding on the petition must be conducted in accordance with chapter 120. The vendor may be removed from the suspended vendor list if the administrative law judge determines that removal from the list would be in the public interest. In determining whether removal from the list would be in the public interest, the administrative law judge may consider, but is not limited to, whether the suspended vendor has prepared a corrective action plan that addresses the original grounds for default or

failure to fulfill the terms and conditions of the contract, reimbursed the agency for any reprocurement costs, or provided additional evidence that the vendor has taken other remedial action.

(b) If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing on removal for a period of at least 9 months after the date of the denial. The department may petition for the suspended vendor's removal before the expiration of such period if, in the department's discretion, the department determines that removal from the suspended vendor list would be in the public interest.

Section 7. Section 287.136, Florida Statutes, is amended to read:

287.136 Audit of executed contract documents.—

(1) After execution of a contract, the Chief Financial Officer shall perform audits of the executed contract document and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services.

(a) ~~(1)~~ At the conclusion of the audit, the Chief Financial Officer's designee shall discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head.

(b) ~~(2)~~ Within 30 days after receipt of the final audit report, the agency head shall submit to the Chief Financial Officer or designee his or her written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a

recurrence.

(2) Beginning October 1, 2021, and every 3 years thereafter, each agency inspector general shall complete a risk-based compliance audit of all contracts executed by the agency for the preceding 3 fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the secretary of the Department of Management Services, and the Governor.

Section 8. Subsection (1) of section 43.16, Florida Statutes, is amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(1) There is hereby created a Justice Administrative Commission, with headquarters located in the state capital. The necessary office space for use of the commission shall be furnished by the proper state agency in charge of state buildings. For purposes of the fees imposed on agencies pursuant to s. 287.057(24) ~~s. 287.057(22)~~, the Justice Administrative Commission shall be exempt from such fees.

Section 9. Paragraph (a) of subsection (2) of section 215.971, Florida Statutes, is amended to read:

215.971 Agreements funded with federal or state assistance.—

(2) For each agreement funded with federal or state financial assistance, the state agency shall designate an employee to function as a grant manager who shall be responsible for enforcing performance of the agreement's terms and conditions and who shall serve as a liaison with the recipient

or subrecipient.

(a)1. Each grant manager who is responsible for agreements in excess of the threshold amount for CATEGORY TWO under s. 287.017 must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management.

2. Effective December 1, 2014, each grant manager responsible for agreements in excess of $100,000 annually must complete the training and become a certified contract manager as provided under s. 287.057(15) ~~s. 287.057(14)~~. All grant managers must become certified contract managers within 24 months after establishment of the training and certification requirements by the Department of Management Services and the Department of Financial Services.

Section 10. Paragraph (a) of subsection (3) of section 287.0571, Florida Statutes, is amended to read:

287.0571 Business case to outsource; applicability.—

(3) This section does not apply to:

(a) A procurement of commodities and contractual services listed in s. 287.057(3)(d) and (e) and (23) ~~(21)~~.

Section 11. Paragraph (b) of subsection (4) of section 295.187, Florida Statutes, is amended to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(4) VENDOR PREFERENCE.—

(b) Notwithstanding s. 287.057(12) ~~s. 287.057(11)~~, if a veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit

bids, proposals, or replies for procurement of commodities or contractual services which are equal with respect to all relevant considerations, including price, quality, and service, the state agency shall award the procurement or contract to the business having the smallest net worth.

Section 12. Paragraph (a) of subsection (1) of section 394.47865, Florida Statutes, is amended to read:

394.47865 South Florida State Hospital; privatization.—

(1) The Department of Children and Families shall, through a request for proposals, privatize South Florida State Hospital. The department shall plan to begin implementation of this privatization initiative by July 1, 1998.

(a) Notwithstanding s. 287.057(14) ~~s. 287.057(13)~~, the department may enter into agreements, not to exceed 20 years, with a private provider, a coalition of providers, or another agency to finance, design, and construct a treatment facility having up to 350 beds and to operate all aspects of daily operations within the facility. The department may subcontract any or all components of this procurement to a statutorily established state governmental entity that has successfully contracted with private companies for designing, financing, acquiring, leasing, constructing, and operating major privatized state facilities.

Section 13. Paragraph (b) of subsection (2) and subsection (3) of section 402.7305, Florida Statutes, are amended to read:

402.7305 Department of Children and Families; procurement of contractual services; contract management.—

(2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

(b) When it is in the best interest of a defined segment of

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its consumer population, the department may competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider. The department must ensure that all providers that participate in the treatment or service system meet all applicable statutory, regulatory, service quality, and cost control requirements. If other governmental entities or units of special purpose government contribute matching funds to the support of a given system of treatment or service, the department shall formally request information from those funding entities in the procurement process and may take the information received into account in the selection process. If a local government contributes matching funds to support the system of treatment or contracted service and if the match constitutes at least 25 percent of the value of the contract, the department shall afford the governmental match contributor an opportunity to name an employee as one of the persons required by s. 287.057(17) ~~s. 287.057(16)~~ to evaluate or negotiate certain contracts, unless the department sets forth in writing the reason why the inclusion would be contrary to the best interest of the state. Any employee so named by the governmental match contributor shall qualify as one of the persons required by s. 287.057(17) ~~s. 287.057(16)~~. A governmental entity or unit of special purpose government may not name an employee as one of the persons required by s. 287.057(17) ~~s. 287.057(16)~~ if it, or any of its political subdivisions, executive agencies, or special districts, intends to compete for the contract to be awarded. The governmental funding entity or contributor of

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matching funds must comply with all procurement procedures set forth in s. 287.057 when appropriate and required.

(3) CONTRACT MANAGEMENT REQUIREMENTS AND PROCESS.—The Department of Children and Families shall review the time period for which the department executes contracts and shall execute multiyear contracts to make the most efficient use of the resources devoted to contract processing and execution. Whenever the department chooses not to use a multiyear contract, a justification for that decision must be contained in the contract. Notwithstanding s. 287.057(15) ~~s. 287.057(14)~~, the department is responsible for establishing a contract management process that requires a member of the department's Senior Management or Selected Exempt Service to assign in writing the responsibility of a contract to a contract manager. The department shall maintain a set of procedures describing its contract management process which must minimally include the following requirements:

(a) The contract manager shall maintain the official contract file throughout the duration of the contract and for a period not less than 6 years after the termination of the contract.

(b) The contract manager shall review all invoices for compliance with the criteria and payment schedule provided for in the contract and shall approve payment of all invoices before their transmission to the Department of Financial Services for payment.

(c) The contract manager shall maintain a schedule of payments and total amounts disbursed and shall periodically reconcile the records with the state's official accounting

records.

(d) For contracts involving the provision of direct client services, the contract manager shall periodically visit the physical location where the services are delivered and speak directly to clients receiving the services and the staff responsible for delivering the services.

(e) The contract manager shall meet at least once a month directly with the contractor's representative and maintain records of such meetings.

(f) The contract manager shall periodically document any differences between the required performance measures and the actual performance measures. If a contractor fails to meet and comply with the performance measures established in the contract, the department may allow a reasonable period for the contractor to correct performance deficiencies. If performance deficiencies are not resolved to the satisfaction of the department within the prescribed time, and if no extenuating circumstances can be documented by the contractor to the department's satisfaction, the department must terminate the contract. The department may not enter into a new contract with that same contractor for the services for which the contract was previously terminated for a period of at least 24 months after the date of termination. The contract manager shall obtain and enforce corrective action plans, if appropriate, and maintain records regarding the completion or failure to complete corrective action items.

(g) The contract manager shall document any contract modifications, which shall include recording any contract amendments as provided for in this section.

(h) The contract manager shall be properly trained before being assigned responsibility for any contract.

Section 14. Subsection (2) of section 408.045, Florida Statutes, is amended to read:

408.045 Certificate of need; competitive sealed proposals.—

(2) The agency shall make a decision regarding the issuance of the certificate of need in accordance with the provisions of s. 287.057(17) ~~s. 287.057(16)~~, rules adopted by the agency relating to intermediate care facilities for the developmentally disabled, and the criteria in s. 408.035, as further defined by rule.

Section 15. Subsection (42) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(42) Notwithstanding the provisions of s. 287.057(24) ~~s. 287.057(22)~~ that require all agencies to use the online procurement system developed by the Department of Management Services, the department may continue to use its own online system. However, vendors utilizing such system shall be prequalified as meeting mandatory requirements and qualifications and shall remit fees pursuant to s. 287.057(24) ~~s. 287.057(22)~~, and any rules implementing s. 287.057.

Section 16. Paragraph (e) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(e) The corporation is subject to s. 287.057 for the

purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24) ~~s. 287.057(22)~~, the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057, except for resolution of bid protests for which the board would serve as the agency head.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a

notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The

contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings; the division's applicable bond requirements do not apply. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation

action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The board, acting as agency head, shall consider the recommended order of an administrative law judge in a public meeting and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

Section 17. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill 1616**, relating to **Agency Contracts for Commodities and Consumer Services**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1624
INTRODUCER:	Senator Albritton
SUBJECT:	Special District Accountability
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.	Ponder	McVaney	GO	**Favorable**
3.	Hrdlicka	Sadberry	AP	**Favorable**

I. Summary:

SB 1624 requires all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every five years beginning October 1, 2021, and October 1, 2022, respectively. The bill also requires the Office of Program Policy Analysis and Government Accountability to conduct performance audits of all independent mosquito control districts and soil and water conservation districts by September 30, 2023, and September 30, 2024, respectively.

The bill provides that the annual financial report and annual financial audit report of all special districts must separately specify the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

The annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments must include the rate of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

The bill clarifies that the annual financial auditing report of a community redevelopment agency must be filed separately from the annual financial auditing report of the county or municipality that created the district.

Special districts may experience increased costs in complying with the requirements of the bill.

The bill takes effect on October 1, 2021.

II. Present Situation:

Independent Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[1] Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[2] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. "Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county."[3] Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.[4]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.[5] An "independent special district" is any district that is not a dependent special district.[6]

According to the Department of Economic Opportunity's Special District Accountability Program Official List of Special Districts, as of March 3, 2021, the state had 1,785 special districts. There were 1,159 independent special districts and 626 dependent districts.

Special districts are governed generally by the Uniform Special District Accountability Act.[7] The act centralizes provisions governing special districts and applies such provisions to the

[1] See *Halifax Hospital Medical Center v. State of Fla*., et al., 278 So. 3d 545, 547 (Fla. 2019).
[2] See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.
[3] Local Gov't Formation Manual 2020 – 2022, p. 64, *available at:* https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited Apr. 15, 2021).
[4] The method of financing a district must be stated in its charter. Sections 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6)(o), Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), and 388.221 (mosquito control).
[5] Section 189.012(2), F.S.
[6] Section 189.012(3), F.S.
[7] Section 189.01, F.S. Also see ch. 190 (community development districts), ch. 191 (independent special fire control districts), ch. 298 (water control districts), ch. 388 (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

formation,[8] governance,[9] administration,[10] supervision,[11] merger,[12] and dissolution[13] of special districts, unless otherwise expressly provided in law.[14]

Special districts do not possess "home rule" powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.[15]

Independent Special Fire Control Districts

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.[16] As of March 1, 2021, there were 64 active independent special fire control districts.[17]

The Independent Special Fire Control District Act provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.[18] The act preempts more specific provisions in any special act or general law of local application creating a fire control district's charter,[19] requires every fire control district be governed by a five-member board,[20] and provides:

- General powers;[21]
- Special powers;[22]
- Authority and procedures for the assessment and collection of ad valorem taxes;[23]
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;[24] and
- Issuance of district bonds and evidence of debt.[25]

[8] See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).
[9] See s. 189.0311, F.S. (charter requirements for independent special districts).
[10] See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).
[11] See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).
[12] Sections 189.071 and 189.074, F.S.
[13] Sections 189.071 and 189.072, F.S.
[14] See, e.g., s. 190.004, F.S. (ch. 190, F.S. as "sole authorization" for creation of community development districts).
[15] See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).
[16] Section 191.003(5), F.S.
[17] Department of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," *available at*: http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Apr. 15, 2021).
[18] Section 191.002, F.S.
[19] Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section.
[20] Section 191.005(1)(a), F.S. (fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997).
[21] Section 191.006, F.S. (e.g. the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).
[22] Section 191.008, F.S.
[23] Sections 191.006(14) and 191.009(1), F.S.
[24] Sections 191.006(11) and (15), 191.009(2), (3), and (4), and 191.011, F.S.
[25] Section 191.012, F.S.

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.[26] A district also may levy non-ad valorem assessments.[27] The district board may adopt a schedule of reasonable fees for services performed.[28] Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.[29]

Hospital Districts

Hospital districts are a type of independent special district specializing in the provision of health care services. As of March 1, 2021, there are 27 active hospital districts: 24 that directly operate health care facilities and three that provide oversight for facilities leased by local governments to private sector entities.[30] The charters of hospital districts generally possess a set of core features: a board appointed by the Governor, the authority to build and operate hospitals, the power of eminent domain, the ability to issue bonds payable from ad valorem taxes, the use of ad valorem tax revenue for operating and maintaining hospitals, and providing that such facilities are established for the benefit of the indigent sick.[31]

Mosquito Control Districts

Mosquito control districts (MCD) are created to protect health and safety, improve quality of life, promote economic development, and allow for the enjoyment of natural attractions of the state by reducing the number of insects that transmit disease within their boundaries.[32] As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.[33]

An MCD may contain part or all of a county or municipality.[34] The creation of new independent MCDs has been prohibited since July 1, 1980.[35] In counties without a district, the board of county commissioners may exercise all the rights, powers, and duties authorized by statute for an MCD or may direct the county health department to do so.[36]

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[26] Section 191.009(1), F.S. *But see* Art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage "authorized by law approved by vote of the electors.")
[27] Section 191.009(2), F.S. If the district levies a non-ad valorem assessment to fund emergency medical and transport services, the district is prohibited from levying an ad valorem tax to fund those services.
[28] Section 191.009(3), F.S.
[29] Section 191.009(4), F.S.
[30] Department of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts."
[31] Florida TaxWatch, Florida's Fragmented Hospital Taxing District System in Need of Reexamination, Briefings (Feb. 2009), *available at:* https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination (last visited Apr. 15, 2021).
[32] Sections 388.0101 and 388.011(5), F.S.
[33] Department of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts."
[34] Section 388.021(1), F.S.
[35] Section 388.021(2), F.S.
[36] Sections 388.241 and 388.251, F.S. The county health department must keep the books and make all reports required under ch. 388, F.S., and all purchases, whether by bid or otherwise, must be made in accordance with the procedures allowed by the Board of County Commissioners. The health department must also submit to the Board of County Commissioners itemized monthly statements of expenses incurred in carrying out the control program in the county.

MCDs are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.[37] Each MCD or county participating in arthropod control under the statutes must submit to the Department of Agriculture and Consumer Services (DACS) a report for the preceding month of expenditures from all funds for arthropod control within 30 days after the end of each month.[38]

Soil and Water Conservation Districts

The stated purpose of soil and water conservation districts (SWCD) is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.[39] All SWCDs are created by the DACS upon petition by landowners in the proposed district.[40] The DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.[41] As of March 1, 2021, there are 56 active districts.[42]

Beginning in 1937,[43] SWCDs were initially established to encourage cooperation between governments and local landowners concerning local conservation needs.[44] The authority of SWCDs now overlap significantly with other agencies created to manage and protect the state's land and water resources, such as the Department of Environmental Protection,[45] the Department of Economic Opportunity,[46] and water management districts.[47] Due to this jurisdictional overlap, SWCDs today primarily focus on working with partners to provide funding and technical support to aid local landowners in conservation efforts.[48]

Local Government Financial Reports and Audits

Florida law requires all units of local government, including special districts, to complete annual financial reports and annual financial audit reports. Each district must submit its annual financial report to the Department of Financial Services (DFS) within 9 months of the completion of its fiscal year.[49] If a district fails to file a completed annual financial report within the required period, the DFS must notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity.[50]

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[37] Section 388.221(1), F.S.
[38] Section 388.341, F.S. The reports must detail activities and accomplishments as may be required by the DACS.
[39] Section 582.02(4), F.S.
[40] Sections 582.10-582.15, F.S.
[41] Section 582.055(3), F.S.
[42] Department of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts."
[43] See ch. 18144, s. 2, Laws of Florida (1937). Originally the districts were called Soil Conservation Districts.
[44] DACS Office of Agricultural Water Policy, Soil and Water Conservation District Supervisor Handbook, 3, *available at:* https://www.fdacs.gov/content/download/7357/file/Fswcd_Handbook_Final.pdf (last visited Apr. 15, 2021).
[45] See, e.g., ch. 408, F.S.
[46] See, e.g., ch. 380, F.S.
[47] See, e.g., ch. 373, F.S.
[48] The primary partners for soil and water conservation districts are the United States Department of Agriculture's Natural Resource Conservation Service, DACS's Office of Agricultural Water Policy, and county governments. DACS Office of Agricultural Water Policy, supra note 58.
[49] A district that is required to complete a financial audit report must submit both reports within 45 days of the completion of the audit report, but no later than 9 months after the end of the fiscal year. Section 218.32(1)(d), F.S.
[50] Section 218.32(1)(f), F.S.

Special districts with revenues or total expenditures and expenses exceeding $100,000 must have an annual financial audit prepared by an independent certified public accountant, unless the district has been notified before the start of the fiscal year that the Auditor General will conduct a financial audit for that year.[51] Special districts with revenues (or a total of expenditures and expenses) between $50,000 and $100,000 are required to conduct a financial audit every 3 years.[52] The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.[53] The audit report for a dependent special district may be included in the annual financial audit report of the county or municipality on which it is dependent. The audit report must be filed with the Auditor General within 45 days of its receipt by the district, but no later than 9 months after the end of the fiscal year.[54]

Community Redevelopment Agency Auditing Requirements

Each community redevelopment agency with revenues or a total of expenditures and expenses in excess of $100,000 must have an annual financial audit prepared by an independent certified public accountant.[55] The audit report must accompany the annual financial report of the county or municipality that created the district.[56]

Performance Audits

A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. This may include examining:

- The economy, efficiency, or effectiveness of the program;
- How a program is structured or designed to accomplish its goals and objectives;
- The adequacy of the program to meet the needs identified by the Legislature or local governing body;
- Whether alternative methods exist to deliver services provided by the program;
- The goals, objectives, and performance measures used by the agency to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies;
- The program's compliance with appropriate policies, rules, or laws; and
- Any other issues related to governmental entities as directed by the Legislative Auditing Committee.[57]

The purpose of a performance audit is to provide objective information that may be used to assist in governance and oversight by providing information that will improve program performance,

[51] Section 218.39(1), F.S.
[52] Section 218.39(1)(h), F.S.
[53] Section 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), *available at:* https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Mar. 1, 2020).
[54] Section 218.39(7), F.S.
[55] Section 163.387(8)(a), F.S.
[56] Section 163.387(8)(c), F.S.
[57] Section 11.45(1)(j), F.S.

reduce costs to taxpayers, and otherwise facilitate decision-making.[58] The Auditor General currently conducts a performance audit at least once every 3 years of the local government financial reporting system and the Department of Revenue's administration of the ad valorem tax laws.[59] A performance audit also must be conducted on any program associated with a proposed discretionary sales surtax levy.[60]

The Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is the research arm of the Legislature. The OPPAGA was created by the Legislature in 1994 to help improve the performance and accountability of state government. The OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. The OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.[61] The OPPAGA provides a variety of research services such as performance evaluations and policy reviews of government programs, research and technical assistance to legislators and legislative committees, and government program summaries containing descriptive and evaluative information on all major state programs.

III. Effect of Proposed Changes:

Performance Audits (Section 1)

The bill creates s. 189.0695, F.S., to require all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every five years beginning October 1, 2021, and October 1, 2022, respectively. The performance audit must be conducted by a qualified independent entity from a list generated by OPPAGA. To be included on the list, an entity must have at least five years of experience conducting performance audits, must conduct audits according to applicable auditing or evaluation standards of appropriate authoritative bodies, and must follow any relevant industry best practices. The audit report must be filed with the governing body of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the fiscal year in which the report is due. If the Auditor General conducts a performance audit of a district in the same fiscal year, that report may be used to satisfy this requirement.

The bill also requires all independent mosquito control districts and soil and water conservation districts to undergo a performance audit conducted by the OPPAGA. The performance audit must compare the services provided by each district with similar services provided by counties and municipalities, examining the similarities and differences as well as relative costs and

[58] Gov't Auditing Standards, s. 1.21 (Gov't Accountability Office 2018). Rule 10.55(3) of the Auditor General incorporates the 2018 Government Auditing Standards adopted by the U.S. Government Accounting Office (2018 Yellow Book).
[59] Section 11.45(2)(g)-(h), F.S.
[60] Section 212.055(11)(a), F.S.
[61] Office of Program Policy Analysis and Government Accountability, *About OPPAGA, available at*: https://oppaga.fl.gov/About (last visited Apr. 15, 2021).

efficiencies of services. The OPPAGA must submit the performance audits of the districts to the President of the Senate and the Speaker of the House of Representatives by:

- September 30, 2023, for independent mosquito control districts; and
- September 30, 2024, for soil and water conservation districts.

The bill defines the term "performance audit" as having the same meaning used in statutes concerning audits performed by the Auditor General.

Annual Financial Report and Annual Financial Audit Report (Sections 2 & 3)

Sections 2 and 3 amend ss. 218.32 and 218.39, F.S., respectively, to require the annual financial report and annual financial audit report for all special districts to separately specify the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

Section 2 requires the annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rates of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

Section 3 revises requirements concerning annual financial audit reports to clarify that the annual financial audit report of a community redevelopment agency with revenues or a total of expenditures and expenses in excess of $100,000 must be provided separately from the annual financial audit report of the county or municipality that created the district.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Special districts may experience workload increases and associated costs to comply with additional reporting requirements created by the bill.

Independent special fire control districts and hospitals governed by special districts or the board of trustees of a public health trust will incur increased costs related to conducting performance audits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 218.32 and 218.39.

This bill creates section 189.0695 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Albritton

26-01565A-21 20211624__

A bill to be entitled

An act relating to special district accountability; creating s. 189.0695, F.S.; defining the term "performance audit"; requiring certain independent special districts to contract with an independent entity to conduct performance audits; providing an exception; specifying the frequency of such audits; requiring the Office of Program Policy Analysis and Government Accountability to conduct performance audits of certain classifications of independent special districts; providing criteria for contracting for such audits; requiring the performance audits to be reported by a time certain; amending s. 218.32, F.S.; requiring additional information to be reported by special districts in the annual report; amending s. 218.39, F.S.; requiring that certain data be included in financial audits of special districts; requiring certain community redevelopment agencies to file separate audited financial statements; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 189.0695, Florida Statutes, is created to read:

189.0695 Independent special districts; performance audits.—

(1) The term "performance audit" has the same meaning as in

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

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s. 11.45(1).

(2)(a) Each independent special district as described in paragraph (c) must contract with an independent entity to conduct a performance audit of the district. The Office of Program Policy Analysis and Government Accountability must generate a list of independent entities qualified to perform the performance audit and the independent special district must select an independent entity from the list. To be included on the list, an entity must have at least 5 years of experience conducting performance audits, must conduct audits according to applicable auditing or evaluation standards of appropriate authoritative bodies, and must follow any applicable industry best practices.

(b) The entity's final report of the performance audit must be filed with the governing board of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the district's fiscal year according to the schedule provided in paragraph (c). However, a performance audit of a district conducted by the Auditor General during the same fiscal year in which a performance audit is due pursuant to paragraph (c) qualifies as that district's scheduled performance audit under this section.

(c)1. Beginning October 1, 2021, and every 5 years thereafter, each independent special fire control district as defined in s. 191.003, must have a performance audit conducted.

2. Beginning October 1, 2022, and every 5 years thereafter, each hospital licensed under chapter 395 which is governed by the governing body of a special district as defined in s.

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189.012 or by the board of trustees of a public health trust created under s. 154.07, must have a performance audit conducted.

(3) The Office of Program Policy Analysis and Government Accountability must conduct a performance audit of all independent special districts within the classifications described in paragraphs (a) and (b). The performance audit must compare the services provided by each district examined with similar services provided by the county and municipal governments wholly or partially within the boundaries of the district, expressly stating the similarities and differences, and relative costs and efficiencies, between the services provided by the district and those provided by the relevant counties and municipalities. The Office of Program Policy Analysis and Government Accountability shall submit the final report of the performance audit to the President of the Senate and the Speaker of the House of Representatives as follows:

(a) For all independent mosquito control districts as defined in s. 388.011, no later than September 30, 2023.

(b) For all soil and water conservation districts as defined in s. 582.01, no later than September 30, 2024.

Section 2. Paragraph (e) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)(e)1. Each local governmental entity that is not required to provide for an audit under s. 218.39 must submit the annual financial report to the department no later than 9 months after the end of the fiscal year. The department shall consult

with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. The format must include balance sheet information used by the Auditor General pursuant to s. 11.45(7)(f). The department must forward the financial information contained within the annual financial reports to the Auditor General in electronic form. This paragraph does not apply to housing authorities created under chapter 421.

2. The annual financial report filed by a dependent special district or an independent special district shall specify separately:

a. The total number of district employees.

b. The amounts budgeted by the district for employee salaries and the amounts budgeted for employee benefits.

c. Each construction project approved by the district to begin after October 1 of the fiscal year being reported together with the amount budgeted for such project.

3. The annual financial report of an independent special district that imposes ad valorem taxes shall include the millage rate or rates imposed by the district, the total amount of ad valorem taxes collected by or on behalf of the district, and the total amount of outstanding bonds issued by the district and the terms of such bonds.

4. The annual financial report of an independent special district that imposes non-ad valorem special assessments shall include the rate or rates of such assessments imposed by the district, the total amount of special assessments collected by or on behalf of the district, and the total amount of outstanding bonds issued by the district and the terms of such

bonds.

Section 3. Paragraph (h) of subsection (1) of section 218.39, Florida Statutes, is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, and subsection (3) of that section is amended, to read:

218.39 Annual financial audit reports.—

(1) If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

(h) As required by s. 163.387(8)(a), each community redevelopment agency with revenues or a total of expenditures and expenses in excess of $100,000, as reported on the trust fund financial statements.

(3)(a) A dependent special district, excluding a community redevelopment agency with revenues or a total of expenditures and expenses in excess of $100,000, as reported on the trust fund financial statements, may provide for an annual financial audit by being included in the audit of the local governmental entity upon which it is dependent. An independent special district may not make provision for an annual financial audit by being included in the audit of another local governmental entity.

(b) A special district that is a component unit, as defined

by generally accepted accounting principles, of a local governmental entity shall provide the local governmental entity, within a reasonable time period as established by the local governmental entity, with financial information necessary to comply with this section. The failure of a component unit to provide this financial information must be noted in the annual financial audit report of the local governmental entity.

(c) The financial audit of a dependent special district or of an independent special district, or the financial audit of a local governmental entity including the information of a dependent special district as provided in paragraph (a) of this subsection, shall separately include and specify the information required in s. 218.32(1)(e)2.

Section 4. This act shall take effect October 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2021

I respectfully request that **Senate Bill #1624**, relating to Special Districts, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2021
Meeting Date

SB 1624
Bill Number (if applicable)

Topic SPECIAL DISTRICT ACCOUNTABILITY

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title

Address PO Box 127 Phone 305 608 4300
Street

TALLAHASSEE FL 32302 Email
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1672
INTRODUCER:	Education Committee and Senator Diaz
SUBJECT:	State University Free Seat Program
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1672 creates the State University Free Seat Program to require each state university to waive the tuition and fees for one online course for a Florida resident who is either a veteran, an active duty member of the United States Armed Forces, an active drilling members of the Florida National Guard, or who has not been enrolled in a postsecondary institution for more than five years, and is enrolled in an online baccalaureate degree program. The bill specifies that:

- A state university may not charge a student who meets such criteria more than 75 percent of the tuition rate or tuition differential for all other courses.
- A student who qualifies for the tuition discount is eligible to receive the discount for up to 110 percent of the number of required credit hours of the enrolled degree program.

The bill does not require a state appropriation. However, state universities will have reduced revenues from tuition and fees for each eligible student who enrolls in their online degree programs. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

Tuition and Fees

Tuition is the basic fee a student is charged for instruction provided by a public postsecondary educational institution in Florida.[1] All students are charged fees except students who are exempt or whose fees are waived. State university boards of trustees are authorized to establish fees, which include activity and service, health, and athletic fees; a technology fee; a financial aid fee; and a tuition differential fee. State universities may also charge a per-credit hour distance learning course fee.[2]

Tuition and Fee Rate

The resident undergraduate tuition is set by law at $105.07 per credit hour.[3] The 2020-2021 State University System (SUS) resident undergraduate tuition and fees average is $199.72 per credit hour. The tuition and fees at Florida International University is $218.71 per credit hour, whereas the tuition and fees at Florida Polytechnic University is $164.65 per credit hour.[4]

Tuition Differential

Each university board of trustees may establish, upon approval by the Board of Governors, a tuition differential to promote improvements in the quality of undergraduate education and is required to provide financial aid to undergraduate students who exhibit financial need for undergraduate courses.[5]

Seventy percent of the revenues from the tuition differential must be expended for purposes of undergraduate education, such as increasing course offerings, improving graduation rates, increasing the percentage of undergraduate students who are taught by faculty, decreasing student-faculty ratios, providing salary increases for faculty who have a history of excellent teaching in undergraduate courses, improving the efficiency of the delivery of undergraduate education through academic advisement and counseling, and reducing the percentage of students who graduate with excess hours. Except as otherwise provided, the remaining 30 percent of the revenues from the tuition differential, or the equivalent amount of revenue from private sources, must be expended to provide financial aid to undergraduate students who exhibit financial need, to meet the cost of university attendance.[6]

The aggregate sum of undergraduate tuition and fees per credit hour, including the tuition differential, may not exceed the national average of undergraduate tuition and fees at four-year degree-granting public postsecondary educational institutions. Each tuition differential may be assessed on one or more undergraduate courses or on all undergraduate courses at a state university, may vary by course or courses, by campus or center location, and by institution.[7]

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[1] Section 1009.01(1), F.S.
[2] Sections 1009.24(2), (4), (5), (7) through (13), (16), and (17), F.S.
[3] Section 1009.24(4)(a), F.S.
[4] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 1.
[5] Section 1009.24(16), F.S.
[6] Section 1009.24(16)(a), F.S.
[7] Section 1009.24(16)(b), F.S.

In 2020-2021, the SUS average resident undergraduate student tuition differential fee is $42.88 per credit hour. Polytechnic University is the only state university that does not charge a tuition differential fee. [8]

Residency for Tuition Purposes

A legal resident of Florida for tuition purposes means one who has maintained his or her residence in this state for the preceding year, has purchased and occupies a home as primary residence, or has established a domicile in this state.[9] Unless costs are exempted or waived, all students are charged fees.[10] An out-of-state fee is charged as an additional fee for a student who does not qualify for the in-state tuition rate.[11]

Benefits for Military

Veterans of the United States Armed Forces

The term "veteran" is defined in law to mean a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized or during a period of wartime service as specified in law.[12]

Veterans currently receive priority course registration[13] and may be eligible to receive credit for relevant military training and education.[14]

Florida National Guard

The Florida National Guard consists of enlisted personnel, commissioned officers, and warrant officers who are citizens of the United States, or who have declared their intention to become citizens of the United States, organized, armed, equipped, and federally recognized, in accordance with the laws of the state and the laws and regulations of the Department of the Army and the Department of the Air Force.[15]

Active duty members of the Army, Navy, Air Force, Navy, Marines, Coast Guard, any current reservists, and active Florida National Guard are afforded some residency protections under Florida law. The following military personnel are classified as residents for tuition purposes:

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[8] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 4.
[9] Section. 1009.21(1)(d), F.S. A person or, if that person is a dependent child, his or her parent or parents, must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.
[10] Section 1009.24(2), F.S.
[11] Section 1009.01(2), F.S. The in-state tuition rate is described in s. 1009.21(1)(g), F.S.
[12] Section 1.01(14), F.S.
[13] Sections 1004.075 and 1005.09, F.S.
[14] Sections 489.1131, 489.5161, and 493.61035, F.S.
[15] Section 250.07(1), F.S.

- Active duty members of the Armed Services of the United States residing or stationed in Florida and active drilling members of the Florida National Guard.
- Military personnel not stationed in Florida whose home of record or state of legal residence certificate is Florida.[16]

Congressman C.W. Bill Young Tuition Waiver Program

The Congressman C.W. Bill Young Veteran Tuition Waiver Program requires a state university, Florida College System institution, or career center to waive out-of-state fees for an honorably discharged veteran of the U.S. Armed Forces, the U.S. Reserve Forces or the National Guard who physically resides in Florida while enrolled at the institution. The waiver covers the applicable portion of the fees up to 110 percent of the required credit hours for the degree or certificate program of enrollment.[17]

Online Courses at State University System Institutions

Nationally, Florida ranks second in the number and percentage of students enrolled in distance learning courses. In the 2018-2019 academic year, 75 percent of undergraduate students at Florida's state universities took at least one distance learning course. At four institutions, the University of Central Florida, University of Florida, University of South Florida, and University of West Florida, at least 80 percent of undergraduate students took one or more distance learning courses. Across the SUS, 11 percent (36,648) of undergraduate students took distance learning courses exclusively, and a majority (63 percent) of undergraduate students (202,895) in the SUS took a combination of distance learning, classroom, or hybrid courses. Systemwide, 30 percent of total undergraduate credit hours were taken in distance learning courses. During the Fall 2019 term, SUS institutions offered 164 online bachelor's degree programs.[18]

University of Florida Online

University of Florida Online (UF Online) was created by the 2013 Legislature as an institute for online learning at a preeminent state research university to provide for high quality, fully online baccalaureate degree programs at an affordable cost.[19] By 2018-2019, strategic development and expansion efforts allowed the program to offer 21 fully online majors and seven minors. More than 2,000 students have graduated from UF Online.[20] For the UF Online program, both the tuition rate ($78.80) and tuition differential fee ($33.12) are set at 75 percent of the per credit hour rates for traditional undergraduate programs at the University of Florida.[21]

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[16] Florida Department of Education, *Military Service & Residence in the Florida College System*, http://www.fldoe.org/core/fileparse.php/7480/urlt/0082723-faqsresidencymilitary.pdf (last visited March 22, 2021), at 1.
[17] Florida Department of Education, *Veterans*, http://www.fldoe.org/schools/higher-ed/fl-college-system/veterans.stml (last visited March 22, 2021). *See* s. 1009.26 (12)(a), F.S.
[18] State University System of Florida, *2019 Annual Report for Online Education* (July 21, 2020), *available at* https://www.flbog.edu/wp-content/uploads/2019-Annual-Report_FINAL.pdf, at 4, 9, 10, 13 and 24.
[19] Section 1001.7065(4), F.S., permits the university to establish a tuition structure for its online institute, not to exceed 75 percent of the tuition rate established by the Legislature.
[20] State University System of Florida, *2019 Annual Report for Online Education* (July 21, 2020), *available at* https://www.flbog.edu/wp-content/uploads/2019-Annual-Report_FINAL.pdf, at 24.
[21] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 1 and 4.

National Recognition

In 2020, *U.S. News & World Report* ranked UF Online as one of the top five best online bachelor's degree programs in the nation. The University of Central Florida ranked in the top 15, while Florida Atlantic University, Florida International University, and University of West Florida all ranked in the top 100.[22]

III. Effect of Proposed Changes:

The bill creates s. 1009.266, F.S., to establish the State University Free Seat Program to encourage veterans, active duty members of the United States Armed Forces, active drilling members of the Florida National Guard, and nontraditional students to enroll in an online baccalaureate degree program at a state university.

The bill specifies that a state university:

- Shall waive the tuition and fees, including lab fees, for one online course during each academic year, provided the student is a resident, enrolled in an online baccalaureate degree program and meets one of the following eligibility requirements:
  - Is a veteran defined by law;
  - Is an active duty member of the United States Armed Forces;
  - Is an active drilling member of the Florida National Guard; or
  - Has not been enrolled in a postsecondary institution for more than five years.
- May not charge an eligible student more than 75 percent of the tuition rate and 75 percent of the tuition differential for all other courses in the program if the student remains enrolled in at least one online course during each academic year.

The bill also specifies that a student is eligible to receive the discount for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled. Most SUS baccalaureate degree programs are set at 120 credit hours, which would authorize the tuition discount for up to 132 credit hours.

The bill requires each state university to report to the Board of Governors (BOG) the number and value of all such fee waivers granted annually, and requires the BOG to adopt regulations to administer the program.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[22] *Id*. (showing UF Online ranked at number 4 in 2020 and number 5 in 2019). *See also* U.S. News and World Report, *Best Online Bachelor's Programs*, *accessible at* https://www.usnews.com/education/online-education/bachelors/rankings.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providing one free online course to students enrolled in an online baccalaureate degree program at a state university and a 25 percent discount on tuition for all other courses in the program may increase access to online classes and enrollment at state universities.

C. Government Sector Impact:

The bill does not require a state appropriation. However, state universities will have reduced revenues from tuition and fees for each eligible student who enrolls in their online degree programs. The number of eligible students who will participate in the State University Free Seat Program is unknown. For each eligible student, a state university will not receive tuition and fees for one online course in an academic year. For example, for each course waived, for UF Online this represents a loss of $129.18[23] per credit hour, and at Florida State University, a loss of 180.49[24] per credit hour.

In addition, for all other courses in the online degree program, each state university will not collect 25 percent of the resident undergraduate tuition rate of $105.07 and 25 percent of the resident undergraduate tuition differential, which averages $42.88, for a total loss of approximately $36.99 per credit hour.

VI. Technical Deficiencies:

None.

[23] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 4.
[24] Florida State University, *2020-2021 Tuition, Distance Learning, available at* https://studentbusiness.fsu.edu/sites/g/files/upcbnu1241/files/2020-2021%20Tuition_DistanceLearning.pdf.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1009.266 of the Florida Statutes.

IX. Additional Information:

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

CS by Education on March 23, 2021:
The committee substitute adds, beyond a student who has not been enrolled in a postsecondary institution for more than five years, criteria for a student who is a resident for tuition purposes and enrolled in an online baccalaureate degree program at a state university to have tuition and fees, including lab fees, waived for one online course. The following may also qualify for the waiver:

- A veteran defined in law;
- An active duty member of the United States Armed Forces;
- An active drilling member of the Florida National Guard; or

In addition, the bill requires each state university to report to the Board of Governors (BOG) the number and value of all such fee waivers granted annually, and requires the BOG to adopt regulations to administer the program.

B. Amendments:

None.

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

By the Committee on Education; and Senator Diaz

581-03261-21 20211672c1

A bill to be entitled

An act relating to the State University Free Seat Program; amending s. 1009.26, F.S.; creating the State University Free Seat Program; providing a purpose; providing an exemption from tuition and fees, including lab fees, for one online course at a state university for certain resident students; prohibiting a state university from charging such students more than a specified percentage of the tuition rate and the tuition differential under certain circumstances; providing a limitation on the application of such tuition discount; requiring each state university to report certain information regarding waivers under the program to the Board of Governors annually; requiring the board to adopt regulations; providing an effective date.

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

Section 1. Subsection (18) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(18) The State University Free Seat Program is created to encourage veterans, active duty members of the United States Armed Forces, active drilling members of the Florida National Guard, and nontraditional students to enroll in an online baccalaureate degree program at a state university.

(a) A state university shall waive the tuition and fees, including lab fees, for one online course for a student who is a

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

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resident for tuition purposes under s. 1009.21 and enrolled in an online baccalaureate degree program, provided the student meets one of the following eligibility requirements:

1. Is a veteran as defined in s. 1.01(14);

2. Is an active duty member of the United States Armed Forces;

3. Is an active drilling member of the Florida National Guard; or

4. Has not been enrolled in a postsecondary institution for more than five years.

(b) For all other courses in the program, a state university may not charge a student specified in paragraph (a) more than 75 percent of the tuition rate as specified in s. 1009.24(4) and 75 percent of the tuition differential pursuant to s. 1009.24(16), if the student remains enrolled in at least one online course during each academic year.

(c) A student who qualifies for the tuition discount under paragraph (b) is eligible to receive the discount for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

(d) Each state university shall report to the Board of Governors the number and value of all fee waivers granted annually under this subsection.

(e) The Board of Governors shall adopt regulations to administer this subsection.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MANNY DIAZ, JR.
36th District

COMMITTEES:
Health Policy Chair
Appropriations Subcommittee on Education Vice Chair
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Commerce and Tourism
Rules

April 14, 2021

Honorable Senator Kelli Stargel
Chair
Committee on Appropriations

Honorable Chair Stargel,

I respectfully request Senate Bill 1672 State University Free Seat Program be placed on the next committee agenda.

Sincerely appreciate your support.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant
Rachel Barnes, Legislative Assistant

REPLY TO:
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Senate's Website: *www.flsenate.gov*

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/21
Meeting Date

1672
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic State Univ. Free Seat Program

Name Dr. Danielle Thomas

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (revised)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1786
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Burgess and others
SUBJECT:	Payments for Birth-related Neurological Injuries
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Smith	Brown	HP	**Fav/CS**
3.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1786 makes several changes to the Florida Birth-Related Neurological Injury Compensation Plan (Plan).

Specifically, the bill:

- Requires the Florida Birth-Related Neurological Injury Compensation Association (NICA) to administer the Plan in a manner that promotes and protects health and best interests of birth-injured children.
- Increases the maximum amount that may be awarded to parents or legal guardians of an infant who has sustained a birth-related neurological injury from $100,000 to $250,000 for pending petitions or claims filed on or after January 1, 2021, with the amount to be incrementally increased by three percent annually. This provision of the bill applies retroactively to claims filed before January 1, 2021.
- Increases the death benefit for an infant who sustained a neurological injury from $10,000 to $50,000.
- Increase the number of directors on the NICA's board from five to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities.
- Specifies that at least one director on the NICA's board is a woman.
- Provides that it is not the intent for the NICA to serve as payor of last resort and it is not the intent to shield physicians who engage in certain activities from filing legitimate claims of medical malpractice against such physicians.

- Extends the time for filing a claim from five years to eight years.
- Requires the Division of Medical Quality Assurance of the Department of Health to conduct a review of claims in which a physician is involved in multiple claims to determine whether the physician's conduct establishes a pattern or practice subject to disciplinary action.
- Requires the plan to reimburse parents or legal guardians of Plan participants for any service, drug, equipment, or treatment at a reasonable rate if they submit a letter of medical necessity from a provider.
- If the Plan determines that the service, drug, equipment, or treatment was not medically necessary, the Plan must ask the parent or legal guardian to provide a second letter of medical necessity from another provider.
- Authorizes the Plan to review and reimburse for experimental treatments using the same medical review process, and if a second letter is not provided, the plan is not required to provide reimbursement.
- Requires the Plan to reimburse private nursing staff or attendant care at a rate of at least equal to the greater of state or federal minimum hourly wage, regardless of setting.
- Requires the Plan to provide family support services, including mental health, for the immediate family members living with the child.
- Requires the Plan to provide quality of life reimbursement for entertainment and other activities that promote mental health of at least $1,500 per year.
- Requires the Plan to reimburse without any limitations expenses for diapers, baby food, and formula.
- Increases the annual assessment for hospitals and nonparticipating and participating physicians.
- Provides an annual benefit of $5,000 for parents and legal guardians of Plan participants for counseling.
- Provides reimbursement for transportation for all necessary trips for prescription refills.
- Creates code of ethics for specified staff and members of the board of directors.
- Requires the NICA to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The first annual report must include an actuarial analysis of the fiscal impacts of revising certain eligibility standards and benefits.
- Requires the Auditor General to conduct an audit of the NICA.
- Provides a sunset on December 31, 2026, of the NICA and the Plan, unless the Legislature reviews and reenacts the provisions by that date.

The NICA engaged an actuary to determine the viability and likely impact of increasing the parental award from $100,000 to $250,000. It was determined that the bill will have a negative fiscal impact on the Plan; however the actuary's report recommended increasing the parental award. Since the 2020 actuarial study did not appear to consider the impact of an increase in the death benefit for an infant from $10,000 to $50,000, as provided in the bill, the fiscal impact is indeterminate, but most likely insignificant.

Additional provisions in the bill increasing Plan services and compensations have a significant indeterminate fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Florida Birth-Related Neurological Injury Compensation Association

In 1988, the Legislature enacted the Florida Birth-Related Neurological Injury Compensation Plan[1] (Plan) to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries.[2] If an infant suffers such an injury, and the physician participates in the Florida Birth-Related Neurological Injury Compensation Association (NICA) and delivers obstetrical services in connection with the birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury, with exceptions.[3] Although the benefits paid under the Plan are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.[4]

A "birth-related neurological injury" is an injury to the brain or spinal cord of a live infant who weighs at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant who weighs at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.[5] Such an injury addressed by this statute renders the infant permanently and substantially mentally and physically impaired.[6]

The NICA is an independent association, and was created by the Legislature to manage the Plan. Although it is not a state agency, the NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on the NICA's board are appointed by the Chief Financial Officer for staggered terms of three years or until their successor is appointed, but there is no limit on the number of terms a director may serve.[7] The five-member board of directors of the Florida Birth-Related NICA administers the Plan.[8] The board of directors is composed of:

- One citizen representative;
- One representative of participating physicians;
- One representative of hospitals;
- One representative of casualty insurers; and
- One representative of physicians other than participating physicians.[9]

Duties of the NICA board of directors include:

- Administering the plan;

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[1] Section 766.303(1), F.S.

[2] Chapter 88-1, ss. 60-75, Laws of Fla., was enacted by the Legislature to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics. The intent of the Legislature is to provide compensation, on a no-fault basis, for a limited class of high costs catastrophic injuries, specifically birth-related neurological injuries, that result in unusually high costs for custodial care and rehabilitation. Section 766.301, F.S.

[3] Section 766.31(1), F.S.

[4] See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

[5] Section 766.302(2), F.S.

[6] *Id.*

[7] Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.

[8] Sections 766.315(1) and (2), F.S.

[9] Section 766.315, F.S., and ch. 88-1, s. 74, Laws of Fla.

- Administering the funds collected on behalf of the plan;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan;
- Reinsuring the risks of the Plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name;
- Exercising all powers necessary or convenient to effect any or all of the purposes for which the Plan was created;
- Entering into such contracts as are necessary or proper to administer the Plan;
- Employing or retaining such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan;
- Taking such legal action as may be necessary to avoid payment of improper claims; and
- Indemnifying any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.[10]

Annually, the NICA must furnish audited financial reports to:
- Any Plan participant upon request;
- The OIR; and
- The Joint Legislative Auditing Committee.[11]

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.[12]

NICA Funding

The funding for the Plan is derived from an initial appropriation of $20 million by the Legislature at the time the Plan was created[13] and annual assessments paid by physicians and hospitals.[14] A participating physician is required to pay a $5,000 fee each year for coverage which runs January 1 through December 31.[15] All licensed Florida physicians pay a mandatory fee of $250, regardless of specialty. Hospitals pay $50 for each live birth during the previous calendar year. Certain exemptions apply to all of these categories, including resident physicians, retired physicians, government physicians, and facilities.[16] In 2019, NICA collected $26,989,960 in hospital and physician assessments; in 2020, NICA collected $27,000,000.[17]

Section 766.314, F.S., requires the OIR to maintain a $20 million reserve in the Insurance Regulatory Trust Fund. If the assessments collected and the appropriation of funds provided by ch. 88-277, s. 41, Laws of Florida, to the Plan from the trust fund are insufficient to maintain the

[10] Section 766.315(4), F.S.
[11] Section 766.315(5)(d), F.S.
[12] *Id*.
[13] Section 766.314(5)(b), F.S.
[14] Section 766.314, F.S.
[15] *Id.*
[16] *Id.*
[17] Turner Consulting, Inc., *Proposed Increase in Parental Award – Section 766.31 (1) (b) (1), Florida Statutes* (Jan. 14, 2020).

Plan on an actuarially sound basis, the OIR is authorized to transfer an additional amount up to $20 million to the NICA from the Insurance Regulatory Trust Fund reserve.[18]

Benefits

The Plan pays, on behalf of a qualifying infant, the following benefits:

- Actual expenses for medically necessary and reasonable care, services, drugs, equipment, facilities, and travel;[19]
- Periodic or lump-sum award, not to exceed $100,000, to the infant's parents or guardians;[20]
- Death benefit of $10,000 for the infant; and
- Reasonable expenses for filing the claim under the Plan, including attorney's fees.[21]

The administrative law judge (ALJ) must require the Plan to immediately pay expenses previously incurred and require that future expenses be paid as incurred.[22]

The $100,000 cash award limit was established when the NICA statutory provisions were enacted in 1988. If the initial award of $100,000 established for the first birth year of 1989 was adjusted for inflation, and assuming an annual increase of three percent, this would result in an indicated award of approximately $250,000.[23]

Exclusions

The Plan does not reimburse or pay expenses that might otherwise be covered by insurance or any private or governmental programs, unless such exclusion is prohibited by federal law.[24] Many children with birth-related injuries are either covered by programs such as Children's Medical Services or Medicaid. Under current state and federal law, Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients

Filing a Claim for Benefits

A claim for compensation under the Plan must be filed within five years of the birth of the infant alleged to be injured.[25] First, the parents or guardians of the infant must file a petition with the Division of Administrative Hearings (DOAH).[26] Then, the DOAH serves a copy of the petition upon the NICA, the physician(s) and hospital named in the petition, the Division of Medical Quality Assurance, and the Agency for Health Care Administration.[27] Within 10 days of filing

[18] Section 766.314(5)(b), F.S.
[19] The plan excludes coverage for expenses that are compensable by state or federal governments, or by private insurers. Section 766.31(1)(a), F.S.
[20] Often the award is paid out over time to assist the parents or guardians in making necessary modifications to living quarters to accommodate a disabled child.
[21] Section 766.31, F.S.
[22] Section 766.31(2), F.S.
[23] Turner Consulting, Inc., Consultants and Actuaries, *Proposed Increase in Parental Award-Section 766.31(b)(1), Florida Statutes*, (Jan. 14, 2020) (on file with the Senate Committee on Health Policy).
[24] Section 766.31(1)(a), F.S.
[25] Section 766.313, F.S.
[26] Section 766.305, F.S.
[27] Section 766.305(2), F.S.

the petition, the parents or guardian must provide to the NICA all medical records, assessments, evaluations and prognoses, documentation of expenses, and documentation of any private or governmental source of services, or reimbursement relative to the impairments.[28]

Within 45 days from the date of service of a complete claim, the NICA must file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury.[29] An ALJ from the DOAH will set a hearing on the claim to be conducted 60-120 days from the petition filing date.[30]

The issue of whether the claim for compensation is covered by the Plan is determined exclusively in an administrative proceeding.[31] The ALJ presiding over the hearing makes the following determinations:

- Whether the injury claimed is a birth-related neurological injury;
- Whether obstetrical services were delivered by a participating physician;
- How much compensation, if any, is awardable under s. 766.31, F.S.; and
- Whether, if raised by the claimant or other party, the factual determination regarding the notice requirement in s. 766.316, F.S.[32]

If the ALJ determines that an injury meets the definition of a birth-related neurological injury, compensation from the Plan is the exclusive legal remedy.[33] If the ALJ determines that, the injury alleged is not a birth-related neurological injury or that a participating physician did not deliver the obstetrical services, the ALJ will enter an order to that effect.[34] The ALJ may also bifurcate the proceeding and address compensability and notice first, and address an award, if any, in a separate proceeding.[35] If any party chooses to appeal the ALJ's order under s. 766.309, F.S., the appeal must be filed in the District Court of Appeal.[36]

Notice Requirement

Section 766.316, F.S., requires any hospital with a participating physician on its staff and each participating physician under the Plan, to provide notice to an obstetrical patient as to the limited no-fault alternative for birth-related neurological injuries. The notice must:

- Be provided on forms furnished by the association; and
- Include a clear and concise explanation of a patient's rights and limitations under the plan.

This section of statute also provides that the notice does not need to be provided to a patient when the patient has an emergency medical condition or when notice is not practicable.

[28] Section 766.305(3), F.S.
[29] Section 766.305(4), F.S.
[30] Section 766.307(1), F.S.
[31] Section 766.301(1)(d), F.S.
[32] Section 766.309(1), F.S.
[33] Section 766.303(2), F.S., only allows a civil action in place of a claim under the plan where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property.
[34] Section 766.309(2), F.S.
[35] Section 766.309(4), F.S.
[36] Section 766.311(1), F.S.

Auditor General

Article III, s. 2 of the State Constitution establishes the Office of the Auditor General. The Auditor General is appointed by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature, and serves at the Legislature's pleasure.[37] The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.[38] The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[39]

A financial audit is an examination of financial statements to determine whether the financial statements conform to generally accepted accounting principles. Its purpose is also to determine whether operations are properly conducted in accordance with legal and regulatory requirements.[40] An operational audit is an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.[41]

III. Effect of Proposed Changes:

Section 1 amends s. 766.301, F.S., to specify that the Florida Birth-Related Neurological Injury Compensation Plan (Plan) is not intended to serve as the payor of last resort for claims arising out of birth-related neurological injuries. This section also provides that it is not the intent of the Legislature to shield physicians who engage in willful misconduct, gross negligence, or recklessness or to preclude individuals from filing legitimate claims of medical malpractice against such physicians.

Section 2 amends s. 766.303, F.S., to require the Florida Birth-Related Neurological injury Compensation Association (NICA) to administer the Plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries who have been accepted in the Plan. The NICA must strive to ensure all of their medical reasonable needs are being met.

Section 3 amends s. 766.305, F.S., to require the Division of Medical Quality Assurance of the Department of Health to conduct a review of claims in which the physician is involved in multiple claims to determine whether the physician's conduct establishes a pattern or practice subject to disciplinary action.

[37] Section 11.42(2), F.S.
[38] Sections 11.45(2)(d)-(f), F.S.
[39] Section 11.45(7)(b), F.S.
[40] Section 11.42(1)(d), F.S.
[41] Section 11.42(1)(i), F.S

Section 4 amends s. 766.31, F.S., to increase the limit for periodic payments or a lump-sum payment of an award from $100,000 to $250,000, beginning January 1, 2021. Each January 1 thereafter, the award limit is increased by three percent. This section provides parents or legal guardians who have received an award of $100,000 or less prior to January 1, 2021, and have a child currently in the Plan, will receive a supplemental payment to achieve a total payout of $250,000. The additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians. Section 4 also increases the death benefit from $10,000 to $50,000.

Once an administrative law judge (ALJ) determines a child is eligible under the Plan, additional Plan services under the bill include, at a minimum, compensation be provided for the following actual expenses:

- Diapers and baby formula for the infant from the time of birth and pureed baby food or other baby food for the infant at the appropriate age or developmental stage.
- An annual benefit of up to $5,000 for immediate family members residing with the infant for psychotherapeutic services.
- Transportation reimbursement for all necessary trips to the pharmacy each month for prescription fills.

Section 4 requires the Plan, within 20 days after the receipt of a request for payment of expenses, to:

- Pay the expenses;
- Notify the parents or legal guardians, or their designee, that specific additional information or documentation is needed to evaluate the request; or
- Notify the parents or legal guardians, or their designee, that the request for payment of expenses is denied.

Section 5 amends s. 766.313, F.S., to extend the time that birth-related neurological injury compensation claims must be filed from five years to eight years.

Section 6 creates s. 766.3135, F.S., to specify the NICA is responsible for reimbursement of actual expenses for medically necessary and reasonable services for a child under the Plan. The Plan is not intended to serve as a payor of last resort and the NICA may not hold itself out as such.

Section 6 provides the following Plan services:

- Requires the Plan to reimburse parents or legal guardians of Plan participants for any service, drug, equipment, or treatment at a reasonable rate if they submit a letter of medical necessity from a provider.
- Authorizes the Plan to establish an independent review process to determine whether the provider's determination of medical necessity was reasonable.
    - If the plan determines that the service, drug, equipment, or treatment was not medically necessary, the Plan may ask the parent or legal guardian to provide a second letter of medical necessity from another provider. If such letter is provided, the Plan may not take further action.

    - If a second letter is not provided, the Plan may debit the reimbursement from future reimbursements.
    - Authorizes the Plan to review and reimburse for experimental treatments using the same medical review process as above, and if a second letter is not provided, the Plan is not required to provide reimbursement.
- Allows reimbursement for the following expenses:
    - Medical, dental, and hospital care;
    - Habilitative services and training;
    - Mental health services;
    - Music or art therapy;
    - Family residential or custodial care;
    - Private nursing services or attendant care must be provided at a rate at least equal to the state or federal minimum wage, whichever is greater, and must be reimbursed at the same rate regardless of the setting in which the services or care is provided;
    - Medically necessary drugs, special equipment, and facilities;
    - Family support services, including mental health, for the immediate family members living with the child;
    - Travel related to the child's care;
    - Entertainment and other promotion of the child's mental and emotional well-being of at least $1,500 per year; and
    - Nutrition and hygiene needs of the child.
- Requires the Plan to provide transportation assistance for the life of the child. The Plan must provide a reliable method of transportation for the care of the child or reimburse the cost of upgrading an existing vehicle to accommodate the child's needs not to be limited based on the child's age or weight.
- Requires the Plan to provide ongoing housing assistance for the life of the child that includes, but is not limited to:
    - Payment assistance for rent and utilities to cover the cost of any increase due to the accommodation of the child's condition and medical needs;
    - Reimbursement of moving costs; and
    - Payment assistance for home construction up to $100,000.
- Requires the Plan to establish an online network portal for parents and legal guardians of children under the Plan to support one another and exchange information and resources. Access to the online network must be provided at no cost to parents and legal guardians.

Section 7 amends s. 766.314, F.S., beginning January 1, 2022, and annually thereafter, to increase the annual assessments to be paid to fund the Plan required from nonparticipating (currently $250), and participating physicians (currently $5,000) and hospitals (currently $50 per infant delivered in the hospital) by three percent.

Section 8 creates s. 766.3145, F.S., to establish a code of ethics for specified employees of the NICA and members of the board of directors. Specifically, on or before July 1 of each year, employees of the NICA must sign and submit a statement attesting that they do not have a conflict of interest. As a condition of employment, all prospective employees must sign and submit to the NICA a conflict of interest statement.

The executive director, the ombudsman, senior managers, and members of the board of directors are subject to part III of ch. 112, F.S., (Code of Ethics for Public Officers and Employees), including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements.

This section prohibits a board member from voting on any measure:

- That would inure to his or her special private gain or loss;
- That he or she knows would inure to the special private gain or loss of any principal, parent organization, subsidiary of a corporate principal, or by whom he or she is retained; or
- That he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

Before the vote is taken, the board member must publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting. Within 15 days after the vote occurs, the board member is required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who must incorporate the memorandum in the minutes.

This section requires the executive director, senior managers, and board members to file disclosures with the Commission on Ethics and the Office of Insurance Regulation. At least quarterly, the executive director or his or her designee must submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers subject to the public disclosure requirements.

The bill provides that an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the NICA or is under consideration for a contract. An employee or board member who fails to comply is subject to penalties provided in ss. 112.317 and 3173, F.S.

Lastly, this section prohibits a senior manager or executive director of the NICA who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment from representing another person or entity before the NICA for two years after retirement or termination.

Section 9 amends s. 766.315, F.S., to increase the number of directors on the NICA's board from five to seven and requires that at least one member of the board is a woman. In addition, of the seven members, the Chief Financial Officer must appoint one parent or legal guardian representative of an injured infant under the Plan and one representative of an advocacy organization for children with disabilities. This section prohibits a participating physician who is named in a pending petition for a claim from being appointed to the board. Also, an appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician was named in the petition for the claim.

This section requires the board of directors to employ an ombudsman who will serve at the pleasure of, and must report directly to, the board and who will act as an advocate for the parents and legal guardians of Plan participants. The ombudsman must be do the following:

- Provide information and assistance, outreach, and education to parents and legal guardians of plan participants regarding Plan benefits and community, state, and federal government resources.
- Investigate complaints of parents or legal guardians of Plan participants regarding the operation of the Plan.
- Provide an annual report to the board regarding the ombudsman's activities, the disposition of complaints, and any recommendations to improve the operations of the Plan and the delivery of benefits to participants.

Section 9 requires, on or before January 31, 2022, and annually thereafter, the NICA to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

- The number of petitions filed for compensation with the Division of Administrative Hearings (DOAH), the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.
- The number and dollar amount of paid and denied compensation for expenses by category and the reason for any denied compensation for expenses by category.
- The average turnaround time for paying or denying compensation for expenses.
- Legislative recommendations to improve the program.
- A summary of any pending or resolved litigation during the year which affects the plan.

For the initial report due on or before January 31, 2022, the bill requires an actuarial report conducted by an independent actuary that provides an analysis of the estimated costs of revising certain eligibility standards and benefits. Specifically, the actuarial report must include the analysis of implementing the following changes to the Plan:

- Reducing the minimum birth weight eligibility for a participant in the Plan from 2,500 grams to 2,000;
- Revising the eligibility of participation in the Plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired; and
- Increasing the annual special benefit or quality of life benefit from $500 to $2,500 per calendar year.

Section 10 requires the Auditor General, by January 15, 2022, to conduct a performance audit of the NICA and the Plan to evaluate management performance in administering the laws, policies, and procedures governing the operations of the NICA and the Plan in an efficient and effective manner. The audit must include evaluations of the following:

- Protocols used for the payment of expenses, including standards for determining medical necessity and reasonableness or requests for medical care, services, or other benefits provided under the Plan and the timeliness of the payment of expenses.
- Effectiveness of the NICA's outreach to inform parents and legal guardians of participants of available benefits and any changes in benefits and processes to resolve disputes regarding the payment of expenses internally.
- Efficacy of the current processes for the procurement of goods and services.
- Internal controls of the Plan and the NICA.

Section 11 provides that ss. 766.301 through 766.316, F.S., establishing the NICA and the Plan and related provisions will stand repealed on December 31, 2026, unless the Legislature reviews and reenacts the provisions by that date.

Section 1 provides that the amendments made to s. 766.31, F.S., by this act apply to claims filed under s. 766.305, F.S., on or after January 1, 2021.

Section 13 provides that the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

To the extent the bill authorizes the increase of the annual assessments required to fund the Florida Birth-Related Neurological Injury Compensation Plan and such annual assessments are considered a "state tax or fee," the requirements of Article VII, Section 19 of the Florida Constitution may apply. Under that section, a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."[42]

E. Other Constitutional Issues:

Once a bill becomes law, it is presumed to apply only prospectively. The presumption against retroactive application may be rebutted by clear evidence of legislative intent.[43] To determine if the terms of a statute and the purpose of the enactment indicate retroactive application, a court may consider the language, structure, purpose, and legislative history of the enactment.[44]

If the legislation clearly expresses an intent that the law should apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.[45]

[42] FLA. CONST. art. VII, s. 19(d)(1).
[43] *Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc*., 67 So. 3d 187 (Fla. 2011).
[44] *Id*.
[45] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

Even when the Legislature has clearly expressed its intention that the statute be given a retroactive application, courts must refuse to do so if it impairs vested rights, creates new obligations, imposes new penalties,[46] or impairs an obligation of contract.[47] For example, ex post facto legislation, i.e., a law that expands criminal liability retroactively by either creating a new crime for past conduct or by increasing the penalty for past conduct, is forbidden by both the State Constitution and the United States Constitution. Statutes that do not alter vested rights, but relate only to remedies or procedure may be applied retroactively.[48]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increasing the cash payment limit from $100,000 to $250,000 and authorizing reimbursement of expenses not currently allowed would assist parents and legal guardians in meeting significant medical expenses and other necessary services and care of children with birth-related neurological injuries.

C. Government Sector Impact:

NICA Report[49]

Florida Birth-Related Neurological Injury Compensation Association (NICA) engaged actuaries to evaluate the viability and likely impact of the proposed increase in parental award, which is authorized pursuant to s. 766.31(1)(b), F.S. The actuaries concluded that, if the payment were increased from $100,000 to $250,000, this would result in additional expected costs to the NICA of approximately $2.70 million for the 2020 birth year. However, the actuaries noted:

> [G]iven the current net assets of approximately $393.2 million[50] plus the recent better than expected inflation levels, it is not likely this increase will significantly impact the overall financial position in the short-term. Given the erosion resulting from the impact of inflation on the parental award coupled with the current NICA financial position, we would recommend the proposed change from $100,000 to $250,000.

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[46] *Id*.
[47] *Menendez v. Progressive Exp. Ins. Co., Inc*., 35 So. 3d 873 (Fla. 2010).
[48] *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999).
[49] *Supra* note 15.
[50] Net assets were approximately $426.5 million on June 30, 2020. Florida Birth-Related Neurological Injury Compensation Association, Financial Statements for years ended June 30, 2020 and 2019, pg. 5, a*vailable at* https://www.nica.com/downloads/2020%20NICA%20Audited%20Financial%20Statements.pdf (last viewed Mar. 25, 2021).

The actuaries also noted that the NICA's financial position and the potential need for assessment level increases in the longer run would depend on actual investment results and inflation levels experienced over shorter term three to five year periods. The shortfall in assessments (i.e., without the additional investment income realized on the net assets and/or the better than expected inflation) and the indicated funding levels have in the past been offset by the better than expected realized the NICA investment returns and inflation rates. To the extent this favorable relationship continues, the actuaries contend that it is likely additional increases in assessment levels will not be required. Alternatively, the actuaries note that volatility in the prospective results or increases in benefit inflation levels may require assessment level increases at some point in the longer term.

Although the bill increases the cap or maximum amount of the one-time parental award from $100,000 to $250,000, the NICA's investment activities will likely absorb the increased costs estimated at $2.7 million per year and should not result in any significant impact for the NICA or increased assessments for hospitals or physicians.

Since the 2020 actuarial study did not appear to consider the impact of an increase in the death benefit for an infant from $10,000 to $50,000, as provided in the bill, the fiscal impact is indeterminate, but most likely insignificant.

Additional provisions in the bill provide significant changes in the benefits offered in the Florida Birth-Related Neurological Injury Compensation Plan (Plan), which have an indeterminate significant fiscal impact and were not considered in the 2020 actuarial study. To the extent benefits exceed the assessments collected, and the appropriation of funds provided by ch. 88-277, s. 41, Laws of Florida, to the Plan from the Insurance Regulatory Trust Fund are insufficient to maintain the Plan on an actuarially sound basis, under current law the Office of Insurance Regulation is authorized to transfer an additional amount up to $20 million to the NICA from the Insurance Regulatory Trust Fund reserve.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 766.301, 766.303, 766.305, 766.31, 766.313, 766.314, and 766.315.

This bill creates the following sections of the Florida Statutes: 766.3135 and 766.3145.

The bill creates undesignated sections of the Florida law.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:
The committee substitute:

- Provides that it is not the intent for Birth-Related Neurological Injury Compensation Association (NICA) to serve as payor of last resort and it is not the intent to shield physicians who engage in certain activities from filing legitimate claims of medical malpractice against such physicians.
- Requires the NICA to administer the Birth-Related Neurological Injury Compensation Plan (Plan) in a manner that promotes the health and best interest of the Plan participants.
- Extends the time for filing a claim from five years to eight years.
- Requires the Division of Medical Quality Assurance of the Department of Health to conduct a review of claims in which a physician is involved in multiple claims to determine whether the physician's conduct establishes a pattern or practice subject to disciplinary action.
- Requires the Plan to reimburse parents or legal guardian of Plan participants for any service, drug, equipment, or treatment at a reasonable rate if they submit a letter of medical necessity from a provider.
- If the Plan determines that the service, drug, equipment or treatment was not medically necessary, the Plan must ask the parent or legal guardian to provide a second letter of medical necessity from another provider.
- Authorizes the Plan to review and reimburse for experimental treatments using the same medical review process, and if a second letter is not provided, the Plan is not required to provide reimbursement.
- Requires the Plan to reimburse private nursing staff or attendant care at a rate of at least equal to the greater of state or federal minimum hourly wage, regardless of setting.
- Requires the Plan to provide family support services, including mental health, for the immediate family members living with the child.
- Requires the Plan to provide quality of life reimbursement for entertainment and other activities that promote mental health of at least $1,500 per year.
- Requires the Plan to provide transportation assistance for the care of the child or reimburse the cost of upgrading an existing vehicle to accommodate the child's needs.
- Requires the Plan to provide ongoing housing assistance for the child that includes, but is not limited to:
  - Payment assistance for rent and utilities to cover the cost of any increase due to the accommodation of the child's condition.
  - Reimbursement of moving costs.
  - Payment assistance for home construction up to $100,000.
- Requires the Plan to reimburse without any limitations expenses for diapers, baby food, and formula.

- Increases the annual assessment for hospitals, nonparticipating and participating physicians.
- Provides an annual benefit of $5,000 for parents and legal guardians of Plan participants for counseling.
- Provides reimbursement for transportation for all necessary trips for prescription refills.
- Creates code of ethics for specified staff and members of the board of directors.
- Increases board membership from five to seven members by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities.
- Requires the NICA to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The first annual report must include an actuarial analysis of the fiscal impacts of revising certain eligibility standards and benefits.
- Requires the Auditor General to conduct an audit of the NICA.
- Provides a sunset on December 31, 2026, of the NICA and the Plan, unless the Legislature reviews and reenacts the provisions by that date.

CS by Health Policy on March 24, 2021:
The CS increases the death benefit for an infant from $10,000 to $50,000. An ALJ must award this death benefit if he or she determines that the infant died due to a birth-related neurological injury and obstetrical services were delivered by a physician participating in the plan at the time of birth. Like the changes made in the underlying bill, the increased death benefit under the CS would apply to claims filed on or after January 1, 2021.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 766.31, Florida Statutes, are amended to read:

766.31 Administrative law judge awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were

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delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel. Compensation must be provided for the following actual expenses, at a minimum:

1. Diapers and baby formula for the infant from the time of birth and pureed baby food or other baby food for the infant at the appropriate age or developmental stage.

2. A total annual benefit of up to $5,000 for parents or legal guardians of the infant for psychotherapeutic services obtained from providers licensed under chapter 490 or chapter 491.

3. Transportation reimbursement for all necessary trips to the pharmacy each month for prescription fills for the infant.

(b) However, the following expenses are not subject to compensation ~~such expenses shall not include~~:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.

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3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses included under ~~this~~ paragraph (a) may not exceed ~~shall be limited to~~ reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(c) ~~(b)~~1.a. Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award may ~~shall~~ not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum. Beginning on January 1, 2021, the award may not exceed $250,000, and each January 1 thereafter the maximum award authorized under this paragraph shall increase by 3 percent.

b. Parents or legal guardians who received an award pursuant to this section before January 1, 2021, and whose child currently receives benefits under the plan must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $250,000. This additional payment may be made

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in a lump sum or in periodic payments as designated by the parents or legal guardians.

2. Death benefit for the infant in an amount of $50,000 ~~$10,000~~.

(d) ~~(c)~~ Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney's fees, which are ~~shall be~~ subject to the approval and award of the administrative law judge. In determining an award for attorney's fees, the administrative law judge shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

2. The fee customarily charged in the locality for similar legal services.

3. The time limitations imposed by the claimant or the circumstances.

4. The nature and length of the professional relationship with the claimant.

5. The experience, reputation, and ability of the lawyer or lawyers performing services.

6. The contingency or certainty of a fee.

Should there be a final determination of compensability, and the claimants accept an award under this section, the claimants are ~~shall~~ not ~~be~~ liable for any expenses, including attorney's fees, incurred in connection with the filing of a claim under ss. 766.301-766.316 other than those expenses awarded under this section.

(2) The award shall require the immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred.

(a) Within 20 days after the receipt of a request for payment of expenses, the plan must pay the expenses or notify the parents or legal guardians, or their designee, that specific additional information or documentation is needed to evaluate the request or that the request for payment of the expenses is being denied.

(b) Parents or legal guardians, or their designee, must submit any additional information or documentation requested by the plan within 35 days after receipt of the notification by the plan that additional information or documentation is needed. Additional information is considered submitted on the date it is mailed or electronically submitted to the plan.

(c) A request for payment of expenses must be paid or denied within 90 days after receipt of the request. Failure to pay or deny the claim within 120 days after receipt of the request creates an uncontestable obligation to pay the expenses.

Section 2. Section 766.3145, Florida Statutes, is created to read:

766.3145 Code of ethics.—

(1) On or before July 1 of each year, employees of the association must sign and submit a statement attesting that they do not have a conflict of interest as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the association a conflict-of-interest statement.

(2) The executive director, the ombudsman, senior managers,

and members of the board of directors are subject to part III of chapter 112, including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements of s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. Pursuant to s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The executive director, senior managers, and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the association or his or her designee shall notify each existing and newly appointed member of the board of directors and senior managers of his or her duty to comply with the reporting

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requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers who are subject to the public disclosure requirements under s. 112.3145.

(3) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(4) An employee or board member who fails to comply with subsection (2) or (3) is subject to penalties provided under ss. 112.317 and 112.3173.

(5) Any senior manager or executive director of the association who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the association for 2 years after retirement or termination of employment from the association.

Section 3. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), and paragraph (i) of subsection (4) of section 766.315, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)(a) The Florida Birth-Related Neurological Injury Compensation Plan shall be governed by a board of seven ~~five~~ directors which shall be known as the Florida Birth-Related

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Neurological Injury Compensation Association. The association is not a state agency, board, or commission. Notwithstanding ~~the provision of~~ s. 15.03, the association is authorized to use the state seal.

(c) The directors shall be appointed by the Chief Financial Officer as follows:

1. One citizen representative.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

6. One parent or legal guardian representative of an injured infant under the plan.

7. One representative of an advocacy organization for children with disabilities.

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII; the representative of hospitals from a list of at least three names recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council, and one of which is recommended by the Property Casualty Insurers Association of America; and the representative of physicians, other than participating physicians, from a list of three names recommended by the

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Florida Medical Association and a list of three names recommended by the Florida Osteopathic Medical Association. However, the Chief Financial Officer is not required to make an appointment from among the nominees of the respective associations. A participating physician who is named in a pending petition for a claim may not be appointed to the board. An appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician was named in the petition for the claim.

(4) The board of directors shall have the power to:

(i) Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.

1. The board of directors shall employ an ombudsman who will serve at the pleasure of, and must report directly to, the board and who will act as an advocate for the parents and legal guardians of plan participants.

2. The ombudsman shall do all of the following:

a. Provide information and assistance, outreach, and education to parents and legal guardians of plan participants regarding plan benefits and community, state, and federal government resources.

b. Investigate complaints of parents or legal guardians of plan participants regarding the operation of the plan.

c. Provide an annual report to the board regarding the ombudsman’s activities, the disposition of complaints, and any recommendations to improve the operations of the plan and the

delivery of benefits to participants.

(6) On or before January 31, 2022, and by each January 31 thereafter, the association shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

(a) The number of petitions filed for compensation with the division, the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.

(b) The number and dollar amount of paid and denied compensation for expenses by category and the reasons for any denied compensation for expenses by category.

(c) The average turnaround time for paying or denying compensation for expenses.

(d) Legislative recommendations to improve the program.

(e) A summary of any pending or resolved litigation during the year which affects the plan.

(f) For the initial report due on or before January 31, 2022, an actuarial report conducted by an independent actuary that provides an analysis of the estimated costs of implementing the following changes to the plan:

1. Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.

2. Revising the eligibility of participation in the plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired.

3. Increasing the annual special benefit or quality of life benefit from $500 to $2,500 per calendar year.

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Section 4. The Auditor General shall conduct a performance audit of the association and plan to evaluate management's performance in administering the laws, policies, and procedures governing the operations of the association and plan in an efficient and effective manner.

(1) The audit must include evaluations of all of the following:

(a) The protocols used for the payment of expenses, including standards for determining medical necessity and reasonableness of requests for medical care, services, or other benefits provided under the plan and the timeliness of the payment of expenses.

(b) The effectiveness of the association's outreach to inform parents and legal guardians of participants of available benefits and any changes in benefits and processes to resolve disputes regarding the payment of expenses internally.

(c) The efficacy of the current processes for the procurement of goods and services.

(d) The internal controls of the plan and association.

(2) The Auditor General shall release the audit by January 15, 2022.

Section 5. Sections 766.301-766.316, Florida Statutes, are repealed on December 31, 2026, unless reviewed and saved from repeal by the Legislature.

Section 6. The amendments made to s. 766.31(1)(c), Florida Statutes, by this act apply to all claims filed under s. 766.305, Florida Statutes, for which an award was made through entry of final order under s. 766.31(1), Florida Statutes, on or after January 1, 2021.

754030

Section 7. This act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Florida Birth-Related Neurological Injury Compensation Plan; amending s. 766.31, F.S.; revising requirements for the award for compensation for claims under the plan; increasing the maximum amount that may be awarded to the parents or legal guardians of an infant found to have sustained a birth-related neurological injury, as of a specified date; requiring that the maximum award amount be increased by a certain percentage annually; requiring the plan to provide retroactive payments in a specified amount to certain parents or legal guardians; authorizing such payment to made in lump sum or periodic payments; increasing the amount of the death benefit that must be awarded; requiring the plan to act on a request for payment of expenses within a specified timeframe; requiring parents or legal guardians, or their designee, to submit any additional information or documentation requested by the plan within a specified timeframe; requiring the plan to pay or deny a request within a specified timeframe; providing that failure to pay or deny the claim within a specified timeframe results in an uncontestable

obligation to pay the claim; creating s. 766.3145, F.S.; requiring association employees to annually sign and submit a conflict-of-interest statement as a condition of employment; requiring prospective employees to sign and submit such statement as a condition of employment; providing that the executive director, the ombudsman, senior managers, and the board of directors are subject to specified provisions; prohibiting board members from voting on measures under certain circumstances; providing procedures and requirements for board members who have a conflict of interest; requiring the executive director, senior managers, and board members to file certain disclosures; requiring the executive director or his or her designee to notify specified individuals of the reporting requirements; requiring the executive director or his or her designee to submit, at least quarterly, a list of specified individuals to the Commission on Ethics; prohibiting employees and board members from accepting gifts or expenditures from certain individuals; providing penalties; prohibiting certain senior managers and executive directors from representing persons or entities before the association for a specified timeframe; amending s. 766.315, F.S.; revising membership of the plan's board of directors; requiring the board of directors to employ an ombudsman for a specified purpose; providing duties of the ombudsman; requiring the association to submit an annual report to the Governor and the

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Legislature by a specified date; providing requirements for the report; requiring the first report to include a certain actuarial report; providing requirements for the actuarial report; requiring the Auditor General to conduct a performance audit of the association and plan; providing requirements for the audit; requiring the Auditor General to release the audit by a specified date; providing for future repeal; providing applicability; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Book) recommended the following:

Senate Amendment to Amendment (754030) (with title amendment)

Delete lines 5 - 190
and insert:
Section 1. Subsection (2) of section 766.301, Florida Statutes, is amended to read:
766.301 Legislative findings and intent.—
(2) It is the intent of the Legislature to provide compensation, on a no-fault basis, for a limited class of

catastrophic injuries that result in unusually high costs for custodial care and rehabilitation. This plan shall apply only to birth-related neurological injuries and is not intended to serve as the payor of last resort for claims arising out of such injuries. It is not the intent of the Legislature to shield physicians who engage in willful misconduct, gross negligence, or recklessness or to preclude individuals from filing legitimate claims of medical malpractice against such physicians.

Section 2. Subsection (4) is added to section 766.303, Florida Statutes, to read:

766.303 Florida Birth-Related Neurological Injury Compensation Plan; exclusiveness of remedy.—

(4) The Florida Birth-Related Neurological Injury Compensation Association shall administer the plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries who have been accepted into the plan, and the association shall strive to ensure that all of their medically reasonable needs are being met.

Section 3. Subsection (5) of section 766.305, Florida Statutes, is amended to read:

766.305 Filing of claims and responses; medical disciplinary review.—

(5) Upon receipt of such petition, the Division of Medical Quality Assurance shall review the information therein and determine whether it involved conduct by a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 which ~~that~~ is subject to disciplinary action. If a

physician is involved in more than one filed claim, the division also must review the circumstances of all such claims together to determine whether the physician's conduct establishes a pattern of practice subject to disciplinary action. Section 456.073 applies in such cases~~, in which case the provisions of s. 456.073 shall apply~~.

Section 4. Section 766.313, Florida Statutes, is amended to read:

766.313 Limitation on claim.—Any claim for compensation under ss. 766.301-766.316 which ~~that~~ is filed more than 8 ~~5~~ years after the birth of an infant alleged to have a birth-related neurological injury is ~~shall be~~ barred.

Section 5. Section 766.3135, Florida Statutes, is created to read:

766.3135 Plan services.—

(1) Pursuant to an award under s. 766.31(1), the association is responsible for reimbursement of actual expenses for medically necessary and reasonable services for a child under the plan. The plan is not intended to serve as the payor of last resort and the association may not hold itself out as such.

(a) The association must reimburse the parents or legal guardians of a child under the plan for any service, drug, equipment, or treatment at a reasonable rate if they submit a letter of medical necessity from the child's physician or other treating health care provider for such service, drug, equipment, or treatment.

(b) The association may establish an independent review process that uses medical experts to review such requests after

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reimbursement to determine whether the physician's or health care provider's determination of medical necessity was reasonable. If the review finds that such determination was not reasonable, the association may ask the parents or legal guardians to provide a letter of medical necessity from a second health care provider. If such letter is provided, the association may not take further action. If the parents or legal guardians are unable to provide a second letter, the association may debit the reimbursement from future reimbursements.

(c) For experimental treatments, therapies, or programs, the parents or legal guardians of the child must submit a report of medical necessity from the physician or other health care provider which details the medical necessity for the experimental treatment, therapy, or program and provides proof that it has shown objective, observable, and demonstrable medical benefits to other patients similarly situated to the child under the plan. The association may use its review process established under paragraph (b) to conclude whether the report reasonably supports the determination of medical necessity. If the review finds that such determination is not reasonable, the association may require the parents or legal guardians to provide a second report from a different health care provider. If such report is provided, the association must reimburse the parents or legal guardians for the experimental treatment, therapy, or program, as applicable. If the parents or legal guardians are unable to provide a second report, the association is not required to provide reimbursement.

(2) Parents or legal guardians of a child under the plan are eligible for reimbursement of expenses for any of the

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following, at a minimum:

(a) Medical, dental, and hospital care; habilitative services and training; mental health services; music or art therapy; family residential or custodial care; and professional residential and custodial care and services. Reimbursement for private nursing staff or attendant care under this paragraph must be provided at a rate at least equal to the state or federal minimum wage, whichever is greater, and must be reimbursed at the same rate regardless of the setting in which the care is provided.

(b) Medically necessary drugs, special equipment, and facilities.

(c) Family support services for immediate family members living with the child, including, but not limited to, mental health services.

(d) Travel expenses related to the child's care. The association may not limit the amount or type of travel which may be reimbursed or differentiate reimbursement rates based on the purpose of such travel, provided that it is related to the child's care.

(e) Entertainment and other promotion of the child's mental and emotional well-being. The parents or legal guardians of the child are entitled to a reimbursement of at least $1,500 per year under this paragraph.

(f) Nutrition and hygiene needs of the child. The association may not limit reimbursement for diapers, baby food, or formula if such items are appropriate for the child's age or developmental stage.

(3) The association is also responsible for the following:

(a) Providing ongoing transportation assistance for the life of the child. The association must provide parents or legal guardians with a reliable method of transportation for the care of the child or reimburse the cost of upgrading an existing vehicle to accommodate the child's needs. The mode of transportation must take into account the special accommodations required for the specific child. The association may not limit such transportation assistance based on the child's age or weight.

(b) Providing ongoing housing assistance for the life of the child. Such assistance includes, but is not limited to:

1. Payment assistance for rent and utilities to cover the cost of any increase due to the accommodation of the child's condition and medical needs.

2. Reimbursement of moving costs.

3. Payment assistance for home construction costs up to $100,000.

(c) Establishing an online network portal for parents and legal guardians of children under the plan to support one another and exchange information and resources. Access to the online network must be provided at no cost to parents and legal guardians.

Section 6. Paragraph (a) of subsection (5) of section 766.314, Florida Statutes, is amended to read:

766.314 Assessments; plan of operation.—

(5)(a) Beginning January 1, 1990, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, as of the date determined in accordance with the plan of operation,

taking into account persons licensed subsequent to the payment of the initial assessment, shall pay an annual assessment in the amount equal to the initial assessments provided in paragraphs (4)(b) and (c). If payment of the annual assessment by a physician is received by the association by January 31 of any calendar year, the physician shall qualify as a participating physician for that entire calendar year. If the payment is received after January 31 of any calendar year, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the association. Beginning on January 1, 2022, and on each January 1 thereafter, the annual assessment shall increase by 3 percent. On January 1, 1991, and on each January 1 thereafter, the association shall determine the amount of additional assessments necessary pursuant to subsection (7), in the manner required by the plan of operation, subject to any increase determined to be necessary by the Office of Insurance Regulation pursuant to paragraph (7)(b). On July 1, 1991, and on each July 1 thereafter, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, shall pay the additional assessments which were determined on January 1. Beginning January 1, 1990, the entities listed in paragraph (4)(a), including those licensed on or after October 1, 1988, shall pay an annual assessment of $50 per infant delivered during the prior calendar year. The additional assessments which were determined on January 1, 1991, pursuant to ~~the provisions of~~ subsection (7) are ~~shall~~ not ~~be~~ due and payable by the entities listed in paragraph (4)(a) until July 1.

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Section 7. Subsections (1) and (2) of section 766.31, Florida Statutes, are amended to read:

766.31 Administrative law judge awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel. At a minimum, compensation must be provided for the following actual expenses:

1. Diapers and baby formula for the infant from the time of birth and pureed baby food or other baby food for the infant at the appropriate age or developmental stage.

2. A total annual benefit of up to $5,000 for immediate family members who reside with the infant for psychotherapeutic services obtained from providers licensed under chapter 490 or chapter 491.

3. Transportation reimbursement for all necessary trips to the pharmacy each month for prescription fills for the infant.

(b) However, the following expenses are not subject to compensation ~~such expenses shall not include~~:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state

or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.

3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

(c) Expenses included under ~~this~~ paragraph (a) may not exceed ~~shall be limited to~~ reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(d)1.a.~~(b)1.~~ Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award may ~~shall~~ not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum. Beginning on January 1, 2021, the award may not exceed $250,000, and each January 1 thereafter the maximum award authorized under this paragraph shall increase by 3 percent.

b. Parents or legal guardians who received an award

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pursuant to this section before January 1, 2021, and whose child currently receives benefits under the plan must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $250,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians.

2. Death benefit for the infant in an amount of $50,000 ~~$10,000~~.

(e) ~~(c)~~ Reasonable expenses incurred in connection with the filing of a claim under ss. 766.301-766.316, including reasonable attorney ~~attorney's~~ fees, which are ~~shall be~~ subject to the approval and award of the administrative law judge. In determining an award for attorney's fees, the administrative law judge shall consider the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

2. The fee customarily charged in the locality for similar legal services.

3. The time limitations imposed by the claimant or the circumstances.

4. The nature and length of the professional relationship with the claimant.

5. The experience, reputation, and ability of the lawyer or lawyers performing services.

6. The contingency or certainty of a fee.

Should there be a final determination of compensability, and the

claimants accept an award under this section, the claimants are ~~shall~~ not ~~be~~ liable for any expenses, including attorney ~~attorney's~~ fees, incurred in connection with the filing of a claim under ss. 766.301-766.316 other than those expenses awarded under this section.

(2) The award shall require the immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred.

(a) Within 20 days after the receipt of a request for payment of expenses, the plan must pay the expenses or notify the parents or legal guardians, or their designee, that specific additional information or documentation is needed to evaluate the request or that the request for payment of the expenses is being denied.

(b) Parents or legal guardians, or their designee, must submit any additional information or documentation requested by the plan within 35 days after receipt of the notification by the plan that additional information or documentation is needed. Additional information is considered submitted on the date it is mailed or electronically submitted to the plan.

(c) A request for payment of expenses must be paid or denied within 90 days after receipt of the request. Failure to pay or deny the claim within 120 days after receipt of the request creates an uncontestable obligation to pay the expenses.

Section 8. Section 766.3145, Florida Statutes, is created to read:

766.3145 Code of ethics.—

(1) On or before July 1 of each year, employees of the association must sign and submit a statement attesting that they

do not have a conflict of interest as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the association a conflict-of-interest statement.

(2) The executive director, the ombudsman, senior managers, and members of the board of directors are subject to part III of chapter 112, including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements of s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. A board member may not vote on any measure that would inure to his or her special private gain or loss and, notwithstanding s. 112.3143(2), may not vote on any measure that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The executive director, senior managers, and board

members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the association or his or her designee shall notify each existing and newly appointed member of the board of directors and senior managers of his or her duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers who are subject to the public disclosure requirements under s. 112.3145.

(3) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(4) An employee or board member who fails to comply with subsection (2) or subsection (3) is subject to penalties provided under ss. 112.317 and 112.3173.

(5) Any senior manager or executive director of the association who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the association for 2 years after retirement or termination of employment from the association.

Section 9. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), and paragraph (i) of subsection (4) of section 766.315, Florida Statutes, are amended, and

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subsection (6) is added to that section, to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)(a) The Florida Birth-Related Neurological Injury Compensation Plan shall be governed by a board of seven ~~five~~ directors which shall be known as the Florida Birth-Related Neurological Injury Compensation Association. The association is not a state agency, board, or commission. Notwithstanding ~~the provision of~~ s. 15.03, the association is authorized to use the state seal.

(c) The Chief Financial Officer shall appoint the directors, ensuring that at least one board member is a woman, ~~shall be appointed by the Chief Financial Officer~~ as follows:

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

And the title is amended as follows:

Between lines 309 and 310

insert:

766.301, F.S.; revising legislative intent; amending s. 766.303, F.S.; requiring the Florida Birth-Related Neurological Injury Compensation Association to administer the Florida Birth-Related Neurological Injury Compensation Plan in a specified manner; amending s. 766.305, F.S.; requiring the Division of Medical Quality Assurance of the Department of Health to review all claims under the plan involving a particular physician together when making certain determinations; amending s. 766.313, F.S.; revising the timeframe within which birth-related neurological

injury compensation claims must be filed; creating s. 766.3135, F.S.; providing that the Florida Birth-Related Neurological Injury Compensation Association is responsible for reimbursing parents and legal guardians for actual expenses for medically necessary and reasonable services for an injured child; prohibiting the association from holding itself out as the payor of last resort for services under the plan; requiring the association to reimburse parents and legal guardians for services, drugs, equipment, or treatment if they provide a certain letter of medical necessity; authorizing the association to establish a review process for such reimbursements; requiring parents and legal guardians to submit a certain report to the association for reimbursement of experimental treatments, therapies, or programs; authorizing the association to use its review process to make certain determinations regarding such reimbursements; requiring the association to reimburse parents and legal guardians for experimental treatments, therapies, and programs under certain circumstances; specifying expenses for which parents and legal guardians are eligible to receive reimbursement; providing duties for the association; amending s. 766.314, F.S.; beginning on a specified date, requiring the annual assessments imposed on physicians and certain entities participating in the plan to be increased by a certain percentage annually; amending s.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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The Committee on Appropriations (Farmer) recommended the following:

Senate Amendment to Amendment (754030) (with directory and title amendments)

Delete lines 114 - 292
and insert:
or denied within 90 days after receipt of the request and must be accompanied by a written explanation of the determination. Failure to pay or deny the claim within 120 days after receipt of the request creates an uncontestable obligation to pay the expenses.

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(3) The award must require the association to conduct a periodic review of benefits provided to claimants to ensure that they are receiving the greatest benefit amount for which they are eligible.

(4) The award must require the reimbursement of expenses for private nursing staff or attendant care to be provided at a rate at least equal to the state or federal minimum wage, whichever is greater.

Section 2. Section 766.3145, Florida Statutes, is created to read:

766.3145 Code of ethics.—

(1) On or before July 1 of each year, employees of the association must sign and submit a statement attesting that they do not have a conflict of interest as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the association a conflict-of-interest statement.

(2) The executive director, the ombudsman, senior managers, and members of the board of directors are subject to part III of chapter 112, including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements of s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. Pursuant to s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by

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whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The executive director, senior managers, and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the association or his or her designee shall notify each existing and newly appointed member of the board of directors and senior managers of his or her duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers who are subject to the public disclosure requirements under s. 112.3145.

(3) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(4) An employee or board member who fails to comply with subsection (2) or (3) is subject to penalties provided under ss. 112.317 and 112.3173.

(5) Any senior manager or executive director of the association who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the association for 2 years after retirement or termination of employment from the association.

Section 3. Paragraphs (a) and (c) of subsection (1), subsection (2), paragraph (i) of subsection (4), and paragraph (b) of subsection (5) of section 766.315, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)(a) The Florida Birth-Related Neurological Injury Compensation Plan shall be governed by a board of nine ~~five~~ directors which shall be known as the Florida Birth-Related Neurological Injury Compensation Association. The association is not a state agency, board, or commission. Notwithstanding ~~the provision of~~ s. 15.03, the association is authorized to use the state seal.

(c) The President of the Senate and the Speaker of the House of Representatives, alternating appointments as vacancies occur, shall appoint the directors, ensuring that the board represents the gender diversity of this state, ~~shall be appointed by the~~ ~~Chief Financial Officer~~ as follows:

1. One citizen representative.

2. One representative of participating physicians.

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3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

6. One parent or legal guardian representative of an injured infant under the plan.

7. One representative of an advocacy organization for children with disabilities.

8. One representative who is a financial management expert with a fiduciary duty to clients.

9. One member in good standing of The Florida Bar who is not affiliated with any of the groups identified in subparagraphs 2.-8. and who has experience representing cases on behalf of children who have been injured in a health care setting. This director must not have represented anyone in legal matters against the association within the 2-year period immediately preceding appointment to the board and may not handle any legal matters against the association while serving as a director or within 2 years after leaving the board.

(2)(a) The President of the Senate or the Speaker of the House of Representatives, as applicable, ~~Chief Financial Officer~~ may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII; the representative of hospitals from a list of at least three names recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the

Florida Insurance Council, and one of which is recommended by the Property Casualty Insurers Association of America; ~~and~~ the representative of physicians, other than participating physicians, from a list of three names recommended by the Florida Medical Association and a list of three names recommended by the Florida Osteopathic Medical Association; the parent or guardian of a child from a list of three names recommended by the Governor; the financial management expert from a list of three names recommended by the Governor; and the member of The Florida Bar from a list of three names recommended by the President of The Florida Bar. However, the President of the Senate or the Speaker of the House of Representatives, as applicable, ~~Chief Financial Officer~~ is not required to make an appointment from among the nominees of the respective associations. A participating physician who is named in a pending petition for a claim may not be appointed to the board. An appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician was named in the petition for the claim.

(b) The President of the Senate or the Speaker of the House of Representatives, as applicable, ~~Chief Financial Officer~~ shall promptly notify the appropriate ~~medical~~ association or person identified in paragraph (a) who makes recommendations upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.

(c) The Governor, the President of the Senate, or the Speaker of the House of Representatives may remove a director from office for misconduct, malfeasance, misfeasance, or neglect

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of duty in office. Any vacancy so created shall be filled as provided in paragraph (a).

(4) The board of directors shall have the power to:

(i) Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.

1. The board of directors shall employ an ombudsman who will serve at the pleasure of, and must report directly to, the board and who will act as an advocate for the parents and legal guardians of plan participants.

2. The ombudsman shall do all of the following:

a. Provide information and assistance, outreach, and education to parents and legal guardians of plan participants regarding plan benefits and community, state, and federal government resources.

b. Investigate complaints of parents or legal guardians of plan participants regarding the operation of the plan.

c. Provide an annual report to the board regarding the ombudsman’s activities, the disposition of complaints, and any recommendations to improve the operations of the plan and the delivery of benefits to participants.

(5)

(b) All meetings of the board of directors are subject to the requirements of s. 286.011, and all books, records, and audits of the plan are open to the public for reasonable inspection ~~to the general public~~, except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of s. 119.07(1) and

790104

s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the association is subject to the authority of the board of directors, which is responsible therefor.

(6) On or before January 31, 2022, and by each January 31 thereafter, the association shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

(a) The number of petitions filed for compensation with the division, the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.

(b) The number and dollar amount of paid and denied compensation for expenses by category and the reasons for any denied compensation for expenses by category.

(c) The average turnaround time for paying or denying compensation for expenses.

(d) Legislative recommendations to improve the program.

(e) A summary of any pending or resolved litigation during the year which affects the plan.

(f) For the initial report due on or before January 31, 2022, an actuarial report conducted by an independent actuary that provides an analysis of the estimated costs of implementing the following changes to the plan:

1. Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.

790104

2. Revising the eligibility of participation in the plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired.

3. Increasing the annual special benefit or quality of life benefit from $500 to $2,500 per calendar year.

Section 4. The Auditor General shall conduct an annual performance audit of the association and plan to evaluate management's performance in administering the laws, policies, and procedures governing the operations of the association and plan in an efficient and effective manner.

(1) The audit must include evaluations of all of the following:

(a) The protocols used for the payment of expenses, including standards for determining medical necessity and reasonableness of requests for medical care, services, or other benefits provided under the plan and the timeliness of the payment of expenses.

(b) The effectiveness of the association's outreach to inform parents and legal guardians of participants of available benefits and any changes in benefits and processes to resolve disputes regarding the payment of expenses internally.

(c) The efficacy of the current processes for the procurement of goods and services.

(d) The internal controls of the plan and association.

(2) The Auditor General shall release the audit and publish it on its website by January 15 of each year, beginning on January 15, 2022.

790104

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 5 - 6
and insert:
Section 5. Present subsection (3) of section 766.31, Florida Statutes, is redesignated as subsection (5), a new subsection (3) and subsection (4) are added to that section, and subsections (1) and (2) are amended, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 355 - 366
and insert:
of directors; authorizing the Governor, the President of the Senate, or the Speaker of the House of Representatives to remove a director for specified conduct; requiring the board of directors to employ an ombudsman for a specified purpose; providing duties of the ombudsman; providing that meetings of the board of directors are subject to public meeting requirements; requiring the association to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; requiring the first report to include a certain actuarial report; providing requirements for the actuarial report; requiring the Auditor General to conduct an annual performance audit of the association and plan; providing requirements for the audit; requiring the Auditor General to release the audit and publish it on

790104

its website by a specified date each year;

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Appropriations (Farmer) recommended the following:

Senate Amendment to Amendment (754030) (with directory and title amendments)

Delete lines 114 - 292
and insert:
denied within 90 days after receipt of the request and must be accompanied by a written explanation of the determination. Failure to pay or deny the claim within 120 days after receipt of the request creates an uncontestable obligation to pay the expenses.

601382

(3) The award must require the association to conduct a periodic review of benefits provided to claimants to ensure that they are receiving the greatest benefit amount for which they are eligible.

Section 2. Section 766.3145, Florida Statutes, is created to read:

766.3145 Code of ethics.—

(1) On or before July 1 of each year, employees of the association must sign and submit a statement attesting that they do not have a conflict of interest as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the association a conflict-of-interest statement.

(2) The executive director, the ombudsman, senior managers, and members of the board of directors are subject to part III of chapter 112, including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements of s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. Pursuant to s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss

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of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The executive director, senior managers, and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the association or his or her designee shall notify each existing and newly appointed member of the board of directors and senior managers of his or her duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers who are subject to the public disclosure requirements under s. 112.3145.

(3) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(4) An employee or board member who fails to comply with subsection (2) or (3) is subject to penalties provided under ss. 112.317 and 112.3173.

(5) Any senior manager or executive director of the

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association who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the association for 2 years after retirement or termination of employment from the association.

Section 3. Paragraphs (a) and (c) of subsection (1), subsection (2), paragraph (i) of subsection (4), and paragraph (b) of subsection (5) of section 766.315, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)(a) The Florida Birth-Related Neurological Injury Compensation Plan shall be governed by a board of nine ~~five~~ directors which shall be known as the Florida Birth-Related Neurological Injury Compensation Association. The association is not a state agency, board, or commission. Notwithstanding ~~the provision of~~ s. 15.03, the association is authorized to use the state seal.

(c) The directors shall be appointed by the Chief Financial Officer, ensuring that the board represents the gender diversity of this state, as follows:

1. One citizen representative.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

6. One parent or legal guardian representative of an injured infant under the plan.

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7. One representative of an advocacy organization for children with disabilities.

8. One representative who is a financial management expert with a fiduciary duty to clients.

9. One member in good standing of The Florida Bar who is not affiliated with any of the groups identified in subparagraphs 2.-8. and who has experience representing cases on behalf of children who have been injured in a health care setting. This director must not have represented anyone in legal matters against the association within the 2-year period immediately preceding appointment to the board and may not handle any legal matters against the association while serving as a director or within 2 years after leaving the board.

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII; the representative of hospitals from a list of at least three names recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council, and one of which is recommended by the Property Casualty Insurers Association of America; ~~and~~ the representative of physicians, other than participating physicians, from a list of three names recommended by the Florida Medical Association and a list of three names recommended by the Florida Osteopathic Medical Association; the parent or guardian of a child from a list of three names

recommended by the Governor; the financial management expert from a list of three names recommended by the Governor; and the member of The Florida Bar from a list of three names recommended by the President of The Florida Bar. However, the Chief Financial Officer is not required to make an appointment from among the nominees of the respective associations. A participating physician who is named in a pending petition for a claim may not be appointed to the board. An appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician was named in the petition for the claim.

(b) The Chief Financial Officer shall promptly notify the appropriate ~~medical~~ association or person identified in paragraph (a) who makes recommendations upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.

(c) The Governor, the President of the Senate, the Speaker of the House of Representatives, or the Chief Financial Officer may remove a director from office for misconduct, malfeasance, misfeasance, or neglect of duty in office. Any vacancy so created shall be filled as provided in paragraph (a).

(4) The board of directors shall have the power to:

(i) Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.

1. The board of directors shall employ an ombudsman who will serve at the pleasure of, and must report directly to, the

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board and who will act as an advocate for the parents and legal guardians of plan participants.

2. The ombudsman shall do all of the following:

a. Provide information and assistance, outreach, and education to parents and legal guardians of plan participants regarding plan benefits and community, state, and federal government resources.

b. Investigate complaints of parents or legal guardians of plan participants regarding the operation of the plan.

c. Provide an annual report to the board regarding the ombudsman's activities, the disposition of complaints, and any recommendations to improve the operations of the plan and the delivery of benefits to participants.

(5)

(b) All meetings of the board of directors are subject to the requirements of s. 286.011, and all books, records, and audits of the plan are open to the public for reasonable inspection ~~to the general public~~, except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the association is subject to the authority of the board of directors, which is responsible therefor.

(6) On or before January 31, 2022, and by each January 31 thereafter, the association shall submit an annual report to the

601382

Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

(a) The number of petitions filed for compensation with the division, the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.

(b) The number and dollar amount of paid and denied compensation for expenses by category and the reasons for any denied compensation for expenses by category.

(c) The average turnaround time for paying or denying compensation for expenses.

(d) Legislative recommendations to improve the program.

(e) A summary of any pending or resolved litigation during the year which affects the plan.

(f) For the initial report due on or before January 31, 2022, an actuarial report conducted by an independent actuary that provides an analysis of the estimated costs of implementing the following changes to the plan:

1. Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.

2. Revising the eligibility of participation in the plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired.

3. Increasing the annual special benefit or quality of life benefit from $500 to $2,500 per calendar year.

Section 4. The Auditor General shall conduct an annual performance audit of the association and the plan to evaluate management’s performance in administering the laws, policies,

601382

and procedures governing the operations of the association and the plan in an efficient and effective manner.

(1) The audit must include evaluations of all of the following:

(a) The protocols used for the payment of expenses, including standards for determining medical necessity and reasonableness of requests for medical care, services, or other benefits provided under the plan and the timeliness of the payment of expenses.

(b) The effectiveness of the association's outreach to inform parents and legal guardians of participants of available benefits and any changes in benefits and processes to resolve disputes regarding the payment of expenses internally.

(c) The efficacy of the current processes for the procurement of goods and services.

(d) The internal controls of the plan and association.

(2) The Auditor General shall release the audit and publish it on its website by January 15 of each year, beginning on January 15, 2022.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 5 - 6

and insert:

Section 5. Present subsection (3) of section 766.31, is redesignated as subsection (4), a new subsection (3) is added to that section, and subsections (1) and (2) are amended, to read:

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

And the title is amended as follows:

Delete lines 355 - 366

and insert:

of directors; authorizing the Governor, the Legislature, or the Chief Financial Officer to remove a director for specified conduct; requiring the board of directors to employ an ombudsman for a specified purpose; providing duties of the ombudsman; providing that meetings of the board of directors are subject to public meeting requirements; requiring the association to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; requiring the first report to include a certain actuarial report; providing requirements for the actuarial report; requiring the Auditor General to conduct an annual performance audit of the association and plan; providing requirements for the audit; requiring the Auditor General to release the audit and publish it on its website by a specified date each year;

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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/20/2021	.	
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The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Before line 14
insert:
Section 1. Subsection (2) of section 766.301, Florida Statutes, is amended to read:
766.301 Legislative findings and intent.—
(2) It is the intent of the Legislature to provide compensation, on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for

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custodial care and rehabilitation. This plan shall apply only to birth-related neurological injuries and is not intended to serve as the payor of last resort for claims arising out of such injuries. It is not the intent of the Legislature to shield physicians who engage in willful misconduct, gross negligence, or recklessness or to preclude individuals from filing legitimate claims of medical malpractice against such physicians.

Section 2. Subsection (5) of section 766.305, Florida Statutes, is amended to read:

766.305 Filing of claims and responses; medical disciplinary review.—

(5) Upon receipt of such petition, the Division of Medical Quality Assurance shall review the information therein and determine whether it involved conduct by a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 which ~~that~~ is subject to disciplinary action. If a physician is involved in more than one filed claim, the division also must review the circumstances of all such claims together to determine whether the physician's conduct establishes a pattern of practice subject to disciplinary action. Section 456.073 applies in such cases~~, in which case the provisions of s. 456.073 shall apply~~.

Section 3. Section 766.313, Florida Statutes, is amended to read:

766.313 Limitation on claim.—Any claim for compensation under ss. 766.301-766.316 which ~~that~~ is filed more than 8 ~~5~~ years after the birth of an infant alleged to have a birth-related neurological injury is ~~shall be~~ barred.

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Section 4. Section 766.3135, Florida Statutes, is created to read:

766.3135 Plan services.—

(1) Pursuant to an award under s. 766.31(1), the association is responsible for reimbursement of actual expenses for medically necessary and reasonable services for the injured child under the plan. The plan is not intended to serve as the payor of last resort and the association may not hold itself out as such. The association must reimburse the parent or legal guardian of the child for any service, drug, equipment, or treatment at a reasonable rate if he or she submits a letter of medical necessity from the child's physician or other treating health care provider for such service, drug, equipment, or treatment. The association may establish an independent review process that uses medical experts to review such requests after reimbursement to determine whether the physician's or health care provider's determination of medical necessity was reasonable. If the medical experts find that such determination was not reasonable, the association may ask the parent or legal guardian to provide a letter of medical necessity from a second health care provider. If provided, the association may not take further action. If the parent or legal guardian is unable to provide a second letter, the association may debit the reimbursement from future reimbursements.

(2) Parents or legal guardians of the child are eligible for reimbursement of expenses for any of the following, at a minimum:

(a) Medical, dental, and hospital care; habilitative services and training; mental health services; music or art

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therapy; family residential or custodial care; and professional residential and custodial care and services. Reimbursement for private nursing staff or attendant care under this paragraph must be provided at a rate at least equal to the state or federal minimum wage, whichever is greater, and must be reimbursed at the same rate regardless of the setting in which the care is provided.

(b) Medically necessary drugs, special equipment, and facilities.

(c) Family support services for immediate family members living with the child, including, but not limited to, mental health services.

(d) Travel expenses related to the child's care. The association may not limit the amount or type of travel which may be reimbursed or differentiate reimbursement rates based on the purpose of such travel, provided that it is related to the child's care.

(e) Entertainment and other promotion of the child's wellbeing. The parents or legal guardians of a child are entitled to a reimbursement of at least $1,500 per year under this paragraph.

(f) Nutrition and hygiene needs of the child. The association may not limit reimbursement for diapers, baby food, or formula if such items are appropriate for the child's age or developmental stage.

(3) The association is also responsible for the following:

(a) Providing ongoing transportation assistance for the life of the child. The association must provide parents or legal guardians with a reliable method of transportation for the care

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of the child or reimburse them the cost of upgrading an existing vehicle to accommodate the child's needs. The mode of transportation must take into account the special accommodations required for the specific child. The association may not limit such transportation assistance based on the child's age or weight.

(b) Providing ongoing housing assistance for the life of the child. Such assistance includes, but is not limited to:

1. Payment assistance for rent and utilities to cover the cost of any increase due to the accommodation of the child's condition and medical needs.

2. Reimbursement of moving costs.

3. Payment assistance for home construction costs up to $100,000.

(c) Establishing an online network portal for parents and legal guardians of children under the plan to support one another and exchange information and resources. Access to the online network must be provided at no cost to the parents and legal guardians.

Section 5. Paragraph (a) of subsection (5) of section 766.314, Florida Statutes, is amended to read:

766.314 Assessments; plan of operation.—

(5)(a) Beginning January 1, 1990, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, as of the date determined in accordance with the plan of operation, taking into account persons licensed subsequent to the payment of the initial assessment, shall pay an annual assessment in the amount equal to the initial assessments provided in paragraphs

(4)(b) and (c). If payment of the annual assessment by a physician is received by the association by January 31 of any calendar year, the physician shall qualify as a participating physician for that entire calendar year. If the payment is received after January 31 of any calendar year, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the association. Beginning on January 1, 2022, and on each January 1 thereafter, the annual assessment shall increase by 3 percent. On January 1, 1991, and on each January 1 thereafter, the association shall determine the amount of additional assessments necessary pursuant to subsection (7), in the manner required by the plan of operation, subject to any increase determined to be necessary by the Office of Insurance Regulation pursuant to paragraph (7)(b). On July 1, 1991, and on each July 1 thereafter, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, shall pay the additional assessments which were determined on January 1. Beginning January 1, 1990, the entities listed in paragraph (4)(a), including those licensed on or after October 1, 1988, shall pay an annual assessment of $50 per infant delivered during the prior calendar year. The additional assessments which were determined on January 1, 1991, pursuant to ~~the provisions of~~ subsection (7) are ~~shall~~ not ~~be~~ due and payable by the entities listed in paragraph (4)(a) until July 1.

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

And the title is amended as follows:

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Delete line 3
and insert:
neurological injuries; amending s. 766.301, F.S.; revising legislative intent; amending s. 766.305, F.S.; requiring the Division of Medical Quality Assurance of the Department of Health to review all claims under the Florida Birth-Related Neurological Injury Compensation Plan involving a particular physician together when making certain determinations; amending s. 766.313, F.S.; revising the timeframe within which birth-related neurological injury compensation claims must be filed; creating s. 766.3135, F.S.; providing that the Florida Birth-Related Neurological Injury Compensation Association is responsible for reimbursing parents and legal guardians for actual expenses for medically necessary and reasonable services for the injured child; prohibiting the association from holding itself out as the payor of last resort for services under the plan; requiring the association to reimburse parents and legal guardians for services, drugs, equipment, or treatment if they provide a certain letter of medical necessity; authorizing the association to establish a certain review process for such reimbursements; specifying expenses for which parents and legal guardians are eligible to receive reimbursement; providing duties for the association; amending s. 766.314, F.S.; beginning on a specified date, requiring the annual assessments imposed on physicians

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and certain entities participating in the plan to be increased by a certain percentage annually; amending s. 766.31, F.S.;

By the Committee on Health Policy; and Senators Burgess and Book

588-03320-21 20211786c1

A bill to be entitled

An act relating to payments for birth-related neurological injuries; amending s. 766.31, F.S.; increasing the amount that may be awarded to the parents or legal guardians of an infant found to have sustained a birth-related neurological injury; requiring that such amount be revised annually; increasing the amount of the death benefit that may be awarded; providing for retroactive application; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 766.31, Florida Statutes, is amended to read:

766.31 Administrative law judge awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(b)1. Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award may ~~shall~~ not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum. Beginning on January 1, 2021, the award may not exceed $250,000, and each January 1 thereafter the award authorized under this paragraph shall increase by 3

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

588-03320-21 20211786c1

percent.

2. Death benefit for the infant in an amount of $50,000 ~~$10,000~~.

Section 2. The amendments made to s. 766.31, Florida Statutes, by this act apply to claims filed under s. 766.305, Florida Statutes, on or after January 1, 2021.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #1786**, relating to Payments for Birth-related Neurological Injuries, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR LAUREN BOOK
32nd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Regulated Industries, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Health Policy
Rules

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEE:
Joint Legislative Budget Commission

April 16, 2021

Dear Chair Stargel,

It has been a pleasure and a privilege to serve under you on the Senate Appropriations Committee as we work to shape meaningful public policy for the State of Florida. I am writing today to ask for your help as Chair so that we may ensure the health and safety of some of our state's most vulnerable families.

Next week, you have placed CS/SB 1786: Payments for Birth-related Neurological Injuries on our Committee Calendar. With this good bill, Senator Burgess and I seek to provide positive improvements to the Florida Birth-Related Neurological Injury Compensation Association (NICA) created by the Florida Legislature in 1988.

Senator Burgess and I have learned that several families served by NICA will be traveling to Tallahassee to testify in support of the bill and to share their experiences with our Committee. As you can imagine, these parents – mostly mothers – have the weight of the world on their shoulders, caring for children with severe physical and neurological disabilities. That weight only increased over the past year, as their children are extremely vulnerable to the COVID-19 virus.

To minimize any risk of COVID exposure for these herculean mothers who are operating under undeniably special circumstances, I am requesting permission to have them testify in our committee room. While every precaution is being taken to ensure safety for those providing remote testimonies, the Civic Center is being flooded with individuals seeking to have their voices heard as Session draws to a close.

The sheer volume of individuals at the remote site increases the risk exponentially for these moms – many of whom avoid grocery stores and other such crowded places.

REPLY TO:
❒ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
❒ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: *www.flsenate.gov*

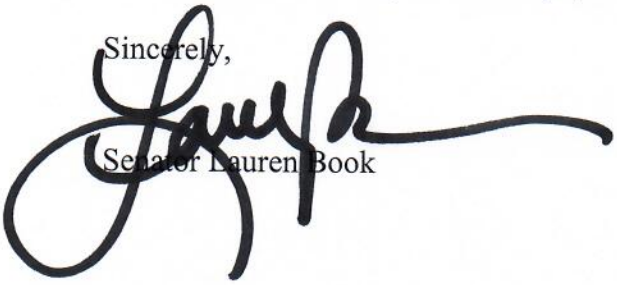
WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

Thank you in advance for your consideration of this unique circumstance, and for allowing the CS/SB 1786 to be heard in the Appropriations Committee next week. As Senator Burgess and I look forward to sharing, this legislation has the power to change these deserving families' lives in transformational ways.

Please let me know if you have any questions about this request. I am available at any time.

Sincerely,



Senator Lauren Book

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1786
Bill Number (if applicable)

790104 (Farmer)
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Name Stephen A. Ecenia

Job Title General Counsel, NICA

Address 119 S. Monroe St., Suite 202
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-6788

Email steve@rutledge-ecenia.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Florida Birth-Related Neurological Injury Compensation Association ("NICA")

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1786
Bill Number (if applicable)

754030 (Burgess)
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Name Tana D. Storey

Job Title Attorney

Address 119 S. Monroe St., Suite 202
Street

Phone 850-681-6788

Tallahassee — *City* | FL — *State* | 32301 — *Zip*

Email tana@rutledge-ecenia.com

Speaking: ☑ For ☐ Against ☑ Information

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

Representing Florida Birth-Related Neurological Injury Compensation Association ("NICA")

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Name Shawna Pollock

Job Title NICA Parent

Address 2360 Christopher Pl # 1
Street

Phone 850-488-8191

Tallahassee FL 32308
City *State* *Zip*

Email tana@rutledge-ecenia.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self (Family)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

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4/19/21
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Name Bibi Khan

Job Title NICA Parent

Address 2360 Christopher Pl # 1
Street

Phone 850-488-8191

Tallahassee — FL — 32308
City — *State* — *Zip*

Email tana@rutledge-ecenia.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self (Family)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2024
Meeting Date

1786
~~754030~~
Bill Number (if applicable)

754030
Amendment Barcode (if applicable)

Topic NICA Sunset

Name Mark Delegal

Job Title

Address 201 East Park Ave
Street
Tallahassee FL 32312
City *State* *Zip*

Phone 850 583-2400

Email mark@dacfl.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing The Doctors Company, Pro Assurance, Mag Mutual

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/19/2021
Meeting Date

1786
Bill Number (if applicable)

559616
Amendment Barcode (if applicable)

Topic NICA

Name Mark Delegal

Job Title

Address 201 East Park Ave.
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-583-2408

Email mark@dactl.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing The Doctors Company, ProAssurance, MagMutual

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1786
Bill Number (if applicable)

Topic Payments for Birth-related Neurological Injuries 754030
Amendment Barcode (if applicable)

Name Beth A. Vecchioli (Vetch-ee-o-lee)

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St. Ste 600
Street
Tallahassee, FL 32301
City State Zip

Phone 850-425-5623

Email beth.vecchioli@mkhaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1786
Bill Number (if applicable)

140544
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries

Name Beth A. Vecchioli (Vetch-ee-o-lee)

Job Title Senior Policy Advisor

Address 315 S. Calhoun St., Ste 600
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City *State* *Zip*

Phone 850-425-5623

Email beth.vecchioli@hklaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-19-21
Meeting Date

1786
Bill Number (if applicable)

Topic Payments for Birth-related Neurological Injuries

790104
Amendment Barcode (if applicable)

Name Beth A. Vecchioli (Vetch-ee-o-lee)

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St. Ste 600
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries

Name Beth A. Vecchioli (Vetch-ee-o-lee)

Job Title Sr. Policy Advisor

Address 315 S. Monroe St, Ste 600
Street
Tallahassee, FL 32301
City State Zip

Phone 850-425-5623

Email beth.vecchioli@hklaw.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing National Association of Mutual Insurance Companies

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2020
Meeting Date

1786
Bill Number (if applicable)

601382
Amendment Barcode (if applicable)

Topic NICA

Name Mark Delegal

Job Title

Address 201 East Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-2400

Email mark@dlacfl.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Doctors Company, MagMutual, ProAssurance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2021
Meeting Date

1786
Bill Number (if applicable)

790104
Amendment Barcode (if applicable)

Topic NICA

Name Mark Delegal

Job Title

Address 201 East Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850583-2400

Email Mark@dacfl.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing The Doctors Company, Mag Mutual, ProAssurance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/2021
Meeting Date

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MICA

Name Mark Delegal

Job Title

Address 201 East Park Ave
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 8505832400

Email Mark@dacFL

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Doctors Company, Pro Assurance, Mag Mutual

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

SB 1786
Bill Number (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Amendment Barcode (if applicable)

Name Michael Devine

Job Title NICA Parent

Address 2360 Christopher Pl # 1
Street

Phone 850-488-8191

Tallahassee | FL | 32308
City | *State* | *Zip*

Email tana@rutledge-ecenia.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self (Family)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries/NICA Plan

Name Rock Pollock

Job Title NICA Parent

Address 2360 Christopher Pl # 1
Street

Phone 850-488-8191

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email tana@rutledge-ecenia.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self (Family)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2021
Meeting Date

SB 1786
Bill Number (if applicable)

#140544 (?)
Amendment Barcode (if applicable)

Topic NICA Families

Name Charity Butler

Job Title NICA Mom

Address 5320 Bright Meadows Rd.
Street

Phone 850-450-9752

Milton, FL 32570
City *State* *Zip*

Email charitybutler@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NICA families

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

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4/19/21
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1786
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Payments for Birth Related Neurological Injuries

Name Bill Cotterall

Job Title General Counsel

Address 218 S Monroe Street
Street

Phone 850-224-9403

Tallahassee
City

FL
State

32301
Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04.19.21
Meeting Date

1786
Bill Number (if applicable)

1140544
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 18, 2021
Meeting Date

1786
Bill Number (if applicable)

559616
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Phone 850-222-0170

Tallahassee FL 32301
City *State* *Zip*

Email William@fljustice.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

04.19.21
Meeting Date

1786
Bill Number (if applicable)

754030 – delete all
Amendment Barcode (if applicable)

Topic Payments for Birth-related Neurological Injuries

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Phone 850-222-0170

Tallahassee FL 32301
City *State* *Zip*

Email William@fljustice.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/17/20
Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic NICA

Name Jayme LO'Connell

Job Title

Address 200 NE Highway 353
Street
Old Town FL 32680
City *State* *Zip*

Phone 727-643-7493

Email Wnabmedical@ivc.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1798
INTRODUCER:	Senators Perry and Diaz
SUBJECT:	Higher Education
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 1798 establishes a waiver of 100 percent of tuition and fees for one course in a program of strategic emphasis for every course in such a program for which a student pays the full tuition and fees. In order to qualify for the waiver, a student must:

- Be a resident for tuition purposes.
- Initially enroll full-time at a state university for the fall academic term immediately following high school graduation.
- Earn at least 60 semester credit hours towards a baccalaureate degree within two years after initial enrollment.
- Enroll in a program of strategic emphasis as specified by the Board of Governors (BOG).

In addition, the bill specifies that a waiver so granted is applicable only for upper-level courses and up to 110 percent of the number of required credit hours of the baccalaureate degree program.

The bill requires the BOG to adopt regulations to administer the above, and requires each state university to report to the BOG the number and value of all such waivers granted annually.

The bill does not require a state appropriation. However, state universities will have reduced revenues from tuition and fees for each eligible student who enrolls in a program of strategic emphasis. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

Tuition and Fees

Tuition is the basic fee a student is charged for instruction provided by a public postsecondary educational institution in Florida.[1] All students are charged fees except students who are exempt or whose fees are waived. State university boards of trustees are authorized to establish fees, which include activity and service, health, and athletic fees; a technology fee; a distance learning fee; a financial aid fee; and a tuition differential fee.[2]

Residency for Tuition Purposes

To qualify as a resident for tuition purposes, a person or, if that person is a dependent child, his or her parent or parents must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.[3]

Tuition and Fee Rate

The State University System (SUS) resident undergraduate tuition is set in law at $105.07 per credit hour.[4] The 2020-2021 SUS average resident undergraduate tuition and fees is $199.72 per credit hour. The tuition and fees at Florida International University is $218.71 per credit hour, whereas the tuition and fees at Florida Polytechnic University is $164.65 per credit hour.[5]

Fee Waivers

Each university board of trustees is authorized to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. All fees waived must be based on policies that are adopted by university boards of trustees pursuant to regulations adopted by the Board of Governors (BOG). Each university must report the purpose, number, and value of all fee waivers granted annually in a format prescribed by the BOG.[6]

Board of Governors

The BOG is fully responsible for the operation, regulation, control, and management of the whole university system.[7] The BOG must exercise its authority in a manner that supports, promotes, and enhances a K-20 education system that provides affordable access to postsecondary educational opportunities for residents of the state.[8]

---

[1] Section 1009.01(1), F.S.
[2] Section 1009.24(2), (4), (5), (7) through (13), (14), (16), and (17) F.S.
[3] Section. 1009.21(2)(a), F.S. A person may establish legal residence by maintaining residence in this state for the preceding year, purchasing a home which is occupied by him or her as his or her residence, or establishing a domicile in this state as specified in law. Section 1009.21(1)(d), F.S.
[4] Section 1009.24(4)(a), F.S.
[5] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 1.
[6] Section 1009.26(9), F.S.
[7] Art. IX, s. 7(d), Fla. Const.
[8] Section 1001.70(3), F.S.

The BOG, or the BOG's designee, is responsible for cost-effective policy decisions appropriate to each constituent university's mission, the implementation and maintenance of high-quality education programs within law, the measurement of performance, the reporting of information, and the provision of input regarding state policy, budgeting, and education standards. Further, the BOG is required to develop a strategic plan specifying goals and objectives for the SUS and each constituent university, including each university's contribution to overall system goals and objectives. The strategic plan must include:

- Performance metrics and standards common for all institutions and metrics and standards unique to institutions depending on institutional core missions.
- Criteria for designating baccalaureate degree and master's degree programs at specified universities as high-demand programs of emphasis.[9]

Programs of Strategic Emphasis

The Programs of Strategic Emphasis exist as one of several tools for aligning the degree production goals of the SUS with the economic and workforce needs of Florida.[10] Florida law specifies that 50 percent of the criteria for designation as high-demand programs of emphasis must be based on achievement of performance outcome thresholds determined by the BOG, and 50 percent of the criteria must be based on achievement of performance outcome thresholds specifically linked to:[11]

- Job placement in employment of 36 hours or more per week and average full-time wages of graduates of the degree programs one year and five years after graduation, based in part on data provided in the economic security report of employment and earning outcomes produced annually.
- Data-driven gap analyses, conducted by the BOG, of the state's job market demands and the outlook for jobs that require a baccalaureate or higher degree.[12]

The BOG periodically updates the list of identified programs of strategic emphasis, and most recently updated the list in September 2020,[13] identifying 868 such programs.[14] The BOG categorizes programs of strategic emphasis into five areas:

- Critical Workforce - Education: comprised of the State Board of Education critical teacher shortage areas.
- Critical Workforce - Health: comprised of workforce projections by the Florida Department of Economic Opportunity.

---

[9] Section 1001.706(1) and (5)(b), F.S.
[10] Florida Board of Governors, *Methodology for Updating Programs of Strategic Emphasis in the State University System of Florida, Board of Governors 2019 Mid-Course Correction - 2025 Strategic Plan* (Sept. 2019), *available at* https://www.flbog.edu/wp-content/uploads/SPC_06c_2019_PSE_Methodology_and_list_CE.pdf, at 1.
[11] Section 1001.706(5)(b)4., F.S.
[12] *See also* Florida Board of Governors, *State University System Workforce Initiatives*, Presentation to the House of Representatives Post-Secondary Education & Lifelong Learning Subcommittee (Feb. 10, 2021), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%202-10-21.pdf, at 6.
[13] Florida Board of Governors, *Programs of Strategic Emphasis*, https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/ (last visited March 24, 2021).
[14] Florida Board of Governors, *Approved PSE List 2020-2021* (Sept. 2020), *available at* https://www.flbog.edu/wp-content/uploads/Current-PSE-list-approved-by-the-BOG-at-its-September-2020-meeting-XLSX.xlsx.

- Critical Workforce - Gap Analysis: programs leading to occupations projected to be critically under-supplied in the BOG analysis of labor market projections and related degree production.
- Economic Development - Global Competitiveness: programs that assist in making the SUS globally competitive.
- Economic Development - Science Technology Engineering and Math: programs identified on at least two program lists published by the Florida Department of Economic Opportunity, the Department of Homeland Security, the National Science Foundation, and the Washington State Education Research and Data Center. [15]

The programs of strategic emphasis are used by the BOG to develop annual accountability plans, coordinate academic programs, and approve new academic programs.[16] Programs of strategic emphasis are also a component of SUS performance-based funding.[17] For the 2019-2020 academic year, 54 percent of bachelor's degrees awarded by the SUS and 63 percent of graduate degrees awarded by the SUS were in programs of strategic emphasis.[18]

State University System Performance-Based Incentive

The State University System Performance-Based Incentive is awarded to state universities using performance-based metrics adopted by the BOG. Beginning with the BOG's determination of each university's performance improvement and achievement ratings, and the related distribution of annual fiscal year appropriation, the performance-based metrics must include all of the following:[19]

- The four-year graduation rate for first-time-in-college students.
- Beginning in fiscal year 2021-2022, the two-year graduation rate for associate in arts transfer students.
- Retention rates.
- Postgraduation education rates.
- Degree production.
- Affordability.
- Postgraduation employment and salaries, including wage thresholds that reflect the added value of a baccalaureate degree.
- Access rate, based on the percentage of undergraduate students enrolled during the fall term who received a Pell Grant during the fall term.

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[15] Florida Board of Governors, *Current CIP 2020 Programs of Strategic Emphasis methodology* (Sept. 2020), *available at* https://www.flbog.edu/wp-content/uploads/CIP_2020_PSE_Methodology_CE_FINAL.pdf, at 3, 4, 5, 6, and 10.
[16] Florida Board of Governors, *Programs of Strategic Emphasis*, https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/ (last visited March 24, 2021).
[17] Florida Board of Governors, *Performance Funding Model Overview* (Nov. 2019), *available at* https://www.flbog.edu/wp-content/uploads/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-1.pdf, at 1. Metric 6 includes bachelor's degrees award in areas of strategic emphasis and Metric 8a. includes graduates degrees awarded in areas of strategic emphasis. *See also* s. 1001.92, F.S.
[18] Florida Board of Governors, *State University System Workforce Initiatives*, Presentation to the House of Representatives Post-Secondary Education & Lifelong Learning Subcommittee (Feb. 10, 2021), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%202-10-21.pdf, at 11.
[19] Section 1001.92(1), F.S.

- Beginning in fiscal year 2021-2022, the six-year graduation rate for students who are awarded a Pell Grant in their first year.

The BOG must adopt benchmarks to evaluate each state university's performance on the metrics to measure the state university's achievement of institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.[20]

III. Effect of Proposed Changes:

The bill requires, beginning with the 2021-2022 academic year, for every course in a program of strategic emphasis in which a student pays the full tuition and fees, a state university must waive 100 percent of the tuition and fees for another course in a program of strategic emphasis for a student who:

- Is a resident for tuition purposes.
- Initially enrolls full-time at a state university for the fall academic term immediately following high school graduation.
- Earns at least 60 semester credit hours towards a baccalaureate degree within two years after initial enrollment.
- Enrolls in a program of strategic emphasis in one of the following categories as identified by the Board of Governors (BOG):
  - Science, technology, engineering, or math.
  - Critical workforce education.
  - Critical workforce healthcare.
  - Critical workforce and undersupplied.

In addition, the bill specifies that:

- A waiver so granted is applicable only for upper-level courses and up to 110 percent of the number of required credit hours of the baccalaureate degree program for which the student is enrolled. For example, for a 120-credit hour state university baccalaureate degree program, the waiver is applicable up to 132 credit hours.
- Tuition and course fees waived in this manner may not be reported for state funding purposes.
- A state university that fails to comply with the waiver requirements as specified is ineligible for the State University System Performance-Based Incentive.

The bill requires the BOG to adopt regulations to administer the waiver, and requires each state university to report to the BOG the number and value of all such waivers granted annually.

The bill may provide students an incentive to select a program identified as a critical need.

The bill takes effect July 1, 2021.

[20] Section 1001.92(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A student enrolled in an identified program of strategic emphasis may realize a substantial cost savings from the waiver. For example, a student who completes the last 60 credit hours of a 120 credit hour program in a program of strategic emphasis may realize an average savings of $5,991.79 in tuition and fees.[21]

C. Government Sector Impact:

The exact number of students who will qualify for and make use of the tuition and fees waiver is unknown. The negative fiscal impact to each state university would continue for up to 110 percent of the number of required credit hours of the baccalaureate degree program. However, the waivers would only apply to upper-level courses in identified programs of strategic emphasis.

VI. Technical Deficiencies:

None.

[21] *See* Florida Board of Governors, *State University System of Florida, Tuition and Required Fees, 2020-21*, *available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.26 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Perry

8-01365A-21 20211798__

A bill to be entitled

An act relating to higher education; amending s. 1009.26, F.S.; requiring a state university to waive the tuition and fees for certain courses in which certain resident students are enrolled; providing specified criteria for such waiver; providing applicability; prohibiting the reporting of tuition and fees waived for state funding purposes; requiring each state university to report certain information regarding such waiver to the Board of Governors annually; providing that a state university is ineligible for a specified performance-based incentive for failure to comply; requiring the board to adopt regulations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (18) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(18)(a) Beginning with the 2021-2022 academic year, for every course in a program of strategic emphasis in which a student pays the full tuition and fees, a state university shall waive 100 percent of the tuition and fees for another course in a program of strategic emphasis for a student who:

1. Is a resident for tuition purposes under s. 1009.21.

2. Initially enrolls full-time at a state university for the fall academic term immediately following high school graduation.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Florida Senate - 2021 **SB 1798**

8-01365A-21 20211798__

3. Earns at least 60 semester credit hours towards a baccalaureate degree within 2 years after initial enrollment.

4. Enrolls in a program of strategic emphasis in one of the following categories as identified by the Board of Governors:

a. Science, technology, engineering, or math.

b. Critical workforce education.

c. Critical workforce healthcare.

d. Critical workforce and undersupplied.

(b) A waiver granted under this subsection is applicable only for upper-level courses and up to 110 percent of the number of required credit hours of the baccalaureate degree program for which the student is enrolled.

(c) Tuition and course fees waived under this subsection may not be reported for state funding purposes.

(d) Each state university shall report to the Board of Governors the number and value of all waivers granted annually under this subsection. A state university that fails to comply with the requirements of this section is ineligible for the State University System Performance-Based Incentive under s. 1001.92.

(e) The Board of Governors shall adopt regulations to administer this subsection.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2021

I respectfully request that **Senate Bill #1798**, relating to Higher Education, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1816
INTRODUCER:	Senator Rouson
SUBJECT:	Task Force on Closing the Achievement Gap for Boys
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 1816 establishes the Task Force on Closing the Achievement Gap for Boys within the Department of Education (DOE) to examine evidence-based strategies for closing the achievement gap for boys and to make recommendations to the department, the Governor, and the Legislature. The recommendations must address:

- Professional development for instructional personnel and school administrators.
- The selection of curriculum, supplemental materials, and classroom activities in early learning programs and K-12 schools.
- Academic, behavioral, and mental health supports to help educate and raise young men who are better prepared for success in school and in life.

The bill establishes the Commissioner of Education or a designee as chair of the task force. Other members of the task force must be appointed by August 1, 2021, including stakeholders appointed by the Governor, the Senate President, and the Speaker of the House of Representatives.

The bill requires the task force to convene by October 1, 2021, and upon the call of the chair thereafter. The task force must submit a report containing its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022.

The task force expires on June 30, 2022.

The DOE will incur costs associated with support of the functions and meetings of the task force. These costs are indeterminate. Task force members may be entitled to reimbursement for travel and per diem. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

Low reading performance in 3rd grade predicts future poor academic performance, increased risk of not graduating from high school, and lower economic stability as an adult.[1] Girls have outscored boys in reading at ages 9, 13, and 17 on the National Assessment of Educational Progress (NAEP) every year since it was first administered in 1971, and as far back as the 1940s, educators found girls outscoring boys in reading comprehension and vocabulary.[2]

In Florida, boys had an average scale score on the 2019 NAEP reading assessment that was nine points lower than girls had both in 4th grade (220 to 229) and in 8th grade (259 to 268).[3] Data from the 2018-2019 administration of Florida's statewide, standardized English Language Arts (ELA) assessment shows that 44 percent of 3rd grade boys were reading below grade level, a four percentage point deficit as compared to girls (40 percent). The deficit is 12 percentage points for 10th grade boys.[4]

2018-19 Florida Standards Assessment in ELA			
Grade Level	**Percent of Female Students Scoring Below Grade Level**	**Percent of Male Students Scoring Below Grade Level**	**Percentage Point Deficit of Males Compared to Females**
3	40%	44%	4%
4	37%	46%	9%
5	39%	48%	9%
6	40%	51%	11%
7	41%	54%	13%
8	38%	49%	11%
9	40%	50%	10%
10	41%	53%	12%

Girls generally outperform boys in reading and writing in most school districts in the United States, regardless of the district's demographics—girls are about half a grade ahead by 3rd grade, and almost a full grade ahead by 8th grade.[5] Gender achievement gaps in 3rd grade through 8th grade have narrowed significantly over the last decade, most notably in math.[6]

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[1] *See* The Annie E. Casey Foundation, *Early Reading Research Confirmed, A Research Update on the Importance of Third-Grade Reading* (2013) at 3, *available at* https://www.aecf.org/resources/early-warning-confirmed/.
[2] The Brookings Institution, *The gender gap in reading* (2015), https://www.brookings.edu/research/the-gender-gap-in-reading/ (last visited Mar. 24, 2021).
[3] The Nation's Report Card, *NAEP Data Explorer*, https://www.nationsreportcard.gov/ndecore/xplore/NDE (last visited March 24, 2021) (search query for Florida data on the 2019 National Assessment of Educational Progress in reading for grades 4 and 8, selecting gender as a variable data point).
[4] *See* Florida Department of Education, *PK-12 Public Schools*, https://edstats.fldoe.org/SASPortal/main.do (last visited Mar. 24, 2021) (search query for state level data on the 2018-2019 statewide, standardized ELA assessment, including a gender comparison data point).
[5] Stanford Graduate School of Education, *New Stanford education study shows where boys and girls do better in math, English*, https://ed.stanford.edu/news/new-stanford-education-study-shows-where-boys-and-girls-do-better-math-english (last visited Mar. 24, 2021).
[6] *Id.*

There are some theories as to why the reading skills of boys fall behind that of girls, particularly in early years. Some theories attribute differences to environmental or cultural and societal causes or a teacher's treatment and expectations of a student and assumptions about how the student typically behaves.[7] A student's interest or motivation in the subject area could also be a factor. For example, boys are less likely to read for pleasure than girls are.[8] One study has supported cultural-societal theories, suggesting further review of differential responses to school-based instruction as well as student interest and motivation, and noted that differences in pre-reading skills apparent in kindergarten are surmountable by later grades.[9]

Some instructional strategies have been identified as helping to improve boys reading skills, including:[10]

- Autonomy in selecting text, including informational texts, to increase interest and motivation to read.
- Robust classroom libraries with high-interest books.
- Small reading groups including common texts or subjects of interest.
- Setting a purpose for a reading activity.
- Providing flexible seating options.
- Incorporating movement into reading lessons.
- Differentiating instruction to ensure success.
- Explicit, systematic instruction including goalsetting with monitoring and feedback.

At least one school district in Florida has implemented an initiative to provide teacher training on strategies that can help close the reading gap for boys.[11] However, there has not been a statewide effort to understand and address the reading gap.

III. Effect of Proposed Changes:

This bill establishes the Task Force[12] on Closing the Achievement Gap for Boys within the Department of Education (DOE) to examine evidence-based strategies for closing the

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[7] *See* The Annie E. Casey Foundation, *Early Warning Confirmed, A Research Update on Third-Grade Reading* (2013) at 3, *available at https://www.aecf.org/m/resourcedoc/AECF-EarlyWarningConfirmed-2013.pdf*.

[8] Tiffany Rudek, *Instructional Approaches That Increase Reading Achievement for Boys, Grades 3-6* (2015), *available at* https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=2286&context=dissertations.

[9] The Brookings Institution, *Girls, boys, and reading* (2015), https://www.brookings.edu/research/girls-boys-and-reading/ (last visited Mar. 24, 2021).

[10] *See e.g.*, Ohio State University, *Strategies to Engage Boys in Reading (and the Girls, Too)*, https://beyondpenguins.ehe.osu.edu/issue/arctic-and-anarctic-birds/strategies-to-engage-boys-in-reading-and-the-girls-too (last visited March 24, 2021); Tiffany Rudek, *Instructional Approaches That Increase Reading Achievement for Boys, Grades 3-6* (2015), *available at* https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=2286&context=dissertations; Pinellas Education Foundation, *Closing the Gap: Presentation to the House Early Learning and Elementary Education Subcommittee* (March 9, 2021), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3106&Session=2021&DocumentType=Meeting Packets&FileName=ele 3-9-21.pdf.

[11] Pinellas Education Foundation, *Closing the Gap* (2020), *available at* https://pinellaseducation.org/wp-content/uploads/2021/03/Closing-the-Gap.pdf.

[12] A "task force" means an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment. Section 20.03(8), F.S.

achievement gap for boys and to make recommendations to the DOE, the Governor, and the Legislature. The recommendations must address:

- Professional development for instructional personnel and school administrators.
- The selection of curriculum, supplemental materials, and classroom activities in early learning programs and K-12 schools.
- Academic, behavioral, and mental health supports to help educate and raise young men who are better prepared for success in school and in life.

The bill establishes the Commissioner of Education or a designee as chair of the task force. Other members of the task force must be appointed by August 1, 2021, as follows:

- Two members appointed by the Governor:
  - The parent of a boy enrolled in either the Voluntary Prekindergarten (VPK) Education Program or the school readiness program.
  - The parent of a boy enrolled in a public elementary school.
- Five members appointed by the Senate President:
  - A school psychologist employed by a school district.
  - An elementary classroom teacher.
  - A prekindergarten teacher employed by a provider participating in the VPK Education Program or the school readiness program.
  - The executive director of an early learning coalition.
  - A member of the Senate.
- Five members appointed by the Speaker of the House of Representatives:
  - A representative of a nonprofit organization that has conducted research or implemented a program designed to close the achievement gap for boys through specific instructional, behavioral, and mental health supports.
  - The superintendent of a school district that has implemented programming and strategies specifically to help close the achievement gap for boys through a partnership with one or more nonprofit organizations.
  - The director of an early learning provider participating in the VPK Education Program or the school readiness program.
  - The principal of a public elementary school.
  - A member of the House of Representatives.

The bill specifies that members may not receive compensation for serving on the task force, but may receive reimbursements for per diem and travel expenses.

The bill requires the task force to convene by October 1, 2021, and upon the call of the chair thereafter. The bill specifies that meetings may be held through teleconference or other electronic means.

The bill requires the DOE to provide staffing, administrative support, data, and other relevant information to the task force to help it carry out its responsibilities. The task force must submit a report containing its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022.

The task force expires on June 30, 2022.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOE will incur cost associated with support of the functions and meetings of the task force. These costs are indeterminate. Task force members may be entitled to reimbursement for travel and per diem.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Rouson

19-01369-21 20211816__

A bill to be entitled

An act relating to the Task Force on Closing the Achievement Gap for Boys; creating the Task Force on Closing the Achievement Gap for Boys within the Department of Education; providing a purpose for the task force; providing for membership and meetings of the task force; requiring the department to provide staff, administrative support, and necessary data and other relevant information to assist the task force; requiring that the task force submit a report to the Governor and Legislature by a specified date; providing for future expiration of the task force; providing an effective date.

WHEREAS, 44 percent of third grade boys are reading below grade level, 4 percentage points more than girls, and 53 percent of 10th grade boys are reading below grade level, 11 percentage points more than girls, based on the 2018-2019 statewide, standardized English Language Arts assessment, and

WHEREAS, research shows that boys develop literacy skills later than girls, and

WHEREAS, in comparison to girls, boys are suspended and expelled from schools more than twice as often, are diagnosed with learning disabilities nearly three times as often, and are diagnosed with emotional disorders over three times as often, and

WHEREAS, boys require specialized instructional, behavioral, and mental health supports in order to flourish academically and personally, NOW, THEREFORE,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

19-01369-21 20211816__

Be It Enacted by the Legislature of the State of Florida:

Section 1. Task Force on Closing the Achievement Gap for Boys.—

(1) The Task Force on Closing the Achievement Gap for Boys, a task force as defined in s. 20.03(8), Florida Statutes, is created within the Department of Education to examine evidence-based strategies for closing the achievement gap for boys and to make recommendations to the department, the Governor, and the Legislature regarding boys' instructional needs through professional development for instructional personnel and school administrators; the selection of curriculum, supplemental materials, and classroom activities in early learning programs and K-12 schools; and other academic, behavioral, and mental health supports necessary to help educate and raise young men who are better prepared for success in school and in life.

(2) The task force shall be composed of the following members, to be appointed by August 1, 2021:

(a) The Commissioner of Education, or his or her designee, who shall be the chair of the task force.

(b) The following members appointed by the Governor:

1. The parent of a boy enrolled in either the Voluntary Prekindergarten Education Program under part V of chapter 1002, Florida Statutes, or the school readiness program under part VI of chapter 1002, Florida Statutes.

2. The parent of a boy enrolled in a public elementary school.

(c) The following members appointed by the President of the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Senate:

1. A school psychologist employed by a school district.

2. An elementary classroom teacher.

3. A prekindergarten teacher employed by a provider participating in the Voluntary Prekindergarten Education Program or the school readiness program.

4. The executive director of an early learning coalition.

5. A member of the Senate.

(d) The following members appointed by the Speaker of the House of Representatives:

1. A representative of a nonprofit organization that has conducted research or implemented a program designed to close the achievement gap for boys through specific instructional, behavioral, and mental health supports.

2. The superintendent of a school district that has implemented programming and strategies specifically to help close the achievement gap for boys through a partnership with one or more nonprofit organizations.

3. The director of an early learning provider participating in the Voluntary Prekindergarten Education Program or the school readiness program.

4. The principal of a public elementary school.

5. A member of the House of Representatives.

(3) Members of the task force shall serve without compensation, but may be entitled to receive reimbursement for per diem and travel expenses.

(4) The task force shall convene no later than October 1, 2021, and upon the call of the chair thereafter. Meetings of the task force may be held through teleconference or other

electronic means.

(5) The department shall provide staff, administrative support, and necessary data and other relevant information to assist the task force in carrying out its responsibilities.

(6) The task force shall submit a report containing its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022.

(7) The task force expires June 30, 2022.

Section 2. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 12, 2021

I respectfully request that **Senate Bill #1816**, relating to Task Force on Closing the Achievement Gap for Boys, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Darryl Ervin Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

1816
Bill Number (if applicable)

Topic Task force on Closing Achievement Gap

Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy
Street

Phone 4078557604

Orlando FL 32809
City *State* *Zip*

Email VP.education@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1900 (410182)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Boyd
SUBJECT:	Cybersecurity
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1900 expands the duties and responsibilities of the Florida Digital Service (FDS) relating to the state's cybersecurity governance framework.

The bill defines "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology (IT) resources.

The bill requires that a cybersecurity audit plan be included in the long-term and annual audit plans that agency inspectors general are required to complete.

The bill specifies the Department of Management Services (DMS), acting through the FDS, is the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures to combat such risks. The bill creates new, and amends current, cybersecurity related duties and responsibilities of the DMS. The bill also expands the responsibilities of each state agency head in relation to cybersecurity.

The bill creates the Florida Cybersecurity Advisory Council (council) within the DMS. The purpose of the council is to assist the state in protecting the state's IT resources from cyber threats and incidents, and to assist the FDS in implementing best cybersecurity practices. The bill

outlines membership requirements of the council, term requirements of each member, and duties and responsibilities of the council as a whole.

Beginning June 30, 2022, and annually thereafter, the council is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

The bill makes conforming changes across several provisions by replacing all versions of the term "information technology security" with the term "cybersecurity."

The bill has an indeterminate significant fiscal impact on state expenditures. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Agency Inspectors General

An office of the inspector general (office) is established in each state agency to provide a central point for coordination of, and responsibility for, activities that promote accountability, integrity, and efficiency in government.[1] The office within each agency is responsible for advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs. The office is also required to assess the reliability and validity of information provided by the state agency on performance measures and standards and must make recommendations for improvement when necessary.

In carrying out the auditing duties and responsibilities, each inspector general should review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general will conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of the findings. At the conclusion of an audit, the inspector general will submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who can respond to any adverse findings within 20 working days after receipt of the preliminary findings. The inspector general will submit the final report to the agency head, the Auditor General and, for state agencies under the Governor, the Chief Inspector General. The inspector general shall develop long-term and annual audit plans based on the findings of the risk assessment. The plan, where appropriate, should include post-audit samplings of payments and accounts. The plan should show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. A copy of the approved plan shall be submitted to the Auditor General.[2]

[1] Section 20.055(2), F.S.
[2] *Id.*

National Institute for Standards and Technology Cybersecurity Framework

The National Institute for Standards and Technology Cybersecurity (NIST) is a non-regulatory federal agency housed within the U.S. Department of Commerce. The NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.[3] The framework is designed to complement, and not replace, an organization's own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. Overall, the framework provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.[4]

The Information Technology Security Act

The Information Technology (IT) Security Act (act) requires the Department of Management Services (DMS) and heads of state agencies[5] to meet certain requirements to enhance the IT security of state agencies. Specifically, the act provides that the DMS is responsible for establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity, and adopting rules that safeguard an agency's data, information, and IT resources to mitigate risks.[6] The DMS is required to designate an employee of the Florida Digital Service (FDS) as the state chief information security officer, who must have experience and expertise in security and risk management for communications and IT resources.

The DMS is required, by February 1 of each year, to develop a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, and disaster recovery planning. Further, the DMS is required to develop and publish for use by state agencies an information technology security framework that includes specific guidelines and processes.[7]

The DMS, in collaboration with the Cybercrime Office of the Department of Law Enforcement, provides training for state agency information security managers and computer security incident response team members that contains training on IT security.[8] The DMS is required to develop and publish for use by state agencies an IT security framework. The act requires each state

[3] National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf (last visited March 30, 2021).
[4] *Id.*
[5] The term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(33), F.S. For purposes of the IT Security Act, the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. Section 282.318(2), F.S.
[6] Section 282.318, F.S.
[7] Section 282.318(3)(b), F.S.
[8] Section 282.318(3)(e), F.S.

agency to designate an information security manager to administer the IT security program of the state agency. This designation must be provided annually in writing to the DMS.[9]

The act requires the head of each state agency to designate an information security manager to administer the IT security program of the state agency.[10] In addition, the head of each state agency must:

- Establish an agency computer incident response team in consultation with the Cybercrime Office within the Florida Department of Law Enforcement (FDLE);
- Annually submit to the DMS the state agency's strategic and operational IT security plans;
- Conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency;
- Develop, and periodically update, written internal policies and procedures, including procedures for reporting IT security incidents and breaches to the Cybercrime Office within the FDLE and the Florida Digital Service (FDS);
- Ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the agency are conducted;
- Ensure that the IT security and cybersecurity requirements in both written specifications for the solicitation and service-level agreement of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for IT security and cybersecurity;
- Provide IT security and cybersecurity awareness training to all state agency employees within 30 days of commencing employment; and
- Develop a process that is consistent with the rules and guidelines established by the DMS for detecting, reporting, and responding to threats, breaches, or IT security incidents.[11]

Florida Digital Service

The FDS has been created within the DMS to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation, and to fully support cloud-first policy[12]. The FDS partners with all state agencies to deliver better government services through design and technology. The FDS is responsible for developing an enterprise architecture, project management and oversight standards, and technology policy for the management of the state's IT[13] resources.

The Secretary of the DMS is required to designate a state chief information officer (CIO), who will administer the FDS. The CIO must have at least five years of experience in the development of IT strategic planning and development or IT policy, and preferably have leadership-level experience in the design, development, and deployment of interoperable software and data solutions. The CIO, on consultation with the Secretary of the DMS, is required to designate a

[9] *Id.*
[10] Section 282.318(4)(a), F.S.
[11] Section 282.318(4), F.S.
[12] Section 282.0051(1), F.S.
[13] Section 282.0041(1), F.S., defines "information technology" to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

state chief data officer. The chief data officer must be a proven and effective administrator who must have significant and substantive experience in data management, data governance, interoperability, and security.

Florida Center for Cybersecurity

Section 1004.444, F.S., creates the Florida Center for Cybersecurity (Cyber Florida).[14] Cyber Florida was created to help the state become a national leader in cybersecurity education, academics, practical research, and community outreach. Established under the auspices of the University of South Florida, Cyber Florida works with all 12 State University System institutions to:

- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives; and
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.[15]

State Data Center

The State Data Center (data center) within the DMS provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.[16] The data center offers, develops, and supports the services and applications defined in service-level agreements executed with its customer entities. The data center enters into service-level agreements with each customer entity to provide the required type and level of service or services.

Cybercrime Office

The cybercrime office is created within the FDLE. The cybercrime office may investigate violations of state law pertaining to the sexual exploitation of children which are facilitated or connected to the use of any device capable of storing electronic data. The cybercrime office monitors state IT resources and provides analysis on IT security incidents, threats, and breaches as defined in s. 282.0041, F.S. Further, the cybercrime office provides security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the FDLE. The cybercrime office consults with the FDS in the adoption of rules relating to the information technology security provisions in s. 282.318, F.S.[17]

[14] Section 1004.444, F.S.
[15] *Id.*
[16] Section 282.201, F.S.
[17] Section 943.0415, F.S.

Advisory Council Requirements under Section 20.03, Florida Statutes

Section 20.03(7), F.S., defines a "council" or "advisory council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.[18]

Florida law provides the following requirements for statutorily enacted advisory councils:

- A council may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose.
- An advisory council may not be created or reestablished unless it meets a statutorily defined purpose and its powers conform to the definition of "advisory council" under law.
- An advisory council must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose. The executive agency to which the advisory council is made an adjunct must advise the Legislature at the time the committee ceases to be essential to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of the committee.[19]

A private citizen member of an advisory council that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.[20]

Standards of Conduct for Public Officers and Employees

Section 112.313, F.S., provides standards of conduct to which a public officer or public employee must adhere in performing his or her official duties and responsibilities. The standards of conduct are intended to ensure that a public officer or public employee conducts his or her self independently and impartially. Such standards include limitations on the solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, salary and expenses, misuse of his or her public position, and disclosure of information not available to members of the general public and gained by reason of his or her official position.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to require that a specific cybersecurity audit plan be included in the long-term and annual audit plans that agency inspector generals are required to complete.

Section 2 amends s. 282.0041, F.S., to substitute the term "cybersecurity" for "information technology (IT) security" and to define the term "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and IT resources.

[18] Section 20.03(7), F.S.
[19] Section 20.052(1)-(4), F.S.
[20] Section 20.052(5)(a), F.S.
[21] Section 112.313(2)-(17), F.S.

This section repeals the definition of the term "information technology security," which is made obsolete by this bill.

Sections 3, 4, and 5 amend ss. 282.0051, 282.201, and 282.206, F.S., respectively, relating to the powers and duties of the Department of Management Services (DMS), the state data center, and "cloud-first" policy, to conform to the changes of the bill by replacing all versions of the term "information technology security" with the term "cybersecurity."

Section 6 amends s. 282.318, F.S., to rename the "Information Technology Security Act" as the "State Cybersecurity Act."

This section designates the DMS, acting through the Florida Digital Service (FDS), as the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures. Thus, the DMS, acting through the FDS, must:

- Establish standards and processes that must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology (NIST) Cybersecurity Framework, for cybersecurity;
- Adopt rules that mitigate risk, safeguard the state's digital assets and agency data to ensure availability, confidentiality, and integrity and support a security governance framework;
- Designate an employee of the FDS as the state chief information security officer. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such incidents the state chief information officer (CIO);
- Develop, and update annually by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber-incident;
- Develop and publish for use by state agencies a cybersecurity governance that includes guidelines;
- Establish procedures for procuring IT commodities and services that require the commodity or service to meet the NIST Framework;
- Provide training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Florid Department of Law Enforcement (FDLE), a private sector entity, or a state university;
- Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtue and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center must serve as a clearinghouse for threat information and coordinate with the FDLE to support state agencies and their response to any confirmed or suspected cybersecurity incident; and
- Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35, F.S.

This section requires each state agency head to:

- Establish an agency cybersecurity response team in consultation with the FDS and the FDLE, and immediately report all confirmed or suspected cybersecurity incidents to the state chief information security officer, or his or her designee;
- Conduct, and update every three years, a comprehensive risk assessment which may be completed by a private sector vendor to determine security threats to the data, information, and IT resources of the agency. If a private sector vendor is used to complete this requirement, the vendor must attest to the validity of the risk assessment findings;
- Implement managerial, operational, and risk assessment remediation plans recommended by the DMS to addresses identified risks to the agency. The DMS, through the FDS, must track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general;
- Ensure that the cybersecurity requirements in both the written specifications for the solicitation, contracts, and service-level agreement of IT and IT resources and services meet the NIST Cybersecurity Framework; and
- Provide cybersecurity awareness training, in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system to all state agency employees in the first 30 days after commencing employment.

This section replaces all versions of the term "information technology security" with the term "cybersecurity."

Section 7 creates s. 282.319, F.S., establishing the Florida Cybersecurity Advisory Council (council) within the DMS.

The council must operate in a manner consistent with s. 20.052, F.S. The purpose of the council is to assist the state in protecting the state's IT resources from cyber threats and incidents and to assist the FDS in implementing the best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force.

The council is comprised of the following members:
- The Lieutenant Governor or his or her designee;
- The state chief information officer;
- The state chief information security officer;
- The director of the Division of Emergency Management or his or her designee;
- A representative of the computer crime center of the FDLE, appointed by the executive director of the FDLE;
- A representative of the Florida Fusion Center of the FDLE, appointed by the executive director of the FDLE;
- The Chief Inspector General;
- A representative from the Public Service Commission;
- Up to two representatives from institutions of higher education located in the state, appointed by the Governor;
- Three representatives from critical infrastructure sectors, one of which must be from a water-treatment facility, appointed by the Governor;

- Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within finance, energy, health care, and transportation sector, appointed by the Governor; and
- Two representatives with expertise on emerging technology with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

The members serve for a term of four years, with the initial appointments made serving for a term of two years. A vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment, and all members of the council are eligible for reappointment. The Secretary of Management Services, or his or her designee, must serve as the ex officio, nonvoting executive director of the council. Members of the council serve without compensation but are entitled to reimbursement for per diem and travel expenses as defined in s. 112.061, F.S.

Council members are required to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities. The bill prohibits current or former members from disclosing or using information not available to the general public and gained by reason of their official position for their personal gain or benefit or the personal gain or benefit of another. Council members must sign an agreement acknowledging these provisions.

The council must meet quarterly to:
- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency information technology;
- Recommend a method to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Examine inconsistencies between state and federal law regarding cybersecurity; and
- Assist the FDS in developing cybersecurity best practices recommendations for state agencies which include recommendations regarding:
  - Continuous risk monitoring;
  - Password management; and
  - Protecting data in legacy and new systems.

The council must work with the NIST and other federal agencies, private sector businesses, and private cybersecurity experts:
- For critical infrastructure not covered by federal law, to identify which local infrastructure sectors are at greatest risk of cyber-attacks and need the most enhanced security measures; and
- To use federal guidance to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage or access could reasonable result in catastrophic consequences.

Beginning June 30, 2022, and annually thereafter, the council must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

Section 8 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a significant fiscal impact on state government due to the operation and maintenance of the Cybersecurity Operations Center, and expenses associated with the Florida Digital Service and the Florida Cybersecurity Advisory Council.

The Department of Management Services (DMS) submitted an Amended Legislative Budget Request (LBR) for Fiscal Year 2021-2022 requesting $30 million ($21 million non-recurring) General Revenue to allow the Florida Digital Service (FDS) to begin implementing the recommendations[22] of the February 1, 2021, Florida Cybersecurity Task Force Final Report, including additional training, incident reporting, and threat detection monitoring. According to the LBR request, funds would be used to support

[22] The Department of Management Services Amended Legislative Budget Request for FY 2021-2022 Fist Submission, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=21881&DocType=PDF

immediate enterprise level resiliency priorities and risk mitigation measure as identified by the state chief information officer and chief information security officer. The DMS also, provided cost estimates for the following responsibilities required in the bill, which are encompassed in the LBR request: $672,000 for providing new cybersecurity training, $3.2 million for operating a virtual Cybersecurity Operations Center, and $320,000 for procurement of an incident tracking tool.

In addition, an agency may incur additional costs if it uses a private sector vendor to complete the required risk assessment once every three years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.055, 282.0041, 282.0051, 282.201, 282.206, and 282.318.

This bill creates section 282.319 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (410182) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):
The proposed committee substitute:

- Clarifies that the executive director of the Department of Law Enforcement appoints the representatives from the computer crime center and the Florida Fusion Center to the advisory council; and
- Includes a provision requiring members of the advisory council to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities.

CS by Governmental Oversight and Accountability on March 31, 2021:
The committee substitute:

- Revises the definition for the term “Cybersecurity;”
- Removes the designation of employees under the chief information security officer as selected exempt service;
- Revises the duties of the chief information security officer from the “development, operation, and management of cybersecurity for state technology systems” to the

"development, operations, and oversight of cybersecurity for state technology systems";

- Removes the authority from the Florida Digital Service to intervene in any confirmed or suspected cybersecurity incident of a state agency;
- Removes the requirement that an agency head must provide an asset management report detailing the agency's IT resources to the chief information officer and chief information security officer;
- Removes the requirement that an agency head must conduct a comprehensive risk assessment on an annual basis, and maintains the three-year requirement provided in current law;
- Requires that solicitations, contracts and service level-agreements relating to cybersecurity meet the National Institute of Standards and Technology Cybersecurity Framework;
- Revises the membership of the newly created Florida Cybersecurity Advisory Council; and
- Requires the council to work with the National Institute of Standards and Technology, federal agencies, private sector businesses, and private cybersecurity experts to identify infrastructure vulnerable to cyber attacks.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to cybersecurity; amending s. 20.055, F.S.; requiring certain audit plans of an inspector general to include certain information; amending s. 282.0041, F.S.; revising and providing definitions; amending ss. 282.0051, 282.201, and 282.206, F.S.; revising provisions to replace references to information technology security with cybersecurity; amending s. 282.318, F.S.; revising provisions to replace references to information technology security and computer security with references to cybersecurity; revising a short title; providing that the Department of Management Services, acting through the Florida Digital Service, is the lead entity for the purpose of certain responsibilities; providing and revising requirements for the department, acting through the Florida Digital Service; providing that the state chief information security officer is responsible for state technology systems and shall be notified of certain incidents and threats; revising requirements for state agency heads; requiring the department, through the Florida Digital Service, to track the implementation by state agencies of certain plans; creating s. 282.319, F.S.; creating the Florida Cybersecurity Advisory Council within the Department of Management Services; providing the purpose of the

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council; requiring the council to provide certain assistance to the Florida Digital Service; providing for the membership of the council; providing for terms of council members; providing that the Secretary of Management Services, or his or her designee, shall serve as the ex officio, nonvoting executive director of the council; providing that members shall serve without compensation but are entitled to reimbursement for per diem and travel expenses; requiring council members to maintain the confidential or exempt status of information received; prohibiting council members from using information not otherwise public for their own personal gain; requiring council members to sign an agreement acknowledging certain provisions; requiring the council to meet at least quarterly for certain purposes; requiring the council to work with certain entities to identify certain local infrastructure sectors and critical cyber infrastructure; requiring the council to submit an annual report to the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) of subsection (6) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(6) In carrying out the auditing duties and responsibilities of this act, each inspector general shall

review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time request the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The plan shall include a specific cybersecurity audit plan. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be

submitted to the Auditor General.

Section 2. Present subsections (8) through (21) of section 282.0041, Florida Statutes, are redesignated as subsections (9) through (22), respectively, a new subsection (8) is added to that section, and present subsection (22) of that section is amended, to read:

282.0041 Definitions.—As used in this chapter, the term:

(8) "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources.

~~(22) "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.~~

Section 3. Paragraph (j) of subsection (1) of section 282.0051, Florida Statutes, is amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service has been created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

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(j) Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2. Developing and implementing cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity. The Florida Digital Service may recommend other payment mechanisms to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such mechanism may be implemented only if specifically authorized by the Legislature.

3. Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a. Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

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b. Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c. Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d. Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e. By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f. Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g. Standardizing and consolidating procurement and contracting practices.

4. In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to cybersecurity ~~information technology security~~

incidents, breaches, and threats.

5. Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery methodologies, and operating procedures.

Section 4. Paragraph (g) of subsection (1) of section 282.201, Florida Statutes, is amended to read:

282.201 State data center.—The state data center is established within the department. The provision of data center services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements. The department shall appoint a director of the state data center, preferably an individual who has experience in leading data center facilities and has expertise in cloud-computing management.

(1) STATE DATA CENTER DUTIES.—The state data center shall:

(g) In its procurement process, show preference for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of state data center infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity ~~information technology security~~.

Section 5. Subsection (2) of section 282.206, Florida Statutes, is amended to read:

282.206 Cloud-first policy in state agencies.—

(2) In its procurement process, each state agency shall show a preference for cloud-computing solutions that either minimize or do not require the use of state data center

infrastructure when cloud-computing solutions meet the needs of the agency, reduce costs, and meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity ~~information technology security~~.

Section 6. Section 282.318, Florida Statutes, is amended to read:

282.318 Cybersecurity ~~Security of data and information technology~~.—

(1) This section may be cited as the "State Cybersecurity Act." ~~"Information Technology Security Act."~~

(2) As used in this section, the term "state agency" has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt ~~information technology security, to include cybersecurity, and adopting~~ rules that mitigate risks; safeguard state agency digital assets, ~~an agency's~~ data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework ~~and to mitigate risks~~. The

department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer shall be notified of all confirmed or suspected incidents or threats of state agency information technology resources and must report such incidents or threats to the state chief information officer and the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity ~~information technology security~~ strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident ~~the strategic issues of information technology security policy, risk management, training, incident management, and disaster recovery planning~~.

(c) Develop and publish for use by state agencies a cybersecurity governance ~~an information technology security~~ framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and

managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity ~~information technology security~~ audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity ~~computer security~~ incident response teams and describing their responsibilities for responding to cybersecurity ~~information technology security~~ incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity ~~an information technology security~~ incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity ~~an information technology~~

~~security~~ incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of Law Enforcement of cybersecurity ~~information technology security~~ incidents. The tiered reporting timeframes shall be based upon the level of severity of the cybersecurity ~~information technology security~~ incidents being reported.

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity ~~information technology security~~ incident response plans.

11. Developing agency strategic and operational cybersecurity ~~information technology security~~ plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity ~~information technology security~~, including cybersecurity~~,~~ threats, trends, and best practices.

(f) Annually review the strategic and operational

cybersecurity ~~information technology security~~ plans of state ~~executive branch~~ agencies.

(g) Provide cybersecurity training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the state university system.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the cybersecurity ~~information technology security~~ program of the state agency. This designation must be provided annually in writing to the department by January 1. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

(b) In consultation with the department, through the Florida Digital Service, and the Cybercrime Office of the Department of Law Enforcement, establish an agency cybersecurity

~~computer security incident~~ response team to respond to a cybersecurity ~~an information technology security~~ incident. The agency cybersecurity ~~computer security incident~~ response team shall convene upon notification of a cybersecurity ~~an information technology security~~ incident and must immediately report all confirmed or suspected incidents to the state chief information security officer, or his or her designee, and comply with all applicable guidelines and processes established pursuant to paragraph (3)(c).

(c) Submit to the department annually by July 31, the state agency's strategic and operational cybersecurity ~~information technology security~~ plans developed pursuant to rules and guidelines established by the department, through the Florida Digital Service.

1. The state agency strategic cybersecurity ~~information technology security~~ plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide cybersecurity ~~information technology security~~ strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational cybersecurity ~~information technology security~~ plan must include a progress report that objectively measures progress made towards the prior operational

cybersecurity ~~information technology security~~ plan and a project plan that includes activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Florida Digital Service within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. If a private sector vendor is used to complete a comprehensive risk assessment, it must attest to the validity of the risk assessment findings.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting cybersecurity ~~information technology security~~ incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Florida Digital Service within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or

information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data, information, and information technology resources of the agency. The department, through the Florida Digital Service, shall track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general.

(g) Ensure that periodic internal audits and evaluations of the agency's cybersecurity ~~information technology security~~ program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Ensure that the ~~information technology security and~~ cybersecurity requirements in both the written specifications for the solicitation, contracts, and service-level agreement of information technology and information technology resources and services meet or exceed the applicable state and federal laws,

regulations, and standards for ~~information technology security and~~ cybersecurity, including the National Institute of Standards and Technology Cybersecurity Framework. Service-level agreements must identify service provider and state agency responsibilities for privacy and security, protection of government data, personnel background screening, and security deliverables with associated frequencies.

(i) Provide ~~information technology security and~~ cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment concerning cybersecurity ~~information technology security~~ risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the state university system.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or cybersecurity ~~information technology security~~ incidents which is consistent with the security rules, guidelines, and processes established by the department through the Florida Digital Service.

1. All cybersecurity ~~information technology security~~ incidents and breaches must be reported to the Florida Digital Service within the department and the Cybercrime Office of the Department of Law Enforcement and must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For cybersecurity ~~information technology security~~

breaches, state agencies shall provide notice in accordance with s. 501.171.

(5) Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed cybersecurity ~~information technology security~~ incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which includes:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(6) The portions of risk assessments, evaluations, external audits, and other reports of a state agency's cybersecurity ~~information technology security~~ program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized

modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

For purposes of this subsection, "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

(7) Those portions of a public meeting as specified in s. 286.011 which would reveal records which are confidential and exempt under subsection (5) or subsection (6) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

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(8) The portions of records made confidential and exempt in subsections (5), (6), and (7) shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for cybersecurity ~~information technology security~~ purposes or in furtherance of the state agency's official duties.

(9) The exemptions contained in subsections (5), (6), and (7) apply to records held by a state agency before, on, or after the effective date of this exemption.

(10) Subsections (5), (6), and (7) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(11) The department shall adopt rules relating to cybersecurity ~~information technology security~~ and to administer this section.

Section 7. Section 282.319, Florida Statutes, is created to read:

282.319 Florida Cybersecurity Advisory Council.—

(1) The Florida Cybersecurity Advisory Council, an advisory council as defined in s. 20.03(7), is created within the department. Except as otherwise provided in this section, the advisory council shall operate in a manner consistent with s. 20.052.

(2) The purpose of the council is to assist state agencies

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in protecting their information technology resources from cyber threats and incidents.

(3) The council shall assist the Florida Digital Service in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force created under chapter 2019-118, Laws of Florida.

(4) The council shall be comprised of the following members:

(a) The Lieutenant Governor or his or her designee.

(b) The state chief information officer.

(c) The state chief information security officer.

(d) The director of the Division of Emergency Management or his or her designee.

(e) A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.

(f) A representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.

(g) The Chief Inspector General.

(h) A representative from the Public Service Commission.

(i) Up to two representatives from institutions of higher education located in this state, appointed by the Governor.

(j) Three representatives from critical infrastructure sectors, one of which must be from a water treatment facility, appointed by the Governor.

(k) Four representatives of the private sector with senior level experience in cybersecurity or software engineering from

within the finance, energy, health care, and transportation sectors, appointed by the Governor.

(l) Two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(5) Members shall serve for a term of 4 years; however, for the purpose of providing staggered terms, the initial appointments of members made by the Governor shall be for a term of 2 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

(6) The Secretary of Management Services, or his or her designee, shall serve as the ex officio, nonvoting executive director of the council.

(7) Members of the council shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(8) Members of the council shall maintain the confidential or exempt status of information received in the performance of their duties and responsibilities as members of the council. In accordance with s. 112.313, a current or former member of the council may not disclose or use information not available to the general public and gained by reason of their official position, except for information relating exclusively to governmental practices, for their personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members shall sign an agreement acknowledging the provisions of this subsection.

(9) The council shall meet at least quarterly to:

(a) Review existing state agency cybersecurity policies.

(b) Assess ongoing risks to state agency information technology.

(c) Recommend a reporting and information sharing system to notify state agencies of new risks.

(d) Recommend data breach simulation exercises.

(e) Assist the Florida Digital Service in developing cybersecurity best practice recommendations for state agencies which include recommendations regarding:

1. Continuous risk monitoring.

2. Password management.

3. Protecting data in legacy and new systems.

(f) Examine inconsistencies between state and federal law regarding cybersecurity.

(10) The council shall work with the National Institute of Standards and Technology and other federal agencies, private sector businesses, and private cybersecurity experts:

(a) For critical infrastructure not covered by federal law, to identify which local infrastructure sectors are at the greatest risk of cyber attacks and need the most enhanced cybersecurity measures.

(b) To use federal guidance to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage or unauthorized cyber access to the infrastructure could reasonably result in catastrophic consequences.

(11) Beginning June 30, 2022, and each June 30 thereafter, the council shall submit to the President of the Senate and the Speaker of the House of Representatives any legislative

recommendations considered necessary by the council to address cybersecurity.

Section 8. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1900
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Boyd
SUBJECT:	Cybersecurity
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1900 expands the duties and responsibilities of the Florida Digital Service (FDS) relating to the state's cybersecurity governance framework.

The bill defines "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology (IT) resources.

The bill requires that a cybersecurity audit plan be included in the long-term and annual audit plans that agency inspectors general are required to complete.

The bill specifies the Department of Management Services (DMS), acting through the FDS, is the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures to combat such risks. The bill creates new, and amends current, cybersecurity related duties and responsibilities of the DMS. The bill also expands the responsibilities of each state agency head in relation to cybersecurity.

The bill creates the Florida Cybersecurity Advisory Council (council) within the DMS. The purpose of the council is to assist the state in protecting the state's IT resources from cyber threats and incidents, and to assist the FDS in implementing best cybersecurity practices. The bill

outlines membership requirements of the council, term requirements of each member, and duties and responsibilities of the council as a whole.

Beginning June 30, 2022, and annually thereafter, the council is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

The bill makes conforming changes across several provisions by replacing all versions of the term "information technology security" with the term "cybersecurity."

The bill has an indeterminate significant fiscal impact on state expenditures. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Agency Inspectors General

An office of the inspector general (office) is established in each state agency to provide a central point for coordination of, and responsibility for, activities that promote accountability, integrity, and efficiency in government.[1] The office within each agency is responsible for advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs. The office is also required to assess the reliability and validity of information provided by the state agency on performance measures and standards and must make recommendations for improvement when necessary.

In carrying out the auditing duties and responsibilities, each inspector general should review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general will conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of the findings. At the conclusion of an audit, the inspector general will submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who can respond to any adverse findings within 20 working days after receipt of the preliminary findings. The inspector general will submit the final report to the agency head, the Auditor General and, for state agencies under the Governor, the Chief Inspector General. The inspector general shall develop long-term and annual audit plans based on the findings of the risk assessment. The plan, where appropriate, should include post-audit samplings of payments and accounts. The plan should show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. A copy of the approved plan shall be submitted to the Auditor General.[2]

[1] Section 20.055(2), F.S.
[2] *Id.*

National Institute for Standards and Technology Cybersecurity Framework

The National Institute for Standards and Technology Cybersecurity (NIST) is a non-regulatory federal agency housed within the U.S. Department of Commerce. The NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.[3] The framework is designed to complement, and not replace, an organization's own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. Overall, the framework provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.[4]

The Information Technology Security Act

The Information Technology (IT) Security Act (act) requires the Department of Management Services (DMS) and heads of state agencies[5] to meet certain requirements to enhance the IT security of state agencies. Specifically, the act provides that the DMS is responsible for establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity, and adopting rules that safeguard an agency's data, information, and IT resources to mitigate risks.[6] The DMS is required to designate an employee of the Florida Digital Service (FDS) as the state chief information security officer, who must have experience and expertise in security and risk management for communications and IT resources.

The DMS is required, by February 1 of each year, to develop a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, and disaster recovery planning. Further, the DMS is required to develop and publish for use by state agencies an information technology security framework that includes specific guidelines and processes.[7]

The DMS, in collaboration with the Cybercrime Office of the Department of Law Enforcement, provides training for state agency information security managers and computer security incident response team members that contains training on IT security.[8] The DMS is required to develop and publish for use by state agencies an IT security framework. The act requires each state

[3] National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf (last visited March 30, 2021).
[4] *Id.*
[5] The term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(33), F.S. For purposes of the IT Security Act, the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. Section 282.318(2), F.S.
[6] Section 282.318, F.S.
[7] Section 282.318(3)(b), F.S.
[8] Section 282.318(3)(e), F.S.

agency to designate an information security manager to administer the IT security program of the state agency. This designation must be provided annually in writing to the DMS.[9]

The act requires the head of each state agency to designate an information security manager to administer the IT security program of the state agency.[10] In addition, the head of each state agency must:

- Establish an agency computer incident response team in consultation with the Cybercrime Office within the Florida Department of Law Enforcement (FDLE);
- Annually submit to the DMS the state agency's strategic and operational IT security plans;
- Conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency;
- Develop, and periodically update, written internal policies and procedures, including procedures for reporting IT security incidents and breaches to the Cybercrime Office within the FDLE and the Florida Digital Service (FDS);
- Ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the agency are conducted;
- Ensure that the IT security and cybersecurity requirements in both written specifications for the solicitation and service-level agreement of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for IT security and cybersecurity;
- Provide IT security and cybersecurity awareness training to all state agency employees within 30 days of commencing employment; and
- Develop a process that is consistent with the rules and guidelines established by the DMS for detecting, reporting, and responding to threats, breaches, or IT security incidents.[11]

Florida Digital Service

The FDS has been created within the DMS to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation, and to fully support cloud-first policy[12]. The FDS partners with all state agencies to deliver better government services through design and technology. The FDS is responsible for developing an enterprise architecture, project management and oversight standards, and technology policy for the management of the state's IT[13] resources.

The Secretary of the DMS is required to designate a state chief information officer (CIO), who will administer the FDS. The CIO must have at least five years of experience in the development of IT strategic planning and development or IT policy, and preferably have leadership-level experience in the design, development, and deployment of interoperable software and data solutions. The CIO, on consultation with the Secretary of the DMS, is required to designate a

[9] *Id.*
[10] Section 282.318(4)(a), F.S.
[11] Section 282.318(4), F.S.
[12] Section 282.0051(1), F.S.
[13] Section 282.0041(1), F.S., defines "information technology" to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

state chief data officer. The chief data officer must be a proven and effective administrator who must have significant and substantive experience in data management, data governance, interoperability, and security.

Florida Center for Cybersecurity

Section 1004.444, F.S., creates the Florida Center for Cybersecurity (Cyber Florida).[14] Cyber Florida was created to help the state become a national leader in cybersecurity education, academics, practical research, and community outreach. Established under the auspices of the University of South Florida, Cyber Florida works with all 12 State University System institutions to:

- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives; and
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.[15]

State Data Center

The State Data Center (data center) within the DMS provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.[16] The data center offers, develops, and supports the services and applications defined in service-level agreements executed with its customer entities. The data center enters into service-level agreements with each customer entity to provide the required type and level of service or services.

Cybercrime Office

The cybercrime office is created within the FDLE. The cybercrime office may investigate violations of state law pertaining to the sexual exploitation of children which are facilitated or connected to the use of any device capable of storing electronic data. The cybercrime office monitors state IT resources and provides analysis on IT security incidents, threats, and breaches as defined in s. 282.0041, F.S. Further, the cybercrime office provides security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the FDLE. The cybercrime office consults with the FDS in the adoption of rules relating to the information technology security provisions in s. 282.318, F.S.[17]

[14] Section 1004.444, F.S.
[15] *Id.*
[16] Section 282.201, F.S.
[17] Section 943.0415, F.S.

Advisory Council Requirements under Section 20.03, Florida Statutes

Section 20.03(7), F.S., defines a "council" or "advisory council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.[18]

Florida law provides the following requirements for statutorily enacted advisory councils:

- A council may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose.
- An advisory council may not be created or reestablished unless it meets a statutorily defined purpose and its powers conform to the definition of "advisory council" under law.
- An advisory council must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose. The executive agency to which the advisory council is made an adjunct must advise the Legislature at the time the committee ceases to be essential to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of the committee.[19]

A private citizen member of an advisory council that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.[20]

Standards of Conduct for Public Officers and Employees

Section 112.313, F.S., provides standards of conduct to which a public officer or public employee must adhere in performing his or her official duties and responsibilities. The standards of conduct are intended to ensure that a public officer or public employee conducts his or her self independently and impartially. Such standards include limitations on the solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, salary and expenses, misuse of his or her public position, and disclosure of information not available to members of the general public and gained by reason of his or her official position.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to require that a specific cybersecurity audit plan be included in the long-term and annual audit plans that agency inspector generals are required to complete.

Section 2 amends s. 282.0041, F.S., to substitute the term "cybersecurity" for "information technology (IT) security" and to define the term "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and IT resources.

[18] Section 20.03(7), F.S.
[19] Section 20.052(1)-(4), F.S.
[20] Section 20.052(5)(a), F.S.
[21] Section 112.313(2)-(17), F.S.

This section repeals the definition of the term "information technology security," which is made obsolete by this bill.

Sections 3, 4, and 5 amend ss. 282.0051, 282.201, and 282.206, F.S., respectively, relating to the powers and duties of the Department of Management Services (DMS), the state data center, and "cloud-first" policy, to conform to the changes of the bill by replacing all versions of the term "information technology security" with the term "cybersecurity."

Section 6 amends s. 282.318, F.S., to rename the "Information Technology Security Act" as the "State Cybersecurity Act."

This section designates the DMS, acting through the Florida Digital Service (FDS), as the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures. Thus, the DMS, acting through the FDS, must:

- Establish standards and processes that must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology (NIST) Cybersecurity Framework, for cybersecurity;
- Adopt rules that mitigate risk, safeguard the state's digital assets and agency data to ensure availability, confidentiality, and integrity and support a security governance framework;
- Designate an employee of the FDS as the state chief information security officer. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such incidents the state chief information officer (CIO);
- Develop, and update annually by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber-incident;
- Develop and publish for use by state agencies a cybersecurity governance that includes guidelines;
- Establish procedures for procuring IT commodities and services that require the commodity or service to meet the NIST Framework;
- Provide training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Florid Department of Law Enforcement (FDLE), a private sector entity, or a state university;
- Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtue and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center must serve as a clearinghouse for threat information and coordinate with the FDLE to support state agencies and their response to any confirmed or suspected cybersecurity incident; and
- Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35, F.S.

This section requires each state agency head to:

- Establish an agency cybersecurity response team in consultation with the FDS and the FDLE, and immediately report all confirmed or suspected cybersecurity incidents to the state chief information security officer, or his or her designee;
- Conduct, and update every three years, a comprehensive risk assessment which may be completed by a private sector vendor to determine security threats to the data, information, and IT resources of the agency. If a private sector vendor is used to complete this requirement, the vendor must attest to the validity of the risk assessment findings;
- Implement managerial, operational, and risk assessment remediation plans recommended by the DMS to addresses identified risks to the agency. The DMS, through the FDS, must track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general;
- Ensure that the cybersecurity requirements in both the written specifications for the solicitation, contracts, and service-level agreement of IT and IT resources and services meet the NIST Cybersecurity Framework; and
- Provide cybersecurity awareness training, in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system to all state agency employees in the first 30 days after commencing employment.

This section replaces all versions of the term "information technology security" with the term "cybersecurity."

Section 7 creates s. 282.319, F.S., establishing the Florida Cybersecurity Advisory Council (council) within the DMS.

The council must operate in a manner consistent with s. 20.052, F.S. The purpose of the council is to assist the state in protecting the state's IT resources from cyber threats and incidents and to assist the FDS in implementing the best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force.

The council is comprised of the following members:
- The Lieutenant Governor or his or her designee;
- The state chief information officer;
- The state chief information security officer;
- The director of the Division of Emergency Management or his or her designee;
- A representative of the computer crime center of the FDLE, appointed by the executive director of the FDLE;
- A representative of the Florida Fusion Center of the FDLE, appointed by the executive director of the FDLE;
- The Chief Inspector General;
- A representative from the Public Service Commission;
- Up to two representatives from institutions of higher education located in the state, appointed by the Governor;
- Three representatives from critical infrastructure sectors, one of which must be from a water-treatment facility, appointed by the Governor;

- Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within finance, energy, health care, and transportation sector, appointed by the Governor; and
- Two representatives with expertise on emerging technology with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

The members serve for a term of four years, with the initial appointments made serving for a term of two years. A vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment, and all members of the council are eligible for reappointment. The Secretary of Management Services, or his or her designee, must serve as the ex officio, nonvoting executive director of the council. Members of the council serve without compensation but are entitled to reimbursement for per diem and travel expenses as defined in s. 112.061, F.S.

Council members are required to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities. The bill prohibits current or former members from disclosing or using information not available to the general public and gained by reason of their official position for their personal gain or benefit or the personal gain or benefit of another. Council members must sign an agreement acknowledging these provisions.

The council must meet quarterly to:
- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency information technology;
- Recommend a method to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Examine inconsistencies between state and federal law regarding cybersecurity; and
- Assist the FDS in developing cybersecurity best practices recommendations for state agencies which include recommendations regarding:
  - Continuous risk monitoring;
  - Password management; and
  - Protecting data in legacy and new systems.

The council must work with the NIST and other federal agencies, private sector businesses, and private cybersecurity experts:
- For critical infrastructure not covered by federal law, to identify which local infrastructure sectors are at greatest risk of cyber-attacks and need the most enhanced security measures; and
- To use federal guidance to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage or access could reasonable result in catastrophic consequences.

Beginning June 30, 2022, and annually thereafter, the council must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

Section 8 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a significant fiscal impact on state government due to the operation and maintenance of the Cybersecurity Operations Center, and expenses associated with the Florida Digital Service and the Florida Cybersecurity Advisory Council.

The Department of Management Services (DMS) submitted an Amended Legislative Budget Request (LBR) for Fiscal Year 2021-2022 requesting $30 million ($21 million non-recurring) General Revenue to allow the Florida Digital Service (FDS) to begin implementing the recommendations[22] of the February 1, 2021, Florida Cybersecurity Task Force Final Report, including additional training, incident reporting, and threat detection monitoring. According to the LBR request, funds would be used to support

[22] The Department of Management Services Amended Legislative Budget Request for FY 2021-2022 Fist Submission, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=21881&DocType=PDF

immediate enterprise level resiliency priorities and risk mitigation measure as identified by the state chief information officer and chief information security officer. The DMS also, provided cost estimates for the following responsibilities required in the bill, which are encompassed in the LBR request: $672,000 for providing new cybersecurity training, $3.2 million for operating a virtual Cybersecurity Operations Center, and $320,000 for procurement of an incident tracking tool.

In addition, an agency may incur additional costs if it uses a private sector vendor to complete the required risk assessment once every three years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.055, 282.0041, 282.0051, 282.201, 282.206, and 282.318.

This bill creates section 282.319 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 19, 2021:
The proposed committee substitute:

- Clarifies that the executive director of the Department of Law Enforcement appoints the representatives from the computer crime center and the Florida Fusion Center to the advisory council; and
- Includes a provision requiring members of the advisory council to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities.

CS by Governmental Oversight and Accountability on March 31, 2021:
The committee substitute:

- Revises the definition for the term "Cybersecurity;"
- Removes the designation of employees under the chief information security officer as selected exempt service;
- Revises the duties of the chief information security officer from the "development, operation, and management of cybersecurity for state technology systems" to the "development, operations, and oversight of cybersecurity for state technology systems";

- Removes the authority from the Florida Digital Service to intervene in any confirmed or suspected cybersecurity incident of a state agency;
- Removes the requirement that an agency head must provide an asset management report detailing the agency's IT resources to the chief information officer and chief information security officer;
- Removes the requirement that an agency head must conduct a comprehensive risk assessment on an annual basis, and maintains the three-year requirement provided in current law;
- Requires that solicitations, contracts and service level-agreements relating to cybersecurity meet the National Institute of Standards and Technology Cybersecurity Framework;
- Revises the membership of the newly created Florida Cybersecurity Advisory Council; and
- Requires the council to work with the National Institute of Standards and Technology, federal agencies, private sector businesses, and private cybersecurity experts to identify infrastructure vulnerable to cyber attacks.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Governmental Oversight and Accountability; and Senator Boyd

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A bill to be entitled

An act relating to cybersecurity; amending s. 20.055, F.S.; requiring certain audit plans of an inspector general to include certain information; amending s. 282.0041, F.S.; revising and providing definitions; amending ss. 282.0051, 282.201, and 282.206, F.S.; revising provisions to replace references to information technology security with cybersecurity; amending s. 282.318, F.S.; revising provisions to replace references to information technology security and computer security with references to cybersecurity; revising a short title; providing that the Department of Management Services, acting through the Florida Digital Service, is the lead entity for the purpose of certain responsibilities; providing and revising requirements for the department, acting through the Florida Digital Service; providing that the state chief information security officer is responsible for state technology systems and shall be notified of certain incidents and threats; revising requirements for state agency heads; requiring the department, through the Florida Digital Service, to track the implementation by state agencies of certain plans; creating s. 282.319, F.S.; creating the Florida Cybersecurity Advisory Council within the Department of Management Services; providing the purpose of the council; requiring the council to provide certain assistance to the Florida Digital Service; providing for the membership of the council; providing for terms

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of council members; providing that the Secretary of Management Services, or his or her designee, shall serve as the ex officio, nonvoting executive director of the council; providing that members shall serve without compensation but are entitled to reimbursement for per diem and travel expenses; requiring the council to meet at least quarterly for certain purposes; requiring the council to work with certain entities to identify certain local infrastructure sectors and critical cyber infrastructure; requiring the council to submit an annual report to the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) of subsection (6) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(6) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time request the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The plan shall include a specific cybersecurity audit plan. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

Section 2. Present subsections (8) through (21) of section 282.0041, Florida Statutes, are redesignated as subsections (9) through (22), respectively, a new subsection (8) is added to that section, and present subsection (22) of that section is amended, to read:

282.0041 Definitions.—As used in this chapter, the term:

(8) "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable

objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources.

~~(22) "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.~~

Section 3. Paragraph (j) of subsection (1) of section 282.0051, Florida Statutes, is amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service has been created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(j) Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2. Developing and implementing cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-

recovery mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity. The Florida Digital Service may recommend other payment mechanisms to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such mechanism may be implemented only if specifically authorized by the Legislature.

3. Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a. Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b. Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c. Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d. Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data

processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e. By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f. Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g. Standardizing and consolidating procurement and contracting practices.

4. In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to cybersecurity ~~information technology security~~ incidents, breaches, and threats.

5. Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery methodologies, and operating procedures.

Section 4. Paragraph (g) of subsection (1) of section 282.201, Florida Statutes, is amended to read:

282.201 State data center.—The state data center is established within the department. The provision of data center

services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements. The department shall appoint a director of the state data center, preferably an individual who has experience in leading data center facilities and has expertise in cloud-computing management.

(1) STATE DATA CENTER DUTIES.—The state data center shall:

(g) In its procurement process, show preference for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of state data center infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity ~~information technology security~~.

Section 5. Subsection (2) of section 282.206, Florida Statutes, is amended to read:

282.206 Cloud-first policy in state agencies.—

(2) In its procurement process, each state agency shall show a preference for cloud-computing solutions that either minimize or do not require the use of state data center infrastructure when cloud-computing solutions meet the needs of the agency, reduce costs, and meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity ~~information technology security~~.

Section 6. Section 282.318, Florida Statutes, is amended to read:

282.318 Cybersecurity ~~Security of data and information technology~~.—

(1) This section may be cited as the "State Cybersecurity

Act." ~~"Information Technology Security Act."~~

(2) As used in this section, the term "state agency" has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt ~~information technology security, to include cybersecurity, and adopting~~ rules that mitigate risks; safeguard state agency digital assets, ~~an agency's~~ data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework ~~and to mitigate risks~~. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The

state chief information security officer shall be notified of all confirmed or suspected incidents or threats of state agency information technology resources and must report such incidents or threats to the state chief information officer and the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity ~~information technology security~~ strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident ~~the strategic issues of information technology security policy, risk management, training, incident management, and disaster recovery planning~~.

(c) Develop and publish for use by state agencies a cybersecurity governance ~~an information technology security~~ framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity ~~information technology security~~ audits, which may be completed by a private sector vendor, and submitting

completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity ~~computer security~~ incident response teams and describing their responsibilities for responding to cybersecurity ~~information technology security~~ incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity ~~an information technology security~~ incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity ~~an information technology security~~ incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of Law Enforcement of cybersecurity ~~information technology security~~ incidents. The tiered reporting timeframes shall be based upon the level of severity of the cybersecurity ~~information technology security~~ incidents being reported.

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity ~~information technology security~~ incident response plans.

11. Developing agency strategic and operational cybersecurity ~~information technology security~~ plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity ~~information technology security~~, including cybersecurity~~,~~ threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity ~~information technology security~~ plans of state ~~executive branch~~ agencies.

(g) Provide cybersecurity training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the state university system.

(h) Operate and maintain a Cybersecurity Operations Center

led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the cybersecurity ~~information technology security~~ program of the state agency. This designation must be provided annually in writing to the department by January 1. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

(b) In consultation with the department, through the Florida Digital Service, and the Cybercrime Office of the Department of Law Enforcement, establish an agency cybersecurity ~~computer security incident~~ response team to respond to a cybersecurity ~~an information technology security~~ incident. The agency cybersecurity ~~computer security incident~~ response team shall convene upon notification of a cybersecurity ~~an information technology security~~ incident and must immediately report all confirmed or suspected incidents to the state chief information security officer, or his or her designee, and comply with all applicable guidelines and processes established pursuant to paragraph (3)(c).

(c) Submit to the department annually by July 31, the state agency's strategic and operational cybersecurity ~~information technology security~~ plans developed pursuant to rules and guidelines established by the department, through the Florida Digital Service.

1. The state agency strategic cybersecurity ~~information technology security~~ plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide cybersecurity ~~information technology security~~ strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational cybersecurity ~~information technology security~~ plan must include a progress report that objectively measures progress made towards the prior operational cybersecurity ~~information technology security~~ plan and a project plan that includes activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must

comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Florida Digital Service within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. If a private sector vendor is used to complete a comprehensive risk assessment, it must attest to the validity of the risk assessment findings.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting cybersecurity ~~information technology security~~ incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Florida Digital Service within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data,

information, and information technology resources of the agency. The department, through the Florida Digital Service, shall track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general.

(g) Ensure that periodic internal audits and evaluations of the agency's cybersecurity ~~information technology security~~ program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Ensure that the ~~information technology security and~~ cybersecurity requirements in both the written specifications for the solicitation, contracts, and service-level agreement of information technology and information technology resources and services meet or exceed the applicable state and federal laws, regulations, and standards for ~~information technology security and~~ cybersecurity, including the National Institute of Standards and Technology Cybersecurity Framework. Service-level agreements must identify service provider and state agency responsibilities for privacy and security, protection of government data, personnel background screening, and security deliverables with associated frequencies.

(i) Provide ~~information technology security and~~ cybersecurity awareness training to all state agency employees

in the first 30 days after commencing employment concerning cybersecurity ~~information technology security~~ risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the state university system.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or cybersecurity ~~information technology security~~ incidents which is consistent with the security rules, guidelines, and processes established by the department through the Florida Digital Service.

1. All cybersecurity ~~information technology security~~ incidents and breaches must be reported to the Florida Digital Service within the department and the Cybercrime Office of the Department of Law Enforcement and must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For cybersecurity ~~information technology security~~ breaches, state agencies shall provide notice in accordance with s. 501.171.

(5) Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed cybersecurity ~~information technology security~~ incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which includes:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(6) The portions of risk assessments, evaluations, external audits, and other reports of a state agency's cybersecurity ~~information technology security~~ program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information

technology systems.

For purposes of this subsection, "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

(7) Those portions of a public meeting as specified in s. 286.011 which would reveal records which are confidential and exempt under subsection (5) or subsection (6) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

(8) The portions of records made confidential and exempt in subsections (5), (6), and (7) shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for cybersecurity ~~information technology security~~ purposes or in furtherance of the state agency's official

duties.

(9) The exemptions contained in subsections (5), (6), and (7) apply to records held by a state agency before, on, or after the effective date of this exemption.

(10) Subsections (5), (6), and (7) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(11) The department shall adopt rules relating to cybersecurity ~~information technology security~~ and to administer this section.

Section 7. Section 282.319, Florida Statutes, is created to read:

282.319 Florida Cybersecurity Advisory Council.—

(1) The Florida Cybersecurity Advisory Council, an advisory council as defined in s. 20.03(7), is created within the department. Except as otherwise provided in this section, the advisory council shall operate in a manner consistent with s. 20.052.

(2) The purpose of the council is to assist state agencies in protecting their information technology resources from cyber threats and incidents.

(3) The council shall assist the Florida Digital Service in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force created under chapter 2019-118, Laws of Florida.

(4) The council shall be comprised of the following members:

(a) The Lieutenant Governor or his or her designee.

(b) The state chief information officer.

(c) The state chief information security officer.

(d) The director of the Division of Emergency Management or his or her designee.

(e) A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the department.

(f) A representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the department.

(g) The Chief Inspector General.

(h) A representative from the Public Service Commission.

(i) Up to two representatives from institutions of higher education located in this state, appointed by the Governor.

(j) Three representatives from critical infrastructure sectors, one of which must be from a water treatment facility, appointed by the Governor.

(k) Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within the finance, energy, health care, and transportation sectors, appointed by the Governor.

(l) Two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(5) Members shall serve for a term of 4 years; however, for the purpose of providing staggered terms, the initial appointments of members made by the Governor shall be for a term

of 2 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

(6) The Secretary of Management Services, or his or her designee, shall serve as the ex officio, nonvoting executive director of the council.

(7) Members of the council shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(8) The council shall meet at least quarterly to:

(a) Review existing state agency cybersecurity policies.

(b) Assess ongoing risks to state agency information technology.

(c) Recommend a reporting and information sharing system to notify state agencies of new risks.

(d) Recommend data breach simulation exercises.

(e) Assist the Florida Digital Service in developing cybersecurity best practice recommendations for state agencies which include recommendations regarding:

1. Continuous risk monitoring.

2. Password management.

3. Protecting data in legacy and new systems.

(f) Examine inconsistencies between state and federal law regarding cybersecurity.

(9) The council shall work with the National Institute of Standards and Technology and other federal agencies, private sector businesses, and private cybersecurity experts:

(a) For critical infrastructure not covered by federal law, to identify which local infrastructure sectors are at the

greatest risk of cyber attacks and need the most enhanced cybersecurity measures.

(b) To use federal guidance to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage or unauthorized cyber access to the infrastructure could reasonably result in catastrophic consequences.

(10) Beginning June 30, 2022, and each June 30 thereafter, the council shall submit to the President of the Senate and the Speaker of the House of Representatives any legislative recommendations considered necessary by the council to address cybersecurity.

Section 8. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1920 (771334)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Children, Families, and Elder Affairs Committee; and Senator Book
SUBJECT:	Child Welfare
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Fav/CS**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1920 creates the Statewide Office of Child Representation (OCR) and makes a number of changes to various provisions related to guardians ad litem (GAL) under ch. 39, F.S., and regarding attorney representation for the child.

The bill provides that on or after July 1, 2022, a GAL must be appointed in specified circumstances including to a child who remains in his or her home or nonlicensed placement under protective supervision of the department, and may be appointed at the court's discretion upon a finding that circumstances exist which require the appointment. If a GAL is appointed initially and the circumstances of the child change resulting in the requirement of the court to subsequently appoint an attorney, the court may maintain the appointment of the guardian ad litem even though an attorney for the child has been appointed.

The bill defines a "conflict of interest" with respect to GAL volunteers and requires the guardian ad litem program (GALP) to develop guidelines to identify when there is reasonable cause to suspect an assigned GAL has a conflict of interest. The bill prohibits the GALP from appointing a GAL when a conflict of interest is identified. It also requires the court to order that a new GAL be assigned or, unless otherwise prohibited by law, discharge the GAL and appoint an attorney for the child when such circumstances exist. Further, the GALP must identify any GAL who is experiencing a physical or mental health issue and who appears to present a danger to any child,

and remove him or her from all assigned cases and terminate his or her volunteer services. The GALP has discretion to allow a GAL to work in the office in certain circumstances, but a GAL who has caused harm to a child during the course of his or her appointment is prohibited from being an employee of or volunteer for the program.

The GAL Qualifications Committee is redesignated as the Child Well-Being Qualifications Committee. The bill provides that the executive director of the GALP may be reappointed to serve more than one term and the reappointment process must be made in accordance with the initial appointment process.

The OCR is established within the Justice Administrative Commission (JAC) and is structured with requirements substantially similar to current law relating to the GALP. Regional Offices are created within the area serviced by each of the five district court of appeals. Child Representation Counsel (CRC) must comply with proscribed duties. The bill provides specified duties for the OCR and the Department of Children and Families (DCF) is required to take any necessary steps to obtain federal Title IV-E funding reimbursement for the OCR. The OCR may contract with a local nonprofit agency to provide direct representation for the child.

Section 39.831, F.S., is created to make provisions regarding when an "attorney for the child", as defined in the bill, must or may be appointed. The bill relocates s. 39.01305(4)(b) and (5), F.S. to s. 39.831, F.S., but clarifies the scope of attorney representation and, unless otherwise agreed, requires an attorney to be compensated in accordance with s. 27.5304, F.S. The bill provides that an attorney for the child, or certain staff when appropriate, may represent the child in fair hearings in certain circumstances within the resources allocated for representation in dependency proceedings. The bill also sets out several other provisions regarding an attorney for the child, including when the OCR must be appointed, the process that must be followed when OCR has a conflict of interest in representing a child, when the attorney for the child may withdraw or be discharged, his or her access to records, and requirement to file all appropriate motions at least 72 hours before a court hearing.

Several sections are amended to conform cross-references and provisions to changes made by the act.

The bill will result in an indeterminate negative fiscal impact on state expenditures. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria in the bill. Further, the JAC states that the bill will likely have a substantial fiscal impact on the JAC through increased workload. Finally, the fiscal impact to fund the creation and operation of the OCR will likely have a substantial negative fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).[1] A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,[2] abandonment,[3] or neglect.[4] A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.[5]

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the Department of Children and Families (DCF) removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.[6] The dependency court process is summarized in the table below.

The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines the child's home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.

[1] Section 39.201(a), F.S.

[2] Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

[3] Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

[4] Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

[5] Section 39.201(5), F.S.

[6] *See* s. 39.01(15), F.S., for the definition of "child who is found to be dependent".

Dependency Proceeding	Description of Process	Controlling Statute
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Attorney Representation in Dependency Cases

An attorney must comply with the Florida Rules of Professional Conduct promulgated by the Florida Bar. An attorney must zealously advocate for his or her client and must abide by a client's decision on how to proceed in a matter.[7] This means the client has authority to decide the purpose and scope of the attorney's representation, within the limits imposed by law and the attorney's professional obligations, including for instance whether to settle a matter.[8] An attorney

[7] Rules Regulating the Fla. Bar 4-1.2.
[8] *Id.*

has an obligation to communicate with his or her client about such decisions,[9] and should try to reach a mutually agreeable resolution with his or her client if a disagreement arises on how to proceed.[10]

Attorney Duties and Conflicts of Interest

Attorneys are required to adhere to specified duties within the Rules of Professional Conduct. For instance, an attorney must be competent to represent his or her client, and must act with reasonable diligence and promptness in representing a client.[11]An attorney also has duties of loyalty and confidentiality to his client.[12] However, an attorney must disclose confidential information if he or she reasonably believes it is necessary to prevent a client from committing a crime, or to prevent death or substantial bodily harm to another.[13] An attorney may also disclose confidential information, in part, if the client gives informed consent or the attorney reasonably believes the disclosure is necessary to serve the client's interest provided the client does not specifically require the information not to be disclosed.[14]

The Rules of Professional Conduct also contain provisions regarding how an attorney must handle circumstances in which conflict of interest exists.[15] This includes, in part, when an attorney has a conflict with a current[16] or former client[17] as well as prohibited transactions.[18] An attorney must not represent a client whose interests are directly adverse to another client, or there is a substantial risk that representation of the client would materially limit the attorney's representation of another client, a former client or personal interest of the lawyer, except when the client waives the conflict in specified circumstances.[19] This means an attorney must not represent opposing parties in litigation.[20] Further, an attorney generally may not use information to the disadvantage of a client without informed consent, unless otherwise permitted in the rules.[21]

An attorney must not represent a client if his or her representation will result in a violation of the Rules of Professional Conduct or law, or the attorney's physical or mental condition materially impairs his or her ability to represent the client.[22] In such instances, the attorney must not commence representation or must withdraw as counsel if specified conditions are met.[23]

[9] Rules Regulating the Fla. Bar 4-1.2 and 4-1.4(a)(1).
[10] Rules Regulating the Fla. Bar 4-1.2.
[11] Rules Regulating the Fla. Bar 4-1.1 and 4-1.3.
[12] Rules Regulating the Fla. Bar 4-1.6 and 4-1.7.
[13] Rules Regulating the Fla. Bar 4-1.6(b).
[14] Rules Regulating the Fla. Bar 4-1.6(a) and (c).
[15] *See* Rules Regulating the Fla. Bar 4-1.7 to 4-1.11.
[16] Rules Regulating the Fla. Bar 4-1.7
[17] Rules Regulating the Fla. Bar 4-1.9.
[18] Rules Regulating the Fla. Bar 4-1.8.
[19] Rules Regulating the Fla. Bar 4-1.7(a).
[20] Rules Regulating the Fla. Bar 4-1.7.
[21] Rules Regulating the Fla. Bar 4-1.8(b).
[22] Rules Regulating the Fla. Bar 4-1.16(a), F.S.
[23] Rules Regulating the Fla. Bar 4-1.16(a) and (b), F.S.

Attorney for the DCF

The DCF must be represented by counsel in dependency and termination of parental rights proceedings.[24] The DCF, through its counsel, must make recommendations to the court and may present evidence including testimony from its own employees or employees of its agents, subcontractors, or other community providers.[25] The DCF may enter into a contract for the provision of children legal services, and all counsel included those contracted must adopt the child welfare practice model as proscribed by the DCF.[26]

Except when legal representation is contracted out, the State of Florida is represented by Children Legal Services through the DCF.[27] The DCF is required to contract with the state attorney in the sixth judicial circuit for children legal services.[28] The DCF contracts with the Florida Attorney General's Office to provide children's legal services in Hillsborough and Broward counties.[29]

Attorney for the parents

Parents have the right to be represented by counsel in dependency proceedings, and they must be informed of this right at each stage of the dependency proceedings.[30] The court must appoint counsel to represent parents who are indigent.[31] The Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) has primary responsibility for representing parents in proceedings under ch. 39, F.S.[32] If OCCCRC has a conflict of interest in representing a parent or parents, private counsel who must be selected from a registry is appointed on a rotating basis.[33] The private attorneys contract with the JAC under specified terms to provide such services.[34]

Attorney for the child

Attorney representation of children

An attorney should, as far as reasonably practical, maintain a normal attorney-client relationship when a client's ability to make an adequately informed decision is impaired, such as in representation of a minor child.[35] An attorney may seek the appointment of a GAL if he or she reasonably believes the client is not able to adequately act in his or her own interest.[36] The Rules of Professional Conduct acknowledge that the law recognizes intermediate degrees of

[24] Section 39.013(12), F.S.
[25] *Id.*
[26] Section 409.996(18), F.S.
[27] The DCF, *Children Legal Services Overview*, available at https://www.myflfamilies.com/service-programs/childrens-legal-services/overview.shtml (last visited March 25, 2021).
[28] Section 409.996(18)(a), F.S.
[29] The Office of Attorney General State of Florida, *Children's Legal Services Bureau*, available at http://myfloridalegal.com/pages.nsf/Main/27E91605D4750EBF85256CCB006E66D3 (last visited March 25, 2021).
[30] Section 39.013(1), F.S.
[31] Section 39.013(9)(a), F.S.
[32] Section 27.511(6)(a), F.S.
[33] Section 27.40(2) and (3), F.S.
[34] Section 27.40(3) and (5), F.S.
[35] Rules Regulating the Fla. Bar 4-1.14.
[36] *Id.*

competence, and explicitly provides that children ages 10 or 12 are regarded as having opinions which are entitled to be considered in respect of legal proceedings concerning their custody.[37]

Child Representation Models

Child representation in dependency proceedings varies but in most instances is based on what is in the child's best interest, direct representation, or a hybrid approach.[38] A summary of the different models and how they operate is set out in the table below.[39]

Exhibit 3
States' Models of Representation for Children in Dependency Proceedings Fall Into Six Categories

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states always receive a GAL who is required to be either an attorney or a professional (e.g., professional GAL or mental health counselor). These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Best Interest (lay volunteer)	12	Children in these states always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

Representation under current Florida law

Section 39.01305, F.S., provides that an attorney must be appointed to represent a dependent child[40] who has the following special needs:

- Resides in or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but does not agree to take it;
- Has a diagnosis of a developmental disability;[41]

[37] *Id.*
[38] The Office of Program Policy Analysis and Government Accountability (OPPAGA), *OPPAGA Review of Florida's Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, January 26, 2021, available at https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf (last visited March 25, 2021) (hereinafter cited as "OPPAGA Presentation").
[39] OPPAGA, *OPPAGA Review of Florida's Guardian ad Litem Program*, p. 5 and 34, December 2020 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The OPPAGA Memo").
[40] Section 39.01305(2), F.S., defines "dependent child" as a child who is subject to any proceeding under ch. 39, F.S. The term does not require that a child be adjudicated dependent for purposes of this section.
[41] Section 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See* s. 393.063, F.S., for other definitions related to developmental disability.

- Is being placed or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.[42]

A court is not restricted to appointing an attorney to represent a child for the reasons listed above.[43]

The court must request a recommendation from the GALP for an attorney who is willing to represent a child without additional compensation before a court may appoint one under s. 39.01305(4)(a), F.S. If the GAL recommends an attorney who is available within 15 days from the date of the court's request, the court must appoint that attorney.[44] The court may appoint an attorney who will receive additional compensation within 15 days if the GALP notifies the court that it will not be able to make a recommendation within the specified time.[45]

An attorney who is appointed to represent a child continues to be appointed until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed.[46] An attorney who is appointed must provide a range of legal services including from removal or appointment through any appellate proceedings.[47] The appointment must be in writing and the attorney must be adequately compensated unless he or she was agreed to provide pro bono services.[48] Unless an attorney has agreed to represent a child pro bono, the JAC must contract with attorneys appointed by the court and their fees may not exceed $1,000 per child per year.[49] All appointed attorneys must also be provided with access to funding for due process costs of litigation subject to appropriations.[50]

Several counties in Florida currently operate offices that provide child representation, including Palm Beach, Broward, and Hillsborough counties.[51] For instance, the Legal Aid Society of Palm Beach (LAS Palm Beach) Children's Foster Project is appointed to every child 0 to 12 years old who is in out-of-home care.[52] The Legal Aid Society of Broward County (LAS Broward) represents children in dependency cases and provides free legal services for eligible relative and nonrelative caregivers.[53] Similarly, the L. David Shear Children's Law Center of Bay Area Legal Services provides representation to children who have been abused, abandoned, or neglected.[54]

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[42] Section 787.06(2)(d), F.S., defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.
[43] Section 39.01305(8), F.S.
[44] Section 39.01305(4)(a), F.S.
[45] *Id.*
[46] Section 39.01305(4)(b), F.S.
[47] *Id.*
[48] Section 39.01305(4)(b) and (5), F.S.
[49] Section 39.01305(5), F.S.
[50] *Id.*
[51] *See* Legal Aid Society Palm Beach ("LAS Palm Beach"), *children*, available at https://legalaidpbc.org/children/ (hereinafter cited as "LAS Palm Beach Children"); Legal Aid Service of Broward County ("LAS Broward"), *Children & Education*, available at https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/ (hereinafter cited as "LAS Broward Children"); Bay Area Legal Services, *Family & Children*, available at https://bals.org/help/family-children (all sites last visited March 25, 2021).
[52] LAS Palm Beach Children.
[53] LAS Broward Children.
[54] *Id.*

At least some of these organizations receive government funding.[55] For instance, the LAS Palm Beach County receives public grants, such as the U.S. Department of Justice under the Violence against Women Act and Children's Services Council of Palm Beach County, and private grants, such as William and Helen Thomas Charitable Foundation.[56] LAS Broward receives funding from the Children's Services Council of Broward County (CSCBC).[57] In many instances, these organizations rely on donations and pro bono attorneys who donate their services to provide representation to children who are the subject of a dependency case.[58]

The Legal Aid Society of Palm Beach County provides representation to all children in the foster care system who are between birth and 12 years old, and their siblings under a program referred to as the Foster Children Project (Project).[59] The Chapin Hall Center for Children at the University of Chicago (CFC) conducted a study that found that children who were represented by the Project had a significantly higher rate of exit to permanency than children not served by the Project due to higher rates of adoption and long-term custody.[60] Additionally, it has been reported that children who were represented by counsel, including those served by the Project, exited foster care 88.3 days quicker on average.[61]

Office of Child Representation (OCR) (Section 8)

Florida law does not currently provide for an OCR. Colorado and Travis County, Texas, however, do have offices of child representation. The Colorado Office of Child's Representative (COCR) is a state agency that was established in 2000 to provide representation to children.[62] The COCR represent children in several types of cases, including:

- Dependency and Neglect;
- Juvenile Delinquency;
- Domestic Relations; and
- Adoption, Truancy, Probation, Mental Health, and Paternity.[63]

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[55] *See* LAS Broward Children.
[56] LAS Palm Beach, *Funding*, available at https://legalaidpbc.org/funding/ (last visited March 25, 2021).
[57] *See* LAS Broward, *Children & Education*, available at https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/ (last visited March 25, 2021). The CSCBC is an independent taxing authority created by voters in 2000 and reauthorized in 2014, and its purpose is to provide advocacy and resources to children of Broward County. The CSCBC, *About Us*, available at https://www.cscbroward.org/about (last visited March 25, 2021).
[58] *See* LAS Broward County, *Get Involved with Legal Aid*, available at https://www.browardlegalaid.org/get-involved/; Dade Legal Aid, *Pro Bono Enrollment (Attorney)*, available at http://www.dadelegalaid.org/psb-enrollment-form-attorneys/; Dade Legal Aid, *Donations through The Miami Foundation*, available at http://www.dadelegalaid.org/donations-through-the-miami-foundation/; Bay Area Legal Services, *Justice Works! The Campaign for Bay Area Legal Services*, available at https://bals.org/support; and Bay Area Legal Services, *Volunteer Lawyers Program*, available at https://bals.org/volunteer (all sites last visited March 25, 2021).
[59] LAS Palm Beach Children.
[60] Zinn, A.E. & Slowriver, J. (2008) *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago: Chapin Hall Center for Children at the University of Chicago, p. 1.
[61] *See* Florida Times-Union, *Guest Column: Legal Representation for Foster Youth can Make a Difference*, available at https://www.jacksonville.com/story/opinion/2021/03/28/guest-column-legal-representation-foster-youth-can-make-difference/6997135002/; Tallahassee Democrat, *Kids in Florida Foster Care Need Legal Representation – and the Legislature can Help | Opinion*, March 31, 2021, available at State's foster children need legal help (Tallahassee Democrat).pdf (all sites last visited April 8, 2021).
[62] The COCR, *What We Do*, available at https://coloradochildrep.org/about-ocr/ (last visited March 25, 2021).
[63] *Id.*

All COCR attorneys are trained on the law, social science research, child development, mental health and education issues, and best practices in court proceedings.[64] A Colorado court must appoint a GAL in dependency and neglect cases to represent the child's best interest, and must appoint an OCR attorney to act as the child's counsel when the child faces contempt citations or the court has determined that the child holds his or her own patient-therapist privilege.[65, 66] The COCR is responsible for overseeing both roles as a GAL and as counsel for the children, if applicable.[67] When COCR is appointed as counsel for the child, the attorney has a traditional attorney-client role in which he or she represents the child's wishes in court proceedings.[68]

In Colorado, a GAL is a COCR attorney who is appointed to represent the best interest of the child which means that the COCR attorney does not advocate for the child's express wishes in a traditional attorney-client role.[69] Instead, the GAL must advocate for the child's health, safety, and well-being, and his or her advocacy must align with the interests and needs of the child.[70] The GAL has specified requirements that must be met, including attending all court hearings and conducting an independent investigation which must continue throughout the duration of the case.[71]

The Travis County, Texas Office of Children Representation (TOCR), however, provides legal representation to children who are the subject of dependency cases only.[72] The TOCR counsel act in a traditional attorney-client role and represent children's legal interests.[73]

Guardian ad Litem

Appointment and Discharge

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.[74] The Child Abuse Prevention and Treatment Act makes the approval of grants contingent on a eligible state plans which must include provisions and procedures to appoint a GAL in every case.[75] The GAL must be appointed to:

- Obtain first-hand knowledge of the child's situation and needs; and
- Make recommendations to the court regarding the best interest of the child.[76]

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[64] The COCR, *Case Types Covered by OCR Attorneys*, available at https://coloradochildrep.org/about-ocr/ocr-cases/ (last visited March 25, 2021).
[65] L.A.N. et al. v. L.M.B., 11 SC 529 (Jan. 22, 2013) (finding that a GAL holds a child's psychotherapist-patient privilege when: (1) the child is too young or incompetent to hold the privilege; (2) the child's interests are adverse to those of his or her parent(s); and (3) section 19-3-311, C.R.S. (2012) does not abrogate the privilege).
[66] The COCR, *Dependency & Neglect Cases*, available at https://coloradochildrep.org/about-ocr/ocr-cases/dependency-and-neglect/ (last visited March 25, 2021) (hereinafter cited as "D&N Cases").
[67] *Id.*
[68] *Id.*
[69] D&N Cases.
[70] *Id.*
[71] *Id.*
[72] Travis County, Tx Gov, *The Office of Child Representation*, available at https://www.traviscountytx.gov/criminal-justice/child-representation (last visited March 25, 2021) (hereinafter cited as "TOCR website").
[73] *Id.*
[74] 42 U.S.C. 67 §5106a.(b)(2)(xiii); Section 39.822(1), F.S.
[75] 42 U.S.C. 67 §5106a.(b)(2)(xiii).
[76] *Id.*

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.[77] The GALP publishes monthly representation reports which summarize, in part, the number of reported dependent children, the GALPs appointments in those cases, and the number of certified volunteer GALs.[78] The December 2020 Representation Report details the following statistics:

- The Office of State Courts Administrator reports there are 31,288 children who are the subject of a dependency case.[79]
- The GALP reports that 22,960 children are appointed to the program, and there are 11,116 certified case volunteers including pro bono attorneys.[80]
- The GALP reports 98 newly certified case volunteers in its December 2020 report.[81]

In some cases, the GALP may discharge from a case when a child's permanency goal has been established and the child is in a stable placement.[82] A summary of the reasons the GALP has been discharged from dependency cases from 2016 to 2020 by Fiscal Year is summarized in the table below.[83]

Exhibit 6
Closure Reasons Reported by GAL Program Remained Stable From Fiscal Year 2016-17 Through the First Half of Fiscal Year 2019-20[1]

GAL Program Closure Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[1]	Four-Year Total
Reunification	29%	31%	29%	31%	30%
Adoption	18%	18%	20%	19%	19%
Permanency Goal Established[2]	18%	19%	23%	22%	21%
Permanent Guardianship	17%	15%	13%	12%	15%
Other[3]	9%	9%	6%	6%	8%
Insufficient Program Resources[4]	5%	4%	4%	4%	5%
Aged Out of Care	3%	4%	4%	4%	4%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

[1] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
[2] Closure reasons of APPLA are included here.
[3] Other includes children who ran away, were transferred to or placed in another circuit, and cases that were either consolidated or bifurcated by the courts.
[4] This includes cases to which the GAL Program was appointed where the program was either unable to staff the case at all or had to discharge from a case before it concluded. Closure reasons of APPLA are included here.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data representing 80% of GAL children with a closed case.

[77] Section 39.822(1), F.S.
[78] *See* the GAL for Children, *Florida Guardian ad Litem Program, Monthly Representation Report: December 2020*, available at https://guardianadlitem.org/wp-content/uploads/2021/01/Representation-Report-December-2020.pdf (last visited March 25, 2021) (hereinafter cited as "December 2020 Representation Report").
[79] *Id.*
[80] December 2020 Representation Report.
[81] *Id.*
[82] The OPPAGA Memo at p. 15.
[83] *Id.* at p. 16.

Role of the GALP and GAL

"Guardian ad litem" is defined as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, pro bono attorney working on behalf of a GAL; court-appointed attorney; or responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided by law including ch. 39, F.S., until discharged by the court.[84]

The GALP reports that it represents the children who are alleged to be abused, abandoned, or neglected and are subject to the dependency court's jurisdiction.[85] The Florida Supreme Court has recognized that a GAL is appointed to serve as the child's representative in court to present what is in the child's best interest.[86] The GALP reports that the adult representing the child's best interest will ordinarily be represented by counsel in the judicial proceedings, and suggests such attorney owes a duty of care to both the guardian ad litem and the child with whom the GAL is appointed to represent.[87] The GALP acknowledges that there is no attorney-client relationship between the GALP attorney and the child, and suggests that independent legal representation is provided through the GAL.[88]

The GAL or GALP representative must review all disposition recommendations or changes in placements, and must be present at all critical stages of the proceeding or submit a written report, which must be filed and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.[89]

Performance Advocacy Snapshot (PASS) summarizes the individual GAL circuit program performance and GAL influence on child welfare outcomes by circuit.[90] The December 2020 PASS report states that a GAL has been appointed to 73.4% of children who are the subject of dependency proceedings, with some exceptions.[91] It also reports 67.5% active certified volunteers statewide.[92] Children achieving permanency within 12 months of entering care totals 18 percent and 40.6 percent of adoptions occur within 24 months according to the PASS report.[93]

Activities of GAL

The GALP reports that GAL are involved in a number of activities related to the child, including, in part:

- Attending school events;
- Guiding children through changes of placement;

[84] Section 39.820(1), F.S.
[85] The GALP, *Agency Analysis for SB 1920*, p. 15, March 14, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The GALP Analysis").
[86] *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citing *C.M. v Dep't of Children & Family Servs.*, 854 So.2d 777, 779 (Fla. 4th DCA 2003).
[87] The GALP Analysis at p. 3 [citing Op. Att'y Gen. Fla. 96-94 (1996)].
[88] *Id.* at p. 4.
[89] Section 39.822(4), F.S.
[90] *See* The GALP, *Statewide Guardian ad Litem Program – Performance Advocacy Snapshot (PASS)*, December 2020, available at https://guardianadlitem.org/wp-content/uploads/2021/01/Performance-Advocacy-SnapShot-December-2020-Revised.pdf (last visited March 25, 2021) (hereinafter cited as "December 2020 PASS").
[91] *Id.*
[92] December 2020 PASS.
[93] *Id.*

- Creating community awareness about children who are abused, abandoned, or neglected;
- Being a safe and stable adult in the child's life; or
- Reporting quality information to judges.[94]

Conflicts of Interest

Under current law, there is no statutory provision under ch. 39, F.S., which requires the GALP to identify any conflict of interest a GAL may have. The GALP Standards of Operation, however, provide that the GALP "shall not accept appointment to a case where the Program has an impermissible conflict of interest and shall seek discharge if an impermissible conflict of interest arises after appointment. An impermissible conflict of interest between the GAL Program and a child or children will be found if the GAL Program has a duty, or the appearance of a duty, to another that may prevent the GAL Program from being fully able to represent the child to whom the Program is appointed. If an individual GAL Volunteer or staff member has a conflict, this may be resolved by assigning another individual from the Program in the discretion of the Circuit Director."[95] Standard 7.D. further states that GALs have an obligation to notify the GAL Program Attorney if they are aware of a possible conflict of interest, which could include prior involvement with individuals involved in the case, any personal reasons that may not allow them to provide best interests advocacy for a child, and situations when the GALP is appointed to represent multiple related children whose interests conflict with one another.
Further, Standard 7.D. states that an impermissible conflict will not be found simply because the GAL is advocating in good faith for the child's best interests and the child conveys a position that may be opposed to the position taken by the GAL.[96]

The GAL's Standards of Operation 3, Code of Conduct, prohibit GALs from practicing, condoning, facilitating, or participating in any form of discrimination, including in part, discrimination based on race, color, gender, sexual orientation, sexual identity, age, religion, or ethnicity.[97] Finally, the GALP reports that the Standards of Operation prohibit a GAL from receiving a fee for their services as a GAL or accepting a gift for personal benefit.[98]

GAL Executive Director Appointment and Reappointment

The GALP's executive director is appointed by the Governor from a list of at least three nominees of eligible applicants selected by the Guardian Ad Litem Qualifications Committee (GALQC).[99] The executive director must meet minimum qualifications, serve a term of 3 years, and has specified duties.[100] The executive director is permitted to serve more than one term, but current law is unclear on whether any additional terms are subject to the appointment process.

[94] The GALP Analysis at p. 4.
[95] *Id.* at p. 9-10 (citing GAL's Standard 7.D.).
[96] The GALP, *Standards of Operation*, Revised April 2020, p. 18, available at https://guardianadlitem.org/wp-content/uploads/2020/05/GAL-Standards-Rev.-4.30.2020-FINAL.pdf (last visited March 25, 2021) (hereinafter cited as "GALP SOP 2020").
[97] *Id.* at p. 10.
[98] The GALP Analysis at p. 10.
[99] Section 39.8296(2)(a), F.S.
[100] *Id.*

Funding

GAL Funding

The OPPAGA reports that state funding for the GALP has increased by 21% over the past five years from $43.6 million in Fiscal Year 2015-16 to $52.9 million in Fiscal Year 2019-20.[101] Other sources of funding, including local governments, federal Victims of Crime Act (VOCA) funds, and non-profit sources, have also increased over the past five years from $4.6 million in Calendar Year (CY) 2015 to $9.7 million in CY 2019.[102] With this increase, the number of staff increased, the number of volunteers remained stable, and the number of children served has decreased from 40,032 in Fiscal Year (FY) 2016-17 to 36,506 in FY 2019-20.[103]

Family First Prevention Services Act

The Bipartisan Budget Act of 2018 (HR 1892) was signed into law on February 9, 2018, which included the Family First Prevention Services Act (FFPSA). The legislation aims at providing financial assistance with a focus on prevention services and reducing funds to residential group care.[104] It also has the potential to dramatically change child welfare systems by expanding the way in which Title IV-E funding may be spent.[105] The FFPSA requirements include:

- Option to use funds for up to 12 months for evidence-based services, such as substance abuse treatment;
- Eligible candidates include children who can remain safely in the home with the provision of services, children in foster care who are parents, or parents or caregivers who require services to prevent a child's entry into foster care;
- States must prepare a prevention plan for the child to safely remain at home with services; and
- Services must be trauma-informed and pre-approved on the Health and Human Services website.[106]

Title IV-E funds previously were restricted to being used for the costs of eligible children's foster care maintenance; administrative expenses to manage the foster care program; training for specified persons; and kinship guardianship assistance. Title IV-E federal funding is now available for direct legal representation and advocacy for eligible children in foster care and their parents.[107] As the GALP attorney does not have a direct attorney-client relationship with the child[108] and directly represent the children in Florida dependency proceedings, it is unclear

[101] OPPAGA Presentation at p. 7.
[102] *Id.*
[103] *Id.*
[104] The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtml (last visited March 25, 2021).
[105] National Conference of State Legislatures, *Family First Prevention Services Act Update*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx. (last visited March 25, 2021).
[106] The DCF, *Family First Prevention Services Act*, p. 26, August 28, 2020, available at http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8_28_2020.pdf (last visited March 25, 2021).
[107] U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, January 14, 2021, available at https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf (last visited March 25, 2021).
[108] The GALP SOP 2020, p. 7.

whether the GALP is eligible for Title IV-E funding under the new federal standards. However, the GALP has not begun to be reimbursed for legal representation and advocacy under the FFPSA standards.

III. Effect of Proposed Changes:

Office of Child Representation (Section 8)

The bill establishes a new Office of Child Representation (OCR) to provide direct legal representation to specified children during dependency proceedings. Similar to the GALP, the bill creates the OCR within the JAC which provides administrative support and services but does not control, supervisor, or direct the OCR in the performance of its duties. However, employees are governed by plans, including salary and benefits, approved by the JAC.

The bill provides for an executive director to be appointed to the OCR with the same appointment process, term, and requirements as the executive of the GALP provided for in s. 39.8296(2)(a), F.S. The OCR executive director must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and social service delivery systems to meet the needs of children who are abused, abandoned and neglected. The bill requires the appointment of the initial executive director to be completed by January 1, 2022.

The OCR, within the resources of the JAC, must provide oversight and technical assistance, in part, as follows:

- Identify the resources required to implement methods of collecting, reporting, and tracking case data;
- Review and collect information relating to offices of child representation and other models of attorney representation in other states;
- Develop statewide performance measures and standards in collaboration with the regional offices of OCR;
- Develop a training program for each attorney for the child, and create a curriculum committee composed of specified professionals[109] for such purpose;
- Develop protocols that must be implemented to assist children in meeting eligibility requirements to receive all federal funding;[110]
- Review methods of funding, maximum the use of those funds, and review the kinds of services being provided by the regional offices;
- Determine the feasibility or desirability of new concepts regarding the operation and scope of services provided by the OCR;
- Develop standards and protocols to represent children who have diminished capacity; and
- Submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, including:

[109] Members must include, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse.

[110] This may not be construed to mean that the protocols may interfere with zealous and effective representation of the children.

- An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.
- A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.
- An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

The DCF or community-based care lead agency must take any steps necessary to obtain and maintain eligible federal funding. The bill provides that OCR may contract with local nonprofit agencies to provide direct representation to a child if it is the most efficient method to satisfy its duties and if federal funding has been approved for reimbursement.

The bill provides for regional offices to be established within each of the five district court of appeals which must commence fulfilling their purpose and duties on July 1, 2022. Each regional office is also assigned to the JAC for it to provide administrative support and services within available resources. Like the statewide office, the regional offices are not subject to control, supervision, or direction by the JAC, but are governed by plans such as salary and benefits.

Finally, the child representation counsel (CRC) who is the head of the regional offices must serve on a full-time basis and may not engage in private practice. Assistant child representation counsel (ACRC) must give priority to his or her duties in that position but part-time ACRC may practice dependency law provided the representation does not result in a legal or ethical conflict of interest with a case that OCR is providing representation.

Attorney for the Child (Sections 1-3 and 9)

Appointment

Section 39.013(13), F.S. is amended to provide that an attorney for the child must be appointed pursuant to s. 39.831, F.S. The bill defines "attorney for the child" as an attorney providing direct representation to the child, which may include the appointment of the Office of the Child Representation, an attorney provided by an entity contracted through the Office of the Child Representation to provide direct representation, any privately court-appointed counsel who is compensated pursuant to s. 27.5305, F.S., any privately retained counsel or pro bono counsel, or any other attorney who represents the child under ch. 39, F.S.

The bill creates s. 39.831, F.S., which provides that an attorney for the child:

- Must be appointed when the child has special needs as provided in s. 39.01305(3), F.S.;
- Must be appointed by the court for any child who is subject to a dependency proceeding and who is placed in out-of-home licensed care on or after July 1, 2022; and
- May be appointed upon a finding by the court that circumstances exist which necessitate the appointment.

The bill modifies s. 39.01305(4)(a), F.S., to provide that an attorney must be appointed as provided for in s. 39.831, F.S.

Scope of Representation and Compensation

The bill clarifies that the scope of the appointment of an attorney for the child is limited to representation of the child in the dependency proceedings, which may include representation in fair hearings and appellate proceedings that are directly related to matters needing resolution for the child to achieve permanency. Further, representation in fair hearings must be provided within the resources allotted for representation in the dependency proceedings. Trained staff of the OCR or local nonprofit agency, which may include social workers, case workers, education advocates, or health care advocates, may attend the fair hearings rather than the appointed attorney when appropriate.

The bill relocates s. 39.01305(4)(b),F.S., to s. 39.831, F.S., which specifies that the appointment continues in effect until the attorney is allowed to withdraw, the attorney is discharged by the court, or the case is dismissed. The attorney for the child must provide all legal services required from the time the child is removed or the initial appointment through appellate proceedings. With court permission, the attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. An order appointing an attorney for the child must be in writing.

The bill clarifies that the attorney must be adequately compensated as provided in s. 27.5304, F.S. The bill also relocates s. 39.01305(5), F.S., to s. 39.831, F.S., in regards to payment required to be made to an attorney for his or her representation which may not exceed $1,000 unless the attorney agrees to represent the child pro bono, and the requirement to provide access to funding for due process costs of litigation which is subject to appropriations.

The court must appoint the OCR unless the child is otherwise represented. Similar to the GALP, parents who are financially able must reimburse the court for the costs of the OCR representation, but reimbursement for the attorney's services may not be contingent upon successful collection by the court of reimbursement from the parent.

Conflicts of Interest

If the OCR determines that the interests of clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the OCR must file a motion to withdraw and move the court to appoint alternative counsel. The bill provides that the OCR must not automatically determine the appointment to represent siblings as a conflict of interest. If requested, the OCR must provide the JAC with a copy of the motion at the time it is filed. The court must consider the OCR's submission regarding the conflict without requiring the disclosure of any confidential communications. The court must deny the motion if there are insufficient grounds for the request. If the motion is granted, the court must appoint an attorney as provided in s. 27.40, F.S.

Access to Records

Upon presentation of a court order by an attorney for the child, an agency, person, or organization must allow the attorney to inspect and copy records related to the child who is the subject of the appointment, including records that are made confidential. An agency must also allow an attorney for the child to inspect and copy records that are exempt from

s. 119.07(1), F.S., or s. 24(a), Art. I of the Florida Constitution, but he or she must maintain the confidential or exempt[111] status of any records shared.

The attorney for the child must review all disposition recommendations and changes in placement and file any appropriate motions at least 72 hours in advance of the hearing. The DCF must develop procedures to request that a court appoint an attorney for the child, and may adopt rules to implement the section.

Guardian ad Litem (Section 4 to 7)

Part XI is retitled to state "GUARDIAN AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD."

Appointment

The bill amends s. 39.822, F.S., providing that a GAL will continue to be appointed as proscribed under current law before July 1, 2022. On or after that date:

- The GAL must be appointed at the earliest possible time to represent a child who is:
  - Placed in nonlicensed care or remains in-home under the protective supervision of the department;
  - The subject of a dependency proceeding and the subject of a criminal proceeding;
  - The subject of a termination of parental rights proceeding under Part X; or
  - A dependent child as described in s. 39.01305(3), F.S.[112]
- The GAL may be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

If a guardian ad litem is appointed, the court may maintain the appointment even if an attorney for the child is later appointed because the child subsequently meets the above-mentioned criteria requiring the appointment of an attorney, such as he or she was placed in out-of-home care.

Conflicts of Interest

The GALP must develop guidelines to identify any possible conflicts of interest of a GAL when he or she is being considered for assignment to a child's case, and prohibits the GALP from appointing such GALs when a conflict is identified. "Conflict of interest" is defined as a GAL who:

- Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a GAL;
- Is in a position to derive a personal benefit from his or her role as a GAL; or
- Has a personal factor or circumstance, including a bias or prejudice, which impairs the GALs ability to fully and fairly discharge his or her duties.

[111] When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[112] See below for further discussion on this section.

The bill permits the court to order that a new GAL be assigned or, unless otherwise provided by law, that the GAL be discharged and an attorney for the child be appointed upon:

- Consent of a child who is the subject of a dependency proceeding; or
- Any party presenting evidence that there is reasonable cause to suspect the assigned GAL has a conflict of interest.

The bill also requires the GALP to identify any GAL who is experiencing any physical or mental health issues and who appears to present a danger to any child, remove such GAL from all assigned cases, and terminate his or her direct contact voluntary services with the GALP. This action must be disclosed to the court. A GAL who has a physical or mental issue may work at the GALP office without direct child contact provided such issue does not negatively affect his or her ability to perform any required work duties or pose a risk of harm to any children represented by the program. A GAL who has caused harm to any child during the course of his or her appointment must not be employed or permitted to volunteer for the program.

Reappointment Process

The GAL Qualifications Committee who nominates at least three eligible applicants for the executive director position of the GALP to the Governor is renamed to the Child Well-Being Qualifications Committee. The bill provides that the executive director may be reappointed to serve more than one term pursuant to the appointment process. Every term is for a 3 year period.

Conforming Sections (Sections 10-40)

The bill amends ss. 39.00145, 39.0139, 39.402, 39.407, 39.4085, and 39.523, F.S., in part, to change the term "attorney ad litem" or other term used to refer to an attorney appointed to represent a child to the term "attorney for the child."

The bill also amends ss. 28.345, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.502, 39.521, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065 to update reference to the attorney for the child as counsel for a party that is applicable to these sections as contemplated in the provisions in this bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill permits the attorney for the child to file a termination of parental rights petition which the GALP reports could raise constitutional issues with respect to the fundamental rights of parents.[113] However, s. 39.802, F.S., currently authorizes any party who has knowledge of the facts alleged or is informed of them and believes that they are true may file a termination of parental rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent a parent is financially able, he or she would have to reimburse the cost of the attorney for the child pursuant to s. 39.831(1)(c), F.S.

C. Government Sector Impact:

Statewide Guardian ad Litem Office Fiscal Impact

The bill's provisions would clearly reduce the demand for services provided by the GALP, though the impact is indeterminate. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria under s. 39.822(1)(b), F.S.[114] Of the 35,160 children in out-of-home care or receiving in-home services as of February 28, 2021, 23,444 children were under 10 years old and 11,714 children were 10 years of age or older.[115] Further, the number of GALs appointed to represent children will vary depending on how many termination of parental rights petitions are filed, how many children have special needs, and whether the children have pending delinquency proceedings.

[113] *2021 Agency Legislative Bill Analysis* at p. 14. (SB 1920) (March 14, 2021), Statewide Guardian ad Litem Program (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).
[114] *Id.* at p. 15.
[115] *Id.*

Justice Administrative Commission (JAC) Fiscal Impact

PCS/CS/SB 1920 will have an indeterminate, but significant, negative fiscal impact on the Justice Administrative Commission. The bill's provisions require the JAC to provide administrative support and services to the Statewide Office of Child Representation. Additional funding would be necessary for new administrative and infrastructure costs inherent in establishing and serving the new Offices of Child Representation, including employee training on the legal requirements of the OCR and incorporating the OCR into the existing state budgeting, finance, and IT systems. The JAC estimates that FTE costs for these functions would total $594,183 as follows:

- One-half FTE in Executive
- One FTE in Human Resources
- One FTE in Accounting
- One-half FTE in Financial Services
- One FTE in Information Technology
- One 3/4 FTE in Budget
- One FTE in Court-Appointed Audit (a blend of a flat fee auditor and hourly/due process auditor)
- Two FTEs in Legal (one attorney and one court-appointed paralegal)

Additionally, the JAC estimates that between $1.1 million to $5.5 million will be needed beginning in FY 2022-2023 for private court-appointed attorneys where the Offices of Child Representation have a conflict precluding representation. These costs are likely to be higher in the first year of appointments while the offices are beginning implementation of this initiative.[116]

The costs to the JAC associated with the bill are also partially contingent upon the service delivery model that the JAC provides to each of the Offices of Child Representation. The bill is silent on whether a single new state entity, the Statewide Office of Child Representation, would serve its regional offices (similar to current GALP), or whether the JAC would support the statewide office and the six separate new state entities, each functioning independently, similar to the Office of Criminal Conflict and Civil Regional Counsel.

Regional Office of the Child Representation Fiscal Impact

The bill requires the creation of five regional offices of child representation, which would have a significant negative fiscal impact on state resources. The estimated costs for the regional offices are difficult to quantify due to the multiple cost drivers, including expected caseload and conflict rate of the offices. In addition to operating costs, each office would also incur start-up costs and ongoing overhead costs. The example below projects annual recurring costs of $20.9 million based on the assumptions below; however, funding scenarios could easily range from $10 to $30 million.

[116] *2021 Agency Legislative Bill Analysis* (SB 1920) (April 2, 2021), Justice Administrative Commission (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

ASSUMPTIONS	
Number of Children Eligible	6,500
Caseload Per Attorney	60
Length of Appointment (In Months)	12
Cost Per Case Paid to Registry Attorney	$1,000
Conflict Rate	10%

FTE		Total Recurring Need	Total Nonrecurring Need
6.00	Salaries and Benefits for Director Positions (1 Per Region + Executive Director)	$ 1,078,152	$ -
	Operations Costs for Directors (Standard # 3 w/ Law Library)	$ 63,600	$ 23,370
5.00	Salaries and Benefits for Regional "Chiefs"	$ 718,365	$ -
	Operations Costs for Chiefs (Standard # 3 w/ Law Library)	$ 53,000	$ 19,475
109.00	Salaries and Benefits for Attorneys (*Estimated at $50,000 starting salary*)	$ 7,995,695	$ -
	Operations Per Attorney (Standard # 3 w/ Law Library)	$ 726,375	$ 421,958
58.00	Salaries and Benefits for Support / Other Staff	$ 3,754,050	$ -
	Operations for Support Positions (Standard # 3)	$ 501,584	$ 202,478
	Human Resource Outsourcing Costs	$ 41,830	$ -
	Risk Management Insurance Costs	$ 42,768	$ -
	Overhead Costs (Rent / IT Costs / Travel / Utilities / Supplies / Training)	$ 1,989,995	$ -
	Due Process Costs	$ 2,925,000	$ -
	Private Registry Attorney Fees (JAC HQ)	$ 650,000	$ -
	Private Registry Due Proccess Conflict Costs (JAC HQ)	$ 325,000	$ -
178.00		**$ 20,865,414**	**$ 667,281**

As discussed in the "Present Situation," state funding for these services could be partially offset by Title IV-E federal funds.

The number of cases that will require the appointment of counsel to represent children is anticipated to be fewer than the number of children eligible for the appointment of an attorney. As of December 31, 2020, there are a total of 21,122 children in out-of-home care in Florida of which 12,875 are in DCF custody.[117] There were a total of 3,573 sibling groups of which 1,732 sibling groups, or 4,317 children, were in DCF custody.[118] Given the fact that sibling representation is not a per se conflict and there are a significant number of sibling groups in out-of-home care, the caseloads will likely be less than the number of children eligible for legal representation.

[117] The DCF, *Children & Young Adults in Out-of-Home Care – Data Table*, March 10, 2021, available at https://www.myflfamilies.com/programs/childwelfare/dashboard/c-in-ooh.shtml (last visited April 8, 2021).
[118] The DCF, *Sibling Groups Where All Siblings are Placed Together*, January 13, 2021, available at https://www.myflfamilies.com/programs/childwelfare/dashboard/siblings-together.shtml (last visited April 8, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 39.001, 39.00145, 39.01, 39.013, 39.01305, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 39.820, 39.822, 39.8296, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 39.83 and 39.831.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS 771334 by Appropriations (Recommended by Appropriations Subcommittee on Criminal and Civil Justice):
The proposed committee substitute:

- Removes the requirement to appoint a GAL to a child who is under 10 years old;
- Requires a GAL to be appointed to represent the best interest of a child who remains in-home or is placed in nonlicensed care who is under the protective supervision of the department;
- Permits the court to maintain the appointment of a GAL when an attorney for the child is appointed if the child is subsequently placed in out-of-home care;
- Clarifies that the GALP must terminate direct child contact volunteer services of any volunteer who has a physical or mental health issue and presents a danger to any child whom the GAL is assigned;
- Permits a GAL with a physical or mental health issue to work in the office performing non-direct contact duties in specified instances;
- Prohibits a GAL who has caused harm to any child during the course of his or her appointment from being an employee or volunteer for the program;
- Removes the requirement to appoint an attorney to a child who is 10 years of age and older;
- Requires an attorney to be appointed to represent a child who is the subject of a dependency proceeding and who is placed in out-of-home licensed care on or after July 1, 2022;
- Permits the attorney for the child to represent the child in fair hearings and appellate proceedings that are directly related to matters needing resolution for the child to achieve permanency;

- Permits the OCR to contract with a local nonprofit agency for attorney representation in a dependency proceeding which includes representation in fair hearings as provided in s. 39.81, F.S., if specified conditions are met;
- Requires that representation at the fair hearings be provided within the resources allocated for representation in the dependency proceedings;
- Permits trained staff rather than the appointed attorney to attend the fair hearings when appropriate;
- Removes the requirement for a GAL or an attorney for the child to be appointed to represent a child in a related adoption proceeding;
- Revises the definition of "attorney for the child" to include private court-appointed counsel who is compensated by the state; and
- Amends a cross-reference regarding private court-appointed counsel compensation to refer to s. 27.5304, F.S., instead of s. 27.5305, F.S.

CS by Children, Families, and Elder Affairs on March 23, 2021:
The committee substitute:

- Relocates and clarifies s. 39.01305(4)(b) and (c), F.S., to s. 39.81 relating to the scope of representation and payment of the attorney for the child;
- Clarifies that the GALP must not appoint a GAL to a child when a conflict of interest is identified;
- Modifies the requirement that the OCR collect certain information about national models related to GALP to other representation models for child representation;
- Modifies the composition of the OCR training curriculum committee to only one director of circuit GAL program and one active certified GAL;
- Permits the court discretion to appoint a GAL to represent a child upon a finding that circumstances exist which require the appointment;
- Requires the OCR to establish standards and protocols for representing children with diminished capacity;
- Removes the requirement for the court to consider a child's age and maturity when deciding whether to discharge a GAL upon the child's express wishes;
- Provides for private counsel to be appointed when OCR determines that it has a conflict of interest in representing a child and establishes the process which must be followed in those instances;
- Clarifies that the scope of the appointment of an attorney for the child is limited to representation in the dependency or related adoption proceeding;
- Clarifies that the court may not discharge a GAL and appoint an attorney for the child if the law otherwise requires a GAL to be appointed;
- Removes references to the OCR or attorney for the child in various sections included in the bill that are not appropriate for such references and clarifying terminology, where appropriate; and
- Makes other technical changes to update cross-references, and modifies language for consistency.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Delete lines 450 - 631

and insert:

representation of children with diminished capacity;

9. Shall retain responsibility for the quality of contracted services and ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations; and

10. Shall submit to the Governor, the President of the

Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court:

a. An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.

b. A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.

c. An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

(d) The department or community-based care lead agency shall take any steps necessary to obtain all available federal funding and maintain compliance with eligibility requirements.

(e) The statewide office may contract with a local nonprofit agency to provide direct attorney representation to a child, including, but not limited to, representation in the dependency proceeding as provided for in s. 39.831, if the office determines that the contract is the most efficient method to satisfy its statutory duties and if federal funding has been approved for this purpose or the local agency is required in the contract to seek such approval. The office must ensure that reimbursement of any Title IV-E funds is properly documented.

1. A local nonprofit agency under contract with the statewide office shall:

a. Provide competent representation to all children to whom the agency is appointed, including compliance with the protocols

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and standards developed by the statewide office with respect to its representation;

b. Ensure that any documentation that is required for reimbursement of any Title IV-E funds is provided to the statewide office on a monthly basis;

c. Provide accurate and timely information that is necessary for the statewide office to provide oversight and comply with its requirements under this section;

d. Ensure all staff comply with mandatory training as required by the statewide office; and

e. Comply with federal and state statutory requirements and provisions as required under the contract.

2. A contract established between the statewide office and any local nonprofit agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources. Unless otherwise provided by law, nothing in this paragraph shall preclude such an agency from raising funds by other means.

a. The method of payment and distribution of funds must be provided for in the contract between the statewide office and a local nonprofit agency; and

b. Each contract with a local nonprofit agency shall provide for the payment by the department to the agency of a reasonable administrative cost in addition to funding for the provision of services.

(2) REGIONAL OFFICES OF CHILD REPRESENTATION.—An office of child representation is created within the area served by each of the five district courts of appeal. The offices shall commence fulfilling their statutory purpose and duties on July

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1, 2022.

(3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child representation counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Each assistant child representation counsel shall give priority and preference to his or her duties as assistant child representation counsel and may not otherwise engage in the practice of dependency law. However, a part-time child representation counsel may practice dependency law for private payment so long as the representation does not result in a legal or ethical conflict of interest with a case in which the office of child representation is providing representation.

Section 8. Section 39.831, Florida Statutes, is created to read:

39.831 Attorney for the child.—

(1) APPOINTMENT.—

(a) An attorney for the child:

1. Shall be appointed by the court as provided in s. 39.01305(3);

2. Shall be appointed by the court for any child who is placed in out-of-home licensed care on or after July 1, 2022, and who is the subject of a dependency proceeding under this chapter; or

3. May be appointed at the court's discretion to represent a child who is the subject of a dependency proceeding upon a finding that circumstances exist which require the appointment.

(b) The court who appoints an attorney for the child under paragraph (a) shall appoint the Statewide Office of Child Representation unless the child is otherwise represented by

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counsel.

(c) An attorney for the child appointed pursuant to this section shall represent the child only in the dependency proceeding, which may include representation in fair hearings and appellate proceedings that are directly related to matters needing resolution for the child to achieve permanency. The Statewide Office of Child Representation or local nonprofit agency appointed to represent a child in the dependency proceeding shall provide representation in fair hearings within the resources allotted for representation in the dependency proceeding. Trained staff of the office of child representation or local nonprofit agency may attend the fair hearings rather than the appointed attorney when appropriate. Trained staff for purposes of this paragraph may include, but is not limited to, social workers, case managers, education advocates, or health care advocates.

(d) Notwithstanding the basis on which an attorney for the child is appointed under paragraph (a), the appointment of the attorney for the child continues in effect until the attorney for the child is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney for the child who is appointed under this section to represent a child shall provide all required legal services in the dependency proceeding or fair hearings provided for in this section from the time of the child's removal from home or of the attorney for the child's initial appointment through all appellate proceedings. With the permission of the court, the appointed attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an

attorney for the child under this section must be in writing.

(e) If, at any time during the representation of two or more children in a dependency proceeding, a child representation counsel determines that the interests of those clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the child representation counsel shall file a motion to withdraw and move the court to appoint other counsel. Child representation counsel may not automatically determine the appointment to represent siblings is a conflict of interest. If requested by the Justice Administrative Commission, the child representation counsel shall submit a copy of the motion to the Justice Administrative Commission at the time it is filed with the court. The court shall review and may inquire or conduct a hearing into the adequacy of the child representation counsel's submissions regarding a conflict of interest without requiring the disclosure of any confidential communications. The court shall deny the motion to withdraw if the court finds the grounds for withdrawal are insufficient or the asserted conflict is not prejudicial to the client. If the court grants the motion to withdraw, the court shall appoint one or more private attorneys to represent the person in accordance with the requirements and process provided for in s. 27.40. The clerk of court shall inform the child representation counsel and the commission when the court appoints private counsel.

(f) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated as provided in s. 27.5304. All appointed attorneys and organizations, including pro bono attorneys, must

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be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payments of attorney fees and case-related due process costs are subject to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year.

(g) In cases in which one or both parents are financially able, the parent or parents, as applicable, of the child shall reimburse the court, in whole or in part, for the cost of services provided under this section; however, reimbursement for services provided by the attorney for the child may not be contingent upon successful collection by the court of reimbursement from the parent or parents.

(2) ACCESS TO RECORDS.—Upon presentation of a court order appointing an attorney for the child:

(a) An agency as defined in chapter 119 must allow the attorney for the child to inspect and copy records related to the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The attorney for the child shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or an organization, other than an agency under paragraph (a), must allow the attorney for the child to inspect and copy any records related to the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(3) COURT HEARINGS.—The attorney for the child shall review all disposition recommendations and changes in placements and file all appropriate motions on behalf of the child at least 72 hours before the hearing.

(4) PROCEDURES.—The department shall develop procedures to request that a court appoint an attorney for the child.

(5) RULEMAKING.—The department may adopt rules to implement this section.

Section 9. Subsection (1) of section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, ~~attorney ad litem,~~ criminal conflict and civil regional counsel, court-appointed attorney for the child, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

Section 10. Section 29.007, Florida Statutes, is amended to read:

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29.007 Court-appointed counsel.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of court-appointed counsel to be provided from state revenues appropriated by general law are as follows:

(1) Private attorneys appointed by the court to handle cases where the defendant is indigent and cannot be represented by the public defender or the office of criminal conflict and civil regional counsel.

(2) When the office of criminal conflict and civil regional counsel has a conflict of interest, private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel in accordance with state and federal constitutional guarantees and federal and state statutes.

(3) When the Statewide Office of Child Representation or a local nonprofit agency with which it has contracted has a conflict of interest, private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel in accordance with federal and state statutes.

(4) ~~(3)~~ Reasonable court reporting and transcription services necessary to meet constitutional or statutory requirements, including the cost of transcribing and copying depositions of witnesses and the cost of foreign language and sign-language interpreters and translators.

(5) ~~(4)~~ Witnesses, including expert witnesses, summoned to appear for an investigation, preliminary hearing, or trial in a case when the witnesses are summoned on behalf of an indigent, and any other expert witnesses approved by the court.

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(6) ~~(5)~~ Mental health professionals appointed pursuant to s. 394.473 and required in a court hearing involving an indigent, mental health professionals appointed pursuant to s. 916.115(2) and required in a court hearing involving an indigent, and any other mental health professionals required by law for the full adjudication of any civil case involving an indigent person.

(7) ~~(6)~~ Reasonable pretrial consultation fees and costs.

(8) ~~(7)~~ Travel expenses reimbursable under s. 112.061 reasonably necessary in the performance of constitutional and statutory responsibilities.

Subsections ~~(3),~~ (4), (5), (6), ~~and~~ (7), and (8) apply when court-appointed counsel is appointed; when the court determines that the litigant is indigent for costs; or when the litigant is acting pro se and the court determines that the litigant is indigent for costs at the trial or appellate level. This section applies in any situation in which the court appoints counsel to protect a litigant's due process rights. The Justice Administrative Commission shall approve uniform contract forms for use in processing payments for due process services under this section. In each case in which a private attorney represents a person determined by the court to be indigent for costs, the attorney shall execute the commission's contract for private attorneys representing persons determined to be indigent for costs.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 49 - 61

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and insert:

nonprofit agencies under certain conditions; providing for duties of contracted local nonprofit agencies and requirements related to funding; creating a regional office of child representation within the boundaries of each of the five district courts of appeal; requiring such offices to commence fulfilling their purpose and duties on a specified date; prescribing qualifications for child representation counsel; providing certain prohibitions; amending s. 29.007, F.S., providing that private attorneys who are court-appointed when the office of child representation or a local nonprofit agency have a conflict of interest must be funded by state revenue; creating s.

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576-03940-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining the term "attorney for the child"; amending ss. 39.013 and 39.01305, F.S.; conforming provisions to changes made by the act; renaming part XI of ch. 39, F.S., as "Guardians ad litem, guardian advocates, and attorney for the child"; amending s. 39.822, F.S.; conforming provisions to changes made by the act; specifying circumstances under which a court is authorized or required, on or after a specified date, to appoint a guardian ad litem; authorizing the court to maintain the appointment of a guardian ad litem in specified circumstances; authorizing the court to order that a new guardian ad litem be assigned for a child or discharge a guardian ad litem and appoint an attorney for the child under specified circumstances; amending s. 39.8296, F.S.; renaming the Guardian Ad Litem Qualifications Committee as the Child Well-Being Qualifications Committee; specifying that the executive director of the Statewide Guardian Ad Litem Office may be reappointed; clarifying that second and subsequent appointments made for the executive director of the office are for 3 years; requiring the office to develop guidelines to identify conflicts of interest of guardians ad litem; prohibiting the office from assigning such guardians; defining the term "conflicts of interest"; requiring

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576-03940-21

the office to identify guardians ad litem who are experiencing health issues and who present a danger to the child to whom the guardian ad litem is assigned; requiring the office to remove such guardians from assigned cases, terminate their volunteer services in specified circumstances, and disclose such actions to the circuit court; creating s. 39.83, F.S.; creating the Statewide Office of Child Representation within the Justice Administrative Commission; requiring the commission to provide administrative support and services to the statewide office; providing that the statewide office is not subject to control, supervision, or direction by the commission; providing that employees of the statewide office are governed by the classification plan and salary and benefits plan approved by the commission; providing that the head of the statewide office is the executive director; providing the process for appointment; requiring that the initial executive director be appointed by a specified date; providing responsibilities of the office; authorizing the office to contract with local nonprofit agencies under certain conditions; creating a regional office of child representation within the boundaries of each of the five district courts of appeal; requiring such offices to commence fulfilling their purpose and duties on a specified date; requiring the commission to provide administrative support to the regional offices; providing that the offices are not subject to control, supervision, or

direction by the commission; providing that employees of the offices are governed by the classification plan and salary and benefits plan for the commission; prescribing qualifications for child representation counsel; providing certain prohibitions; creating s. 39.831, F.S.; specifying when the court is authorized or required to appoint an attorney for the child; requiring the court to appoint the Statewide Office of Child Representation; providing for the scope of representation for court-appointed counsel; limiting resources to be allocated; providing that staff may attend fair hearings; providing for the duration of attorney representation; authorizing the attorney for the child to arrange for supplemental or separate counsel in specified circumstances; providing for the appointment of private counsel when the office has a conflict of interest; requiring an attorney for the child to be compensated and have access to funding for expenses with specified conditions; providing conditions under which a parent is required to reimburse the court for the cost of the attorney; requiring agencies, persons, and organizations to allow an attorney for the child to inspect and copy certain records; defining the term "records"; providing requirements for an attorney for the child relating to hearings; requiring the Department of Children and Families to develop procedures to request that a court appoint an attorney for the child; authorizing the department to adopt rules; amending

ss. 28.345, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065, F.S.; conforming cross-references and provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (9) through (87) of section 39.01, Florida Statutes, are redesignated as subsections (10) through (88), respectively, a new subsection (9) is added to that section, and present subsections (10) and (37) are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(9) "Attorney for the child" means an attorney providing direct representation to the child, which may include the appointment of the Office of Child Representation, an attorney provided by an entity contracted through the Office of Child Representation to provide direct representation, any private court-appointed counsel who is compensated pursuant to s. 27.5304, any privately retained counsel or pro bono counsel, or any other attorney who is appointed to represent the child under this chapter.

(11)~~(10)~~ "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person

responsible for a child's welfare as defined in subsection (55) ~~(54)~~.

(38)~~(37)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's welfare as defined in subsection (55) ~~(54)~~.

Section 2. Subsection (13) is added to section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(13) The court shall appoint an attorney for the child pursuant to s. 39.831.

Section 3. Subsections (4) and (5) of section 39.01305, Florida Statutes, are amended to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(4)~~(a)~~ An attorney for the child appointed under this section shall be made in accordance with s. 39.831 ~~Before a court may appoint an attorney, who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the Statewide Guardian Ad Litem Office informs the court that it will not be able to recommend an attorney within that time period.~~

~~(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.~~

~~(5) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are subject to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year~~.

Section 4. Part XI of chapter 39, Florida Statutes, entitled "GUARDIANS AD LITEM AND GUARDIAN ADVOCATES," is renamed "GUARDIANS AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD."

Section 5. Section 39.822, Florida Statutes, is amended to read:

39.822 Appointment of guardian ad litem for abused, abandoned, or neglected child.—

(1)(a) Before July 1, 2022, a guardian ad litem must ~~shall~~ be appointed by the court at the earliest possible time to represent a ~~the~~ child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.

(b) On or after July 1, 2022, a guardian ad litem:

1. Must be appointed by the court at the earliest possible time to represent a child under the following circumstances:

a. The child remains in his or her home or nonlicensed placement under the protective supervision of the department;

b. The child is the subject of a dependency proceeding under this chapter and the subject of a criminal proceeding;

c. The child is the subject of a termination of parental rights proceeding under part X of this chapter; or

d. The child is a dependent child as described in s. 39.01305(3).

2. May be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

(2) If a child who is appointed a guardian ad litem when placed under the protective supervision of the department as required under subparagraph (1)(b)1. is subsequently appointed an attorney for the child pursuant to s. 39.831, the court has the discretion to maintain the appointment of the guardian ad litem notwithstanding the appointment of an attorney for the child.

(3) Upon request by a child who is the subject of a dependency proceeding under this chapter and who has a guardian ad litem assigned, or upon any party presenting evidence that

there is reasonable cause to suspect the assigned guardian ad litem has a conflict of interest as defined in s. 39.8296(2)(b)9., the court may:

(a) Order that a new guardian ad litem be assigned; or

(b) Unless otherwise provided by law, discharge the child's current guardian ad litem and appoint an attorney for the child if one is not appointed.

(4) Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(5)~~(2)~~ In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services may ~~shall~~ not be contingent upon successful collection by the court from the parent or parents.

(6)~~(3)~~ Upon presentation by a guardian ad litem of a court order appointing the guardian ad litem:

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or organization, other than an agency under paragraph (a), shall allow the guardian ad litem to inspect and copy any records related to the best interests of the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records related to the best interests of the child" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(7) ~~(4)~~ The guardian ad litem or the program representative shall review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours before ~~prior to~~ the hearing.

Section 6. Subsection (2) of section 39.8296, Florida Statutes, is amended to read:

39.8296 Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.—

(2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Guardian Ad

Litem Office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office are governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(a) The head of the Statewide Guardian Ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by the Child Well-Being ~~a Guardian Ad Litem~~ Qualifications Committee. The Child Well-Being ~~Guardian Ad Litem~~ Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian Ad Litem Office in accordance with state and federal law. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be

reappointed ~~permitted~~ to serve more than one term in accordance with the process provided for in this paragraph. Every second or subsequent appointment shall be for a term of 3 years.

(b) The Statewide Guardian Ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.

1. The office shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. The office shall review the current guardian ad litem programs in Florida and other states.

3. The office, in consultation with local guardian ad litem offices, shall develop statewide performance measures and standards.

4. The office shall develop a guardian ad litem training program, which shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with a degree in social work, and a social worker experienced in working with victims and perpetrators of child abuse.

5. The office shall review the various methods of funding

guardian ad litem programs, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by circuit guardian ad litem programs.

6. The office shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. In an effort to promote normalcy and establish trust between a court-appointed volunteer guardian ad litem and a child alleged to be abused, abandoned, or neglected under this chapter, a guardian ad litem may transport a child. However, a guardian ad litem volunteer may not be required or directed by the program or a court to transport a child.

8. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed plan including alternatives for meeting the state's guardian ad litem and attorney ad litem needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year the office shall provide a status report and provide further recommendations to address the need for guardian ad litem services and related issues.

9. The office shall develop guidelines to identify any possible conflicts of interest of a guardian ad litem when he or she is being considered for assignment to a child's case. The office may not assign a guardian ad litem for whom a conflict of interest has been identified to a child's case. For purposes of this subparagraph, the term "conflicts of interest" means the guardian ad litem:

a. Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a guardian ad litem;

b. Is in a position to derive a personal benefit from his or her role as a guardian ad litem; or

c. Has a particular factor or circumstance, including personal bias or prejudice against a protected class of the child or the child's family, that prevents or substantially impairs his or her ability to fairly and fully discharge the duties of the guardian ad litem.

(c) The Statewide Guardian Ad Litem Office shall identify any guardian ad litem who is experiencing an issue with his or her physical or mental health and who appears to present a danger to any child to whom the guardian ad litem is assigned. As soon as possible after identification, the office must remove such guardian ad litem from all assigned cases, terminate his or her direct child contact volunteer services with the Guardian Ad Litem Program, and disclose such action to the appropriate circuit court. The Statewide Guardian Ad Litem Office may allow a guardian ad litem with physical or mental health issues identified in accordance with this paragraph to work in the office without direct child contact provided such issues do not

negatively affect his or her ability to perform any required work duties or pose a risk of harm to any children represented by the program. A guardian ad litem who has caused harm to any child during the course of his or her appointment may not be employed by or permitted to volunteer for the program.

Section 7. Section 39.83, Florida Statutes, is created to read:

39.83 Statewide Office of Child Representation; qualifications, appointment, and duties of executive director and attorney for the child.—

(1) STATEWIDE OFFICE OF CHILD REPRESENTATION.—

(a) There is created a Statewide Office of Child Representation within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and services to the statewide office as directed by the executive director within the available resources of the commission. The statewide office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office are governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(b) The head of the Statewide Office of Child Representation is the executive director who must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and the social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall be appointed in accordance with the process, and serve in

accordance with the terms and requirements, provided in s. 39.8296(2)(a) for the head of the Statewide Guardian Ad Litem Office. The appointment for the initial executive director must be completed by January 1, 2022.

(c) The Statewide Office of Child Representation, within available resources of the Justice Administrative Commission, is responsible for oversight of, and for providing technical assistance to, all offices of child representation in this state. The statewide office:

1. Shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data;

2. Shall review and collect information relating to offices of child representation and other models of attorney representation of children in other states;

3. In consultation with the regional offices of child representation established under subsection (2), shall develop statewide performance measures and standards;

4. Shall develop a training program for each attorney for the child. To that end, the statewide office shall establish a curriculum committee composed of members including, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse;

5. Shall develop protocols that must be implemented to assist children who are represented by the Statewide Office of Child Representation, regional offices, or its contracted local agencies in meeting eligibility requirements to receive all available federal funding. This subparagraph may not be construed to mean that the protocols may interfere with zealous and effective representation of the children;

6. Shall review the various methods of funding the regional offices, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by the regional offices;

7. Shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of, and fulfill other needs of, dependent children;

8. Shall establish standards and protocols for representation of children with diminished capacity; and

9. Shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court:

a. An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.

b. A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.

c. An annual status report that includes any additional

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recommendations for addressing the representation needs of children in this state and related issues.

(d) The department or community-based care lead agency shall take any steps necessary to obtain all available federal funding and maintain compliance with eligibility requirements.

(e) The statewide office may contract with a local nonprofit agency to provide direct attorney representation to a child, including, but not limited to, representation in the dependency proceeding as provided for in s. 39.831, if the office determines that the contract is the most efficient method to satisfy its statutory duties and if federal funding has been approved for this purpose or the local agency is required in the contract to seek such approval. The office must ensure that reimbursement of any Title IV-E funds is properly documented.

(2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

(a) An office of child representation is created within the area served by each of the five district courts of appeal. The offices shall commence fulfilling their statutory purpose and duties on July 1, 2022.

(b) Each regional office of child representation is assigned to the Justice Administrative Commission for administrative purposes. The commission shall provide administrative support and service to the offices within the available resources of the commission. The offices are not subject to control, supervision, or direction by the commission in the performance of their duties, but the employees of the offices are governed by the classification plan and the salary and benefits plan approved by the commission.

(3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child

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representation counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Each assistant child representation counsel shall give priority and preference to his or her duties as assistant child representation counsel and may not otherwise engage in the practice of dependency law. However, a part-time child representation counsel may practice dependency law for private payment so long as the representation does not result in a legal or ethical conflict of interest with a case in which the office of child representation is providing representation.

Section 8. Section 39.831, Florida Statutes, is created to read:

39.831 Attorney for the child.—

(1) APPOINTMENT.—

(a) An attorney for the child:

1. Shall be appointed by the court as provided in s. 39.01305(3);

2. Shall be appointed by the court for any child who is placed in out-of-home licensed care on or after July 1, 2022, and who is the subject of a dependency proceeding under this chapter; or

3. May be appointed at the court’s discretion to represent a child who is the subject of a dependency proceeding upon a finding that circumstances exist which require the appointment.

(b) The court shall appoint the Statewide Office of Child Representation unless the child is otherwise represented by counsel.

(c) An attorney for the child appointed pursuant to this section shall represent the child only in the dependency

proceeding, which may include representation in fair hearings and appellate proceedings that are directly related to matters needing resolution for the child to achieve permanency. The Statewide Office of Child Representation or local nonprofit agency appointed to represent a child in the dependency proceeding shall provide representation in fair hearings within the resources allotted for representation in the dependency proceeding. Trained staff of the office of child representation or local nonprofit agency may attend the fair hearings rather than the appointed attorney when appropriate. Trained staff for purposes of this paragraph may include, but is not limited to, social workers, case managers, education advocates, or health care advocates.

(d) Notwithstanding the basis on which an attorney for the child is appointed under paragraph (a), the appointment of the attorney for the child continues in effect until the attorney for the child is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney for the child who is appointed under this section to represent a child shall provide all required legal services in the dependency proceeding or fair hearings provided for in this section from the time of the child's removal from home or of the attorney for the child's initial appointment through all appellate proceedings. With the permission of the court, the appointed attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney for the child under this section must be in writing.

(e) If, at any time during the representation of two or more children in a dependency proceeding, a child representation

counsel determines that the interests of those clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the child representation counsel shall file a motion to withdraw and move the court to appoint other counsel. Child representation counsel may not automatically determine the appointment to represent siblings is a conflict of interest. If requested by the Justice Administrative Commission, the child representation counsel shall submit a copy of the motion to the Justice Administrative Commission at the time it is filed with the court. The court shall review and may inquire or conduct a hearing into the adequacy of the child representation counsel's submissions regarding a conflict of interest without requiring the disclosure of any confidential communications. The court shall deny the motion to withdraw if the court finds the grounds for withdrawal are insufficient or the asserted conflict is not prejudicial to the client. If the court grants the motion to withdraw, the court shall appoint one or more private attorneys to represent the person in accordance with the requirements and process provided for in s. 27.40. The clerk of court shall inform the child representation counsel and the commission when the court appoints private counsel.

(f) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated as provided in s. 27.5304. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payments of attorney fees and case-related due process costs are subject

to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year.

(g) In cases in which one or both parents are financially able, the parent or parents, as applicable, of the child shall reimburse the court, in whole or in part, for the cost of services provided under this section; however, reimbursement for services provided by the attorney for the child may not be contingent upon successful collection by the court of reimbursement from the parent or parents.

(2) ACCESS TO RECORDS.—Upon presentation of a court order appointing an attorney for the child:

(a) An agency as defined in chapter 119 must allow the attorney for the child to inspect and copy records related to the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The attorney for the child shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or an organization, other than an agency under paragraph (a), must allow the attorney for the child to inspect and copy any records related to the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court,

social services, and financial records.

(3) COURT HEARINGS.—The attorney for the child shall review all disposition recommendations and changes in placements and file all appropriate motions on behalf of the child at least 72 hours before the hearing.

(4) PROCEDURES.—The department shall develop procedures to request that a court appoint an attorney for the child.

(5) RULEMAKING.—The department may adopt rules to implement this section.

Section 9. Subsection (1) of section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, ~~attorney ad litem,~~ criminal conflict and civil regional counsel, court-appointed attorney for the child, ~~and private court-appointed counsel paid by the state,~~ and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

Section 10. Paragraph (j) of subsection (3) and paragraph (a) of subsection (10) of section 39.001, Florida Statutes, are amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) The ability to contact their guardian ad litem or attorney for the child ~~attorney ad litem~~, if appointed, by having that individual's name entered on all orders of the court.

(10) PLAN FOR COMPREHENSIVE APPROACH.—

(a) The office shall develop a state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children. The Department of Children and Families, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, and the Agency for Persons with Disabilities shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; guardian ad litem programs for children under the circuit court; child representation counsel regional offices; the school boards of the local school districts; the Florida local advocacy councils; community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working

with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multidisciplinary Child Protection Teams; child day care centers; law enforcement agencies; and the circuit courts, when guardian ad litem programs and attorney for the child are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

Section 11. Subsections (2) and (4) of section 39.00145, Florida Statutes, are amended to read:

39.00145 Records concerning children.—

(2) Notwithstanding any other provision of this chapter, all records in a child's case record must be made available for inspection, upon request, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney for the child ~~attorney~~.

(a) A complete and accurate copy of any record in a child's case record must be provided, upon request and at no cost, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney.

(b) The department shall release the information in a manner and setting that are appropriate to the age and maturity of the child and the nature of the information being released, which may include the release of information in a therapeutic setting, if appropriate. This paragraph does not deny the child access to his or her records.

(c) If a child or the child's caregiver, guardian ad litem,

or attorney for the child ~~attorney~~ requests access to the child's case record, any person or entity that fails to provide any record in the case record under assertion of a claim of exemption from the public records requirements of chapter 119, or fails to provide access within a reasonable time, is subject to sanctions and penalties under s. 119.10.

(d) For the purposes of this subsection, the term "caregiver" is limited to parents, legal custodians, permanent guardians, or foster parents; employees of a residential home, institution, facility, or agency at which the child resides; and other individuals legally responsible for a child's welfare in a residential setting.

(4) Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Revenue, the school districts, the Statewide Guardian Ad Litem Office, the Statewide Office of Child Representation, and any provider contracting with such agencies, may share with each other confidential records or information that are confidential or exempt from disclosure under chapter 119 if the records or information are reasonably necessary to ensure access to appropriate services for the child, including child support enforcement services, or for the safety of the child. However:

(a) Records or information made confidential by federal law may not be shared.

(b) This subsection does not apply to information concerning clients and records of certified domestic violence centers, which are confidential under s. 39.908 and privileged under s. 90.5036.

Section 12. Subsections (3) and (4) of section 39.0132, Florida Statutes, are amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child, ~~and~~ the parents of the child and their attorneys, guardian ad litem, attorney for the child, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4)(a)1. All information obtained pursuant to this part in

the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, attorney for the child, and others entitled under this chapter to receive that information, except upon order of the court.

2.a. The following information held by a guardian ad litem is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

b. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

(b) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sex offender, as defined in s.

39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. Paragraphs (a) and (b) of subsection (4) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

(4) HEARINGS.—A person who meets any of the criteria set forth in paragraph (3)(a) who seeks to begin or resume contact with the child victim shall have the right to an evidentiary hearing to determine whether contact is appropriate.

(a) Before ~~Prior to~~ the hearing, the court shall appoint an attorney for the child ~~an attorney ad litem~~ or a guardian ad litem, as appropriate, for the child if one has not already been appointed. Any attorney for the child ~~attorney ad litem~~ or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) At the hearing, the court may receive and rely upon any relevant and material evidence submitted to the extent of its probative value, including written and oral reports or recommendations from the Child Protection Team, the child's therapist, or the child's guardian ad litem~~, or the child's attorney ad litem~~, even if these reports, recommendations, and evidence may not be admissible under the rules of evidence.

Section 14. Paragraphs (k) and (t) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the child's guardian ad litem or attorney for the child.

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01(42) ~~s. 39.01(41)~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

Section 15. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges

that an employee or agent of the department, or any other entity or person covered by s. 39.01(38) or (55) ~~s. 39.01(37) or (54)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and

appropriate in view of the circumstances of the specific case.

Section 16. Paragraph (c) of subsection (8) and paragraph (a) of subsection (14) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child or an attorney for the child to provide direct representation as provided in part XI, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013;

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of

support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined to be the father of the child by the Department of Revenue as provided in s. 409.256.

(14) The time limitations in this section do not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the attorney for the child or the child's ~~counsel or the child's~~ guardian ad litem, if one has been appointed by the court, or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the attorney for the child ~~child's attorney~~ or the child's guardian ad litem~~, if one has been appointed by the court,~~ and the child.

Section 17. Paragraphs (e) and (f) of subsection (3) and subsection (6) of section 39.407, Florida Statutes, are amended to read:

39.407 Medical, psychiatric, and psychological examination

and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)

(e)1. If the child's prescribing physician or psychiatric nurse, as defined in s. 394.455, certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's or psychiatric nurse's medical report to the court, the child's guardian ad litem or the attorney for the child, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days.

2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization as described in paragraph (c).

(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social

services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem~~,~~ or the child ~~attorney, or attorney ad litem who has been appointed to represent the child or the child's interests~~, the court may review the status more frequently than required in this subsection.

2. The court may, in the best interests of the child, order the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.

(6) Children who are in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must be appointed ~~have~~ a guardian ad litem and an attorney for the child ~~appointed~~.

(a) As used in this subsection, the term:

1. "Residential treatment" means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a

hospital licensed under chapter 395.

2. "Least restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.

3. "Suitable for residential treatment" or "suitability" means a determination concerning a child or adolescent with an emotional disturbance as defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:

a. The child requires residential treatment.

b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.

c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment

center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.

2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department, to the guardian ad litem and attorney for the child, and, if the child is a member of a Medicaid managed care plan, to the plan that is financially responsible for the child's care in residential treatment, all of whom must be provided with the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem, the attorney for the child, and the court having jurisdiction over the child and must provide the guardian ad litem, the attorney for the child, and the court with a copy

of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, ~~and~~ to the guardian ad litem, and to the attorney for the child, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem, the attorney for the child, and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, to the attorney for the child, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem, to the attorney for the child, and to the department. The

department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress toward achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 60 days after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 60-day review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 60-day review, the court must conduct a review of the child's residential treatment plan every 90

days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child's progress toward achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

Section 18. Subsections (20) and (21) of section 39.4085, Florida Statutes, are amended to read:

39.4085 Legislative findings and declaration of intent for goals for dependent children.—The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the following goals for children in shelter or foster care:

(20) To have a guardian ad litem appointed to represent, within reason, their best interests; and, as appropriate, have an attorney for the child ~~and, where appropriate, an attorney ad litem~~ appointed to represent their legal interests.~~,~~ The guardian ad litem and attorney for the child ~~attorney ad litem~~ shall have immediate and unlimited access to the children they represent.

(21) To have all their records available for review by

their guardian ad litem or attorney for the child, as applicable, ~~and attorney ad litem~~ if they deem such review necessary.

The provisions of this section establish goals and not rights. Nothing in this section shall be interpreted as requiring the delivery of any particular service or level of service in excess of existing appropriations. No person shall have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing herein shall require the expenditure of funds to meet the goals established herein except funds specifically appropriated for such purpose.

Section 19. Subsections (8), (12), (13), (14), and (17) of section 39.502, Florida Statutes, are amended to read:

39.502 Notice, process, and service.—

(8) It is not necessary to the validity of a proceeding covered by this part that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child or an attorney for the child, as appropriate.

(12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem or attorney

for the child, as applicable.

(13) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department or the guardian ad litem or attorney for the child, as applicable.

(14) No fee shall be paid for service of any process or other papers by an agent of the department or the guardian ad litem or attorney for the child, as applicable. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

(17) The parent or legal custodian of the child, the attorney for the department, the guardian ad litem or attorney for the child, as applicable, the foster or preadoptive parents, and all other parties and participants shall be given reasonable notice of all proceedings and hearings provided for under this part. All foster or preadoptive parents must be provided with at least 72 hours' notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

Section 20. Paragraphs (c) and (e) of subsection (1) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have

failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(c) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal guardian or the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~ demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or

evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either

case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

4. Determine whether the child has a strong attachment to the prospective permanent guardian and whether such guardian has a strong commitment to permanently caring for the child.

(e) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem or attorney for the child if appointed, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child

support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order must include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's child care, early education program, or any other educational placement, and to promote family preservation or reunification whenever possible.

Section 21. Paragraph (a) of subsection (2) of section 39.523, Florida Statutes, is amended to read:

39.523 Placement in out-of-home care.—

(2) ASSESSMENT AND PLACEMENT.—When any child is removed from a home and placed into out-of-home care, a comprehensive placement assessment process shall be completed to determine the level of care needed by the child and match the child with the most appropriate placement.

(a) The community-based care lead agency or subcontracted agency with the responsibility for assessment and placement must coordinate a multidisciplinary team staffing with any available individual currently involved with the child, including, but not limited to, a representative from the department and the case manager for the child; a therapist, ~~attorney ad litem,~~ a guardian ad litem, an attorney for the child, teachers, coaches, and Children's Medical Services; and other community providers of services to the child or stakeholders as applicable. The team may also include clergy, relatives, and fictive kin if appropriate. Team participants must gather data and information on the child which is known at the time including, but not

limited to:

1. Mental, medical, behavioral health, and medication history;

2. Community ties and school placement;

3. Current placement decisions relating to any siblings;

4. Alleged type of abuse or neglect including sexual abuse and trafficking history; and

5. The child's age, maturity, strengths, hobbies or activities, and the child's preference for placement.

Section 22. Paragraph (a) of subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem or attorney for the child, and, if appropriate, the child and the temporary custodian of the child.

Section 23. Paragraph (c) of subsection (1) of section 39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(c) If there is evidence of harm as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~, the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 24. Subsection (8) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

(8) During the time that a young adult is in care, the court shall maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. The court shall review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. If the young adult is appointed a guardian under chapter 744 or a guardian advocate under s. 393.12, at the permanency review hearing the court shall review the necessity of continuing the guardianship and whether restoration of guardianship proceedings are needed when the young adult reaches 22 years of age. The court may appoint an attorney for the child ~~a guardian ad litem~~ or continue the appointment of a guardian ad litem or an attorney for the child, as applicable, with the young adult's consent. The young adult or any other party to the dependency case may request an

additional hearing or review.

Section 25. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(b)1. The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months following the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem or attorney for the child, if one has been appointed, and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

2. Notwithstanding subparagraph 1., the court must retain jurisdiction over a child if the child is placed in the home with a parent or caregiver with an in-home safety plan and such safety plan remains necessary for the child to reside safely in the home.

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(b) *Submission and distribution of reports.*—

1. A copy of the social service agency's written report and the written report of the guardian ad litem, and a report of the attorney for the child, if he or she has prepared one, must be served on all parties whose whereabouts are known; to the foster parents or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with

a copy of the written report does not apply to those parents who have voluntarily surrendered their child for adoption or who have had their parental rights to the child terminated.

2. In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

3. In addition to or in lieu of any written statement provided to the court, the foster parent or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.

Section 26. Paragraph (g) of subsection (5) of section 39.702, Florida Statutes, is amended to read:

39.702 Citizen review panels.—

(5) The independent not-for-profit agency authorized to administer each citizen review panel shall:

(g) Establish policies to ensure adequate communication with the parent, the foster parent or legal custodian, the guardian ad litem or attorney for the child, and any other person deemed appropriate.

Section 27. Paragraph (a) of subsection (3) and subsections (5), (6), and (7) of section 39.801, Florida Statutes, are

amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not

required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

8. The attorney for the child, if appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(5) All process and orders issued by the court must be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department, ~~or~~ the guardian ad litem, or the attorney for the child.

(6) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served or executed by authorized agents of the department, ~~or~~ of the guardian ad litem, or of the attorney for the child.

(7) A fee may not be paid for service of any process or other papers by an agent of the department, ~~or~~ the guardian ad litem, or the attorney for the child. If any process, orders, or other papers are served or executed by any sheriff, the sheriff's fees must be paid by the county.

Section 28. Subsection (1) of section 39.802, Florida Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

(1) All proceedings seeking an adjudication to terminate parental rights pursuant to this chapter must be initiated by the filing of an original petition by the department, the guardian ad litem, the attorney for the child, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

Section 29. Subsection (2) of section 39.808, Florida Statutes, is amended to read:

39.808 Advisory hearing; pretrial status conference.—

(2) At the hearing the court shall inform the parties of their rights under s. 39.807, shall appoint counsel for the parties in accordance with legal requirements, and shall appoint a guardian ad litem or an attorney for the child as provided for in s. 39.831 to represent the interests of the child if one has not already been appointed.

Section 30. Subsection (11) of section 39.810, Florida Statutes, is amended to read:

39.810 Manifest best interests of the child.—In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child. This

consideration shall not include a comparison between the attributes of the parents and those of any persons providing a present or potential placement for the child. For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:

(11) The recommendations for the child provided by the child's guardian ad litem ~~or legal representative~~.

Section 31. Subsection (9) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(9) After termination of parental rights, the court shall retain jurisdiction over any child for whom custody is given to a social service agency until the child is adopted. The court shall review the status of the child's placement and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the attorney for the child or guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

Section 32. Subsection (4) of section 39.812, Florida Statutes, is amended to read:

39.812 Postdisposition relief; petition for adoption.—

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this

continuing jurisdiction, for good cause shown by the attorney for the child or guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child. When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:

(a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;

(b) Thirty days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; or

(c) The foster parent or custodian agrees to the child's removal.

Section 33. Subsections (5), (6), and (7) of section 43.16, Florida Statutes, are amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(5) The duties of the commission shall include, but not be limited to, the following:

(a) The maintenance of a central state office for administrative services and assistance when possible to and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal

conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem Program, and the Statewide Office of Child Representation.

(b) Each state attorney, public defender, ~~and~~ criminal conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem Program, and the Statewide Office of Child Representation shall continue to prepare necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans, but will forward such items to the commission for recording and submission to the proper state officer. However, when requested by a state attorney, a public defender, a criminal conflict and civil regional counsel, ~~or~~ the Guardian Ad Litem Program, or the Statewide Office of Child Representation, the commission will either assist in the preparation of budget requests, voucher schedules, and other forms and reports or accomplish the entire project involved.

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, ~~and~~ the Guardian Ad Litem Program, and the Statewide Office of Child Representation shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

(7) The provisions contained in this section shall be supplemental to those of chapter 27, relating to state attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel; to those of chapter 39, relating to the Guardian Ad Litem Program and the Statewide Office of Child Representation; or to other laws pertaining hereto.

Section 34. Paragraph (a) of subsection (2) of section 63.085, Florida Statutes, is amended to read:

63.085 Disclosure by adoption entity.—

(2) DISCLOSURE TO ADOPTIVE PARENTS.—

(a) At the time that an adoption entity is responsible for selecting prospective adoptive parents for a born or unborn child whose parents are seeking to place the child for adoption or whose rights were terminated pursuant to chapter 39, the adoption entity must provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity by the parents, legal custodian, or the department. This subsection applies only if the adoption entity identifies the prospective adoptive parents and supervises the placement of the child in the prospective adoptive parents' home. If any information cannot be disclosed because the records custodian failed or refused to produce the background information, the adoption entity has a duty to provide the information if it becomes available. An individual or entity contacted by an adoption entity to obtain the background information must release the requested information to the adoption entity without the

necessity of a subpoena or a court order. In all cases, the prospective adoptive parents must receive all available information by the date of the final hearing on the petition for adoption. The information to be disclosed includes:

1. A family social and medical history form completed pursuant to s. 63.162(6).

2. The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.

3. A complete set of the child's medical records documenting all medical treatment and care since the child's birth and before placement.

4. All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement.

5. The child's educational records, including all records concerning any special education needs of the child before placement.

6. Records documenting all incidents that required the department to provide services to the child, including all orders of adjudication of dependency or termination of parental rights issued pursuant to chapter 39, any case plans drafted to address the child's needs, all protective services investigations identifying the child as a victim, and all guardian ad litem reports or attorney for the child reports filed with the court concerning the child.

7. Written information concerning the availability of adoption subsidies for the child, if applicable.

Section 35. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 36. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

Section 37. Section 627.746, Florida Statutes, is amended to read:

627.746 Coverage for minors who have a learner's driver license; additional premium prohibited.—An insurer that issues an insurance policy on a private passenger motor vehicle to a named insured who is a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~ may not charge an additional premium for coverage of the minor while the minor is operating the insured vehicle, for the period of time that the minor has a learner's driver license, until such time as the minor obtains a driver license.

Section 38. Paragraph (c) of subsection (1) of section 934.255, Florida Statutes, is amended to read:

934.255 Subpoenas in investigations of sexual offenses.—

(1) As used in this section, the term:

(c) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(78) ~~s. 39.01(77)~~.

Section 39. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

Section 40. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1920
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Book
SUBJECT:	Child Welfare
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Fav/CS**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1920 creates the Statewide Office of Child Representation (OCR) and makes a number of changes to various provisions related to guardians ad litem (GAL) under ch. 39, F.S., and regarding attorney representation for the child.

The bill provides that on or after July 1, 2022, a GAL must be appointed in specified circumstances including a dependency proceeding or "related adoption proceeding" as defined in s. 39.820, F.S., and may be appointed at the court's discretion upon a finding that circumstances exist which require the appointment. The guardian ad litem program (GALP) must be discharged within 60 days after a child reaches 10 years old except if certain factors are met.

The bill defines a "conflict of interest" with respect to GAL volunteers and requires the GALP to develop guidelines to identify when there is reasonable cause to suspect an assigned GAL has a conflict of interest. The bill prohibits the GALP from appointing a GAL when a conflict of interest is identified. It also requires the court to order that a new GAL be assigned or, unless otherwise prohibited by law, discharge the GAL and appoint an attorney for the child when such circumstances exist. Further, the GALP must identify any GAL who is experiencing a physical or mental health issue or who appears to present a danger to any child, and remove him or her from all assigned cases and terminate his or her volunteer services.

The GAL Qualifications Committee is redesignated as the Child Well-Being Qualifications Committee. The bill provides that the executive director of the GALP may be reappointed to

serve more than one term and the reappointment process must be made in accordance with the initial appointment process.

The OCR is established within the Justice Administrative Commission (JAC) and is structured with requirements substantially similar to current law relating to the GALP. Regional Offices are created within the area serviced by each of the five district court of appeals. Child Representation Counsel (CRC) must comply with proscribed duties. The bill provides specified duties for the OCR and the Department of Children and Families (DCF) is required to take any necessary steps to obtain federal Title IV-E funding reimbursement for the OCR. The OCR may contract with a local nonprofit agency to provide direct representation for the child.

Section 39.831, F.S., is created to make provisions regarding when an "attorney for the child", as defined in the bill, must or may be appointed. The bill relocates s. 39.01305(4)(b) and (5), F.S. to s. 39.831, F.S., but clarifies the scope of attorney representation and that compensation must be made in accordance with s. 27.5305, F.S. The bill also sets out several other provisions regarding an attorney for the child, including when the OCR must be appointed, the process that must be followed when OCR has a conflict of interest in representing a child, when the attorney for the child may withdraw or be discharged, his or her access to records, and requirement to file all appropriate motions at least 72 hours before a court hearing.

Several sections are amended to conform cross-references and provisions to changes made by the act.

The bill will result in an indeterminate negative impact on state expenditures. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria in the bill. Further, the JAC states that the bill will likely have a substantial fiscal impact on the JAC through increased workload. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).[1] A child protective investigation begins if the hotline determines the allegations meet the statutory

[1] Section 39.201(a), F.S.

definition of abuse,[2] abandonment,[3] or neglect.[4] A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.[5]

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the Department of Children and Families (DCF) removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.[6] The dependency court process is summarized in the table below.

The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines the child's home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.

[2] Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

[3] Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

[4] Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

[5] Section 39.201(5), F.S.

[6] *See* s. 39.01(15), F.S., for the definition of "child who is found to be dependent".

Dependency Proceeding	Description of Process	Controlling Statute
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Attorney Representation in Dependency Cases

An attorney must comply with the Florida Rules of Professional Conduct promulgated by the Florida Bar. An attorney must zealously advocate for his or her client and must abide by a client's decision on how to proceed in a matter.[7] This means the client has authority to decide the purpose and scope of the attorney's representation, within the limits imposed by law and the attorney's professional obligations, including for instance whether to settle a matter.[8] An attorney has an obligation to communicate with his or her client about such decisions,[9] and should try to reach a mutually agreeable resolution with his or her client if a disagreement arises on how to proceed.[10]

[7] Rules Regulating the Fla. Bar 4-1.2.
[8] *Id.*
[9] Rules Regulating the Fla. Bar 4-1.2 and 4-1.4(a)(1).
[10] Rules Regulating the Fla. Bar 4-1.2.

Attorney Duties and Conflicts of Interest

Attorneys are required to adhere to specified duties within the Rules of Professional Conduct. For instance, an attorney must be competent to represent his or her client, and must act with reasonable diligence and promptness in representing a client.[11]An attorney also has duties of loyalty and confidentiality to his client.[12] However, an attorney must disclose confidential information if he or she reasonably believes it is necessary to prevent a client from committing a crime, or to prevent death or substantial bodily harm to another.[13] An attorney may also disclose confidential information, in part, if the client gives informed consent or the attorney reasonably believes the disclosure is necessary to serve the client's interest provided the client does not specifically require the information not to be disclosed.[14]

The Rules of Professional Conduct also contain provisions regarding how an attorney must handle circumstances in which conflict of interest exists.[15] This includes, in part, when an attorney has a conflict with a current[16] or former client[17] as well as prohibited transactions.[18] An attorney must not represent a client whose interests are directly adverse to another client, or there is a substantial risk that representation of the client would materially limit the attorney's representation of another client, a former client or personal interest of the lawyer, except when the client waives the conflict in specified circumstances.[19] This means an attorney must not represent opposing parties in litigation.[20] Further, an attorney generally may not use information to the disadvantage of a client without informed consent, unless otherwise permitted in the rules.[21]

An attorney must not represent a client if his or her representation will result in a violation of the Rules of Professional Conduct or law, or the attorney's physical or mental condition materially impairs his or her ability to represent the client.[22] In such instances, the attorney must not commence representation or must withdraw as counsel if specified conditions are met.[23]

Attorney for the DCF

The DCF must be represented by counsel in dependency and termination of parental rights proceedings.[24] The DCF, through its counsel, must make recommendations to the court and may present evidence including testimony from its own employees or employees of its agents, subcontractors, or other community providers.[25] The DCF may enter into a contract for the

[11] Rules Regulating the Fla. Bar 4-1.1 and 4-1.3.
[12] Rules Regulating the Fla. Bar 4-1.6 and 4-1.7.
[13] Rules Regulating the Fla. Bar 4-1.6(b).
[14] Rules Regulating the Fla. Bar 4-1.6(a) and (c).
[15] *See* Rules Regulating the Fla. Bar 4-1.7 to 4-1.11.
[16] Rules Regulating the Fla. Bar 4-1.7
[17] Rules Regulating the Fla. Bar 4-1.9.
[18] Rules Regulating the Fla. Bar 4-1.8.
[19] Rules Regulating the Fla. Bar 4-1.7(a).
[20] Rules Regulating the Fla. Bar 4-1.7.
[21] Rules Regulating the Fla. Bar 4-1.8(b).
[22] Rules Regulating the Fla. Bar 4-1.16(a), F.S.
[23] Rules Regulating the Fla. Bar 4-1.16(a) and (b), F.S.
[24] Section 39.013(12), F.S.
[25] *Id.*

provision of children legal services, and all counsel included those contracted must adopt the child welfare practice model as proscribed by the DCF.[26]

Except when legal representation is contracted out, the State of Florida is represented by Children Legal Services through the DCF.[27] The DCF is required to contract with the state attorney in the sixth judicial circuit for children legal services.[28] The DCF contracts with the Florida Attorney General's Office to provide children's legal services in Hillsborough and Broward counties.[29]

Attorney for the parents

Parents have the right to be represented by counsel in dependency proceedings, and they must be informed of this right at each stage of the dependency proceedings.[30] The court must appoint counsel to represent parents who are indigent.[31] The Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) has primary responsibility for representing parents in proceedings under ch. 39, F.S.[32] If OCCCRC has a conflict of interest in representing a parent or parents, private counsel who must be selected from a registry is appointed on a rotating basis.[33] The private attorneys contract with the JAC under specified terms to provide such services.[34]

Attorney for the child

Attorney representation of children

An attorney should, as far as reasonably practical, maintain a normal attorney-client relationship when a client's ability to make an adequately informed decision is impaired, such as in representation of a minor child.[35] An attorney may seek the appointment of a GAL if he or she reasonably believes the client is not able to adequately act in his or her own interest.[36] The Rules of Professional Conduct acknowledge that the law recognizes intermediate degrees of competence, and explicitly provides that children ages 10 or 12 are regarded as having opinions which are entitled to be considered in respect of legal proceedings concerning their custody.[37]

[26] Section 409.996(18), F.S.
[27] The DCF, *Children Legal Services Overview*, available at https://www.myflfamilies.com/service-programs/childrens-legal-services/overview.shtml (last visited March 25, 2021).
[28] Section 409.996(18)(a), F.S.
[29] The Office of Attorney General State of Florida, *Children's Legal Services Bureau*, available at http://myfloridalegal.com/pages.nsf/Main/27E91605D4750EBF85256CCB006E66D3 (last visited March 25, 2021).
[30] Section 39.013(1), F.S.
[31] Section 39.013(9)(a), F.S.
[32] Section 27.511(6)(a), F.S.
[33] Section 27.40(2) and (3), F.S.
[34] Section 27.40(3) and (5), F.S.
[35] Rules Regulating the Fla. Bar 4-1.14.
[36] *Id.*
[37] *Id.*

Child Representation Models

Child representation in dependency proceedings varies but in most instances is based on what is in the child's best interest, direct representation, or a hybrid approach.[38] A summary of the different models and how they operate is set out in the table below.[39]

Exhibit 3
States' Models of Representation for Children in Dependency Proceedings Fall Into Six Categories

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states always receive a GAL who is required to be either an attorney or a professional (e.g., professional GAL or mental health counselor). These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Best Interest (lay volunteer)	12	Children in these states always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

Representation under current Florida law

Section 39.01305, F.S., provides that an attorney must be appointed to represent a dependent child[40] who has the following special needs:

- Resides in or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but does not agree to take it;
- Has a diagnosis of a developmental disability;[41]
- Is being placed or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.[42]

[38] The Office of Program Policy Analysis and Government Accountability (OPPAGA), *OPPAGA Review of Florida's Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, January 26, 2021, available at https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf (last visited March 25, 2021) (hereinafter cited as "OPPAGA Presentation").
[39] OPPAGA, *OPPAGA Review of Florida's Guardian ad Litem Program*, p. 5 and 34, December 2020 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The OPPAGA Memo").
[40] Section 39.01305(2), F.S., defines "dependent child" as a child who is subject to any proceeding under ch. 39, F.S. The term does not require that a child be adjudicated dependent for purposes of this section.
[41] Section 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See* s. 393.063, F.S., for other definitions related to developmental disability.
[42] Section 787.06(2)(d), F.S., defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

A court is not restricted to appointing an attorney to represent a child for the reasons listed above.[43]

The court must request a recommendation from the GALP for an attorney who is willing to represent a child without additional compensation before a court may appoint one under s. 39.01305(4)(a), F.S. If the GAL recommends an attorney who is available within 15 days from the date of the court's request, the court must appoint that attorney.[44] The court may appoint an attorney who will receive additional compensation within 15 days if the GALP notifies the court that it will not be able to make a recommendation within the specified time.[45]

An attorney who is appointed to represent a child continues to be appointed until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed.[46] An attorney who is appointed must provide a range of legal services including from removal or appointment through any appellate proceedings.[47] The appointment must be in writing and the attorney must be adequately compensated unless he or she was agreed to provide pro bono services.[48] Unless an attorney has agreed to represent a child pro bono, the JAC must contract with attorneys appointed by the court and their fees may not exceed $1,000 per child per year.[49] All appointed attorneys must also be provided with access to funding for due process costs of litigation subject to appropriations.[50]

Several counties in Florida currently operate offices that provide child representation, including Palm Beach, Broward, and Hillsborough counties.[51] For instance, the Legal Aid Society of Palm Beach (LAS Palm Beach) Children's Foster Project is appointed to every child 0 to 12 years old who is in out-of-home care.[52] The Legal Aid Society of Broward County (LAS Broward) represents children in dependency cases and provides free legal services for eligible relative and nonrelative caregivers.[53] Similarly, the L. David Shear Children's Law Center of Bay Area Legal Services provides representation to children who have been abused, abandoned, or neglected.[54]

At least some of these organizations receive government funding.[55] For instance, the LAS Palm Beach County receives public grants, such as the U.S. Department of Justice under the Violence against Women Act and Children's Services Council of Palm Beach County, and private grants,

[43] Section 39.01305(8), F.S.
[44] Section 39.01305(4)(a), F.S.
[45] *Id.*
[46] Section 39.01305(4)(b), F.S.
[47] *Id.*
[48] Section 39.01305(4)(b) and (5), F.S.
[49] Section 39.01305(5), F.S.
[50] *Id.*
[51] *See* Legal Aid Society Palm Beach ("LAS Palm Beach"), *children*, available at https://legalaidpbc.org/children/ (hereinafter cited as "LAS Palm Beach Children"); Legal Aid Service of Broward County ("LAS Broward"), *Children & Education*, available at https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/ (hereinafter cited as "LAS Broward Children"); Bay Area Legal Services, *Family & Children*, available at https://bals.org/help/family-children (all sites last visited March 25, 2021).
[52] LAS Palm Beach Children.
[53] LAS Broward Children.
[54] *Id.*
[55] *See* LAS Broward Children.

such as William and Helen Thomas Charitable Foundation.[56] LAS Broward receives funding from the Children's Services Council of Broward County (CSCBC).[57] In many instances, these organizations rely on donations and pro bono attorneys who donate their services to provide representation to children who are the subject of a dependency case.[58]

Office of Child Representation (OCR) (Section 8)

Florida law does not currently provide for an OCR. Colorado and Travis County, Texas, however, do have offices of child representation. The Colorado Office of Child's Representative (COCR) is a state agency that was established in 2000 to provide representation to children.[59] The COCR represent children in several types of cases, including:

- Dependency and Neglect;
- Juvenile Delinquency;
- Domestic Relations; and
- Adoption, Truancy, Probation, Mental Health, and Paternity.[60]

All COCR attorneys are trained on the law, social science research, child development, mental health and education issues, and best practices in court proceedings.[61] A Colorado court must appoint a GAL in dependency and neglect cases to represent the child's best interest, and must appoint an OCR attorney to act as the child's counsel when the child faces contempt citations or the court has determined that the child holds his or her own patient-therapist privilege.[62, 63] The COCR is responsible for overseeing both roles as a GAL and as counsel for the children, if applicable.[64] When COCR is appointed as counsel for the child, the attorney has a traditional attorney-client role in which he or she represents the child's wishes in court proceedings.[65]

In Colorado, a GAL is a COCR attorney who is appointed to represent the best interest of the child which means that the COCR attorney does not advocate for the child's express wishes in a

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[56] LAS Palm Beach, *Funding*, available at https://legalaidpbc.org/funding/ (last visited March 25, 2021).
[57] *See* LAS Broward, *Children & Education*, available at https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/ (last visited March 25, 2021). The CSCBC is an independent taxing authority created by voters in 2000 and reauthorized in 2014, and its purpose is to provide advocacy and resources to children of Broward County. The CSCBC, *About Us*, available at https://www.cscbroward.org/about (last visited March 25, 2021).
[58] *See* LAS Broward County, *Get Involved with Legal Aid*, available at https://www.browardlegalaid.org/get-involved/; Dade Legal Aid, *Pro Bono Enrollment (Attorney)*, available at http://www.dadelegalaid.org/psb-enrollment-form-attorneys/; Dade Legal Aid, *Donations through The Miami Foundation*, available at http://www.dadelegalaid.org/donations-through-the-miami-foundation/; Bay Area Legal Services, *Justice Works! The Campaign for Bay Area Legal Services*, available at https://bals.org/support; and Bay Area Legal Services, *Volunteer Lawyers Program*, available at https://bals.org/volunteer (all sites last visited March 25, 2021).
[59] The COCR, *What We Do*, available at https://coloradochildrep.org/about-ocr/ (last visited March 25, 2021).
[60] *Id.*
[61] The COCR, *Case Types Covered by OCR Attorneys*, available at https://coloradochildrep.org/about-ocr/ocr-cases/ (last visited March 25, 2021).
[62] L.A.N. et al. v. L.M.B., 11 SC 529 (Jan. 22, 2013) (finding that a GAL holds a child's psychotherapist-patient privilege when: (1) the child is too young or incompetent to hold the privilege; (2) the child's interests are adverse to those of his or her parent(s); and (3) section 19-3-311, C.R.S. (2012) does not abrogate the privilege).
[63] The COCR, *Dependency & Neglect Cases*, available at https://coloradochildrep.org/about-ocr/ocr-cases/dependency-and-neglect/ (last visited March 25, 2021) (hereinafter cited as "D&N Cases").
[64] *Id.*
[65] *Id.*

traditional attorney-client role.[66] Instead, the GAL must advocate for the child's health, safety, and well-being, and his or her advocacy must align with the interests and needs of the child.[67] The GAL has specified requirements that must be met, including attending all court hearings and conducting an independent investigation which must continue throughout the duration of the case.[68]

The Travis County, Texas Office of Children Representation (TOCR), however, provides legal representation to children who are the subject of dependency cases only.[69] The TOCR counsel act in a traditional attorney-client role and represent children's legal interests.[70]

Guardian ad Litem

Appointment and Discharge

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.[71] The Child Abuse Prevention and Treatment Act makes the approval of grants contingent on a eligible state plans which must include provisions and procedures to appoint a GAL in every case.[72] The GAL must be appointed to:

- Obtain first-hand knowledge of the child's situation and needs; and
- Make recommendations to the court regarding the best interest of the child.[73]

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.[74] The GALP publishes monthly representation reports which summarize, in part, the number of reported dependent children, the GALPs appointments in those cases, and the number of certified volunteer GALs.[75] The December 2020 Representation Report details the following statistics:

- The Office of State Courts Administrator reports there are 31,288 children who are the subject of a dependency case.[76]
- The GALP reports that 22,960 children are appointed to the program, and there are 11,116 certified case volunteers including pro bono attorneys.[77]
- The GALP reports 98 newly certified case volunteers in its December 2020 report.[78]

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[66] D&N Cases.
[67] *Id.*
[68] *Id.*
[69] Travis County, Tx Gov, *The Office of Child Representation*, available at https://www.traviscountytx.gov/criminal-justice/child-representation (last visited March 25, 2021) (hereinafter cited as "TOCR website").
[70] *Id.*
[71] 42 U.S.C. 67 §5106a.(b)(2)(xiii); Section 39.822(1), F.S.
[72] 42 U.S.C. 67 §5106a.(b)(2)(xiii).
[73] *Id.*
[74] Section 39.822(1), F.S.
[75] *See* the GAL for Children, *Florida Guardian ad Litem Program, Monthly Representation Report: December 2020*, available at https://guardianadlitem.org/wp-content/uploads/2021/01/Representation-Report-December-2020.pdf (last visited March 25, 2021) (hereinafter cited as "December 2020 Representation Report").
[76] *Id.*
[77] December 2020 Representation Report.
[78] *Id.*

In some cases, the GALP may discharge from a case when a child's permanency goal has been established and the child is in a stable placement.[79] A summary of the reasons the GALP has been discharged from dependency cases from 2016 to 2020 by Fiscal Year is summarized in the table below.[80]

Exhibit 6
Closure Reasons Reported by GAL Program Remained Stable From Fiscal Year 2016-17 Through the First Half of Fiscal Year 2019-20[1]

GAL Program Closure Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[1]	Four-Year Total
Reunification	29%	31%	29%	31%	30%
Adoption	18%	18%	20%	19%	19%
Permanency Goal Established[2]	18%	19%	23%	22%	21%
Permanent Guardianship	17%	15%	13%	12%	15%
Other[3]	9%	9%	6%	6%	8%
Insufficient Program Resources[4]	5%	4%	4%	4%	5%
Aged Out of Care	3%	4%	4%	4%	4%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

[1] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
[2] Closure reasons of APPLA are included here.
[3] Other includes children who ran away, were transferred to or placed in another circuit, and cases that were either consolidated or bifurcated by the courts.
[4] This includes cases to which the GAL Program was appointed where the program was either unable to staff the case at all or had to discharge from a case before it concluded. Closure reasons of APPLA are included here.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data representing 80% of GAL children with a closed case.

Role of the GALP and GAL

"Guardian ad litem" is defined as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, pro bono attorney working on behalf of a GAL; court-appointed attorney; or responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided by law including ch. 39, F.S., until discharged by the court.[81]

The GALP reports that it represents the children who are alleged to be abused, abandoned, or neglected and are subject to the dependency court's jurisdiction.[82] The Florida Supreme Court has recognized that a GAL is appointed to serve as the child's representative in court to present what is in the child's best interest.[83] The GALP reports that the adult representing the child's best interest will ordinarily be represented by counsel in the judicial proceedings, and suggests such attorney owes a duty of care to both the guardian ad litem and the child with whom the GAL is appointed to represent.[84] The GALP acknowledges that there is no attorney-client relationship

[79] The OPPAGA Memo at p. 15.
[80] *Id.* at p. 16.
[81] Section 39.820(1), F.S.
[82] The GALP, *Agency Analysis for SB 1920*, p. 15, March 14, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The GALP Analysis").
[83] *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citing *C.M. v Dep't of Children & Family Servs.*, 854 So.2d 777, 779 (Fla. 4th DCA 2003).
[84] The GALP Analysis at p. 3 [citing Op. Att'y Gen. Fla. 96-94 (1996)].

between the GALP attorney and the child, and suggests that independent legal representation is provided through the GAL.[85]

The GAL or GALP representative must review all disposition recommendations or changes in placements, and must be present at all critical stages of the proceeding or submit a written report, which must be filed and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.[86]

Performance Advocacy Snapshot (PASS) summarizes the individual GAL circuit program performance and GAL influence on child welfare outcomes by circuit.[87] The December 2020 PASS report states that a GAL has been appointed to 73.4% of children who are the subject of dependency proceedings, with some exceptions.[88] It also reports 67.5% active certified volunteers statewide.[89] Children achieving permanency within 12 months of entering care totals 18 percent and 40.6 percent of adoptions occur within 24 months according to the PASS report.[90]

Activities of GAL

The GALP reports that GAL are involved in a number of activities related to the child, including, in part:

- Attending school events;
- Guiding children through changes of placement;
- Creating community awareness about children who are abused, abandoned, or neglected;
- Being a safe and stable adult in the child's life; or
- Reporting quality information to judges.[91]

Conflicts of Interest

Under current law, there is no statutory provision under ch. 39, F.S., which requires the GALP to identify any conflict of interest a GAL may have. The GALP Standards of Operation, however, provide that the GALP "shall not accept appointment to a case where the Program has an impermissible conflict of interest and shall seek discharge if an impermissible conflict of interest arises after appointment. An impermissible conflict of interest between the GAL Program and a child or children will be found if the GAL Program has a duty, or the appearance of a duty, to another that may prevent the GAL Program from being fully able to represent the child to whom the Program is appointed. If an individual GAL Volunteer or staff member has a conflict, this may be resolved by assigning another individual from the Program in the discretion of the Circuit Director."[92] Standard 7.D. further states that GALs have an obligation to notify the GAL Program Attorney if they are aware of a possible conflict of interest, which could include prior

[85] *Id.* at p. 4.
[86] Section 39.822(4), F.S.
[87] *See* The GALP, *Statewide Guardian ad Litem Program – Performance Advocacy Snapshot (PASS)*, December 2020, available at https://guardianadlitem.org/wp-content/uploads/2021/01/Performance-Advocacy-SnapShot-December-2020-Revised.pdf (last visited March 25, 2021) (hereinafter cited as "December 2020 PASS").
[88] *Id.*
[89] December 2020 PASS.
[90] *Id.*
[91] The GALP Analysis at p. 4.
[92] *Id.* at p. 9-10 (citing GAL's Standard 7.D.).

involvement with individuals involved in the case, any personal reasons that may not allow them to provide best interests advocacy for a child, and situations when the GALP is appointed to represent multiple related children whose interests conflict with one another.
Further, Standard 7.D. states that an impermissible conflict will not be found simply because the GAL is advocating in good faith for the child's best interests and the child conveys a position that may be opposed to the position taken by the GAL.[93]

The GAL's Standards of Operation 3, Code of Conduct, prohibit GALs from practicing, condoning, facilitating, or participating in any form of discrimination, including in part, discrimination based on race, color, gender, sexual orientation, sexual identity, age, religion, or ethnicity.[94] Finally, the GALP reports that the Standards of Operation prohibit a GAL from receiving a fee for their services as a GAL or accepting a gift for personal benefit.[95]

GAL Executive Director Appointment and Reappointment

The GALP's executive director is appointed by the Governor from a list of at least three nominees of eligible applicants selected by the Guardian Ad Litem Qualifications Committee (GALQC).[96] The executive director must meet minimum qualifications, serve a term of 3 years, and has specified duties.[97] The executive director is permitted to serve more than one term, but current law is unclear on whether any additional terms are subject to the appointment process.

Funding

GAL Funding

The OPPAGA reports that state funding for the GALP has increased by 21% over the past five years from $43.6 million in Fiscal Year 2015-16 to $52.9 million in Fiscal Year 2019-20.[98] Other sources of funding, including local governments, federal Victims of Crime Act (VOCA) funds, and non-profit sources, have also increased over the past five years from $4.6 million in Calendar Year (CY) 2015 to $9.7 million in CY 2019.[99] With this increase, the number of staff increased, the number of volunteers remained stable, and the number of children served has decreased from 40,032 in Fiscal Year (FY) 2016-17 to 36,506 in FY 2019-20.[100]

Family First Prevention Services Act

The Bipartisan Budget Act of 2018 (HR 1892) was signed into law on February 9, 2018, which included the Family First Prevention Services Act (FFPSA). The legislation aims at providing financial assistance with a focus on prevention services and reducing funds to residential group

[93] The GALP, *Standards of Operation*, Revised April 2020, p. 18, available at https://guardianadlitem.org/wp-content/uploads/2020/05/GAL-Standards-Rev.-4.30.2020-FINAL.pdf (last visited March 25, 2021) (hereinafter cited as "GALP SOP 2020").
[94] *Id.* at p. 10.
[95] The GALP Analysis at p. 10.
[96] Section 39.8296(2)(a), F.S.
[97] *Id.*
[98] OPPAGA Presentation at p. 7.
[99] *Id.*
[100] *Id.*

care.[101] It also has the potential to dramatically change child welfare systems by expanding the way in which Title IV-E funding may be spent.[102] The FFPSA requirements include:

- Option to use funds for up to 12 months for evidence-based services, such as substance abuse treatment;
- Eligible candidates include children who can remain safely in the home with the provision of services, children in foster care who are parents, or parents or caregivers who require services to prevent a child's entry into foster care;
- States must prepare a prevention plan for the child to safely remain at home with services; and
- Services must be trauma-informed and pre-approved on the Health and Human Services website.[103]

Title IV-E funds previously were restricted to being used for the costs of eligible children's foster care maintenance; administrative expenses to manage the foster care program; training for specified persons; and kinship guardianship assistance. Title IV-E federal funding is now available for direct legal representation and advocacy for eligible children in foster care and their parents.[104] As the GALP attorney does not have a direct attorney-client relationship with the child[105] and directly represent the children in Florida dependency proceedings, it is unclear whether the GALP is eligible for Title IV-E funding under the new federal standards. However, the GALP has not begun to be reimbursed for legal representation and advocacy under the FFPSA standards.

III. Effect of Proposed Changes:

Office of Child Representation (Section 8)

The bill establishes a new Office of Child Representation (OCR) to provide direct legal representation to specified children during dependency proceedings. Similar to the GALP, the bill creates the OCR within the JAC which provides administrative support and services but does not control, supervisor, or direct the OCR in the performance of its duties. However, employees are governed by plans, including salary and benefits, approved by the JAC.

The bill provides for an executive director to be appointed to the OCR with the same appointment process, term, and requirements as the executive of the GALP provided for in s. 39.8296(2)(a), F.S. The OCR executive director must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and social service delivery

[101] The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtml (last visited March 25, 2021).
[102] National Conference of State Legislatures, *Family First Prevention Services Act Update*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx. (last visited March 25, 2021).
[103] The DCF, *Family First Prevention Services Act*, p. 26, August 28, 2020, available at http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8_28_2020.pdf (last visited March 25, 2021).
[104] U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, January 14, 2021, available at https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf (last visited March 25, 2021).
[105] The GALP SOP 2020, p. 7.

systems to meet the needs of children who are abused, abandoned and neglected. The bill requires the appointment of the initial executive director to be completed by January 1, 2022.

The OCR, within the resources of the JAC, must provide oversight and technical assistance, in part, as follows:

- Identify the resources required to implement methods of collecting, reporting, and tracking case data;
- Review and collect information relating to offices of child representation and other models of attorney representation in other states;
- Develop statewide performance measures and standards in collaboration with the regional offices of OCR;
- Develop a training program for each attorney for the child, and create a curriculum committee composed of specified professionals[106] for such purpose;
- Develop protocols that must be implemented to assist children in meeting eligibility requirements to receive all federal funding;[107]
- Review methods of funding, maximum the use of those funds, and review the kinds of services being provided by the regional offices;
- Determine the feasibility or desirability of new concepts regarding the operation and scope of services provided by the OCR;
- Develop standards and protocols to represent children who have diminished capacity; and
- Submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, including:
    - An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.
    - A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.
    - An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

The DCF or community-based care lead agency must take any steps necessary to obtain and maintain eligible federal funding. The bill provides that OCR may contract with local nonprofit agencies to provide direct representation to a child if it is the most efficient method to satisfy its duties and if federal funding has been approved for reimbursement.

The bill provides for regional offices to be established within each of the five district court of appeals which must commence fulfilling their purpose and duties on July 1, 2022. Each regional office is also assigned to the JAC for it to provide administrative support and services within

[106] Members must include, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse.
[107] This may not be construed to mean that the protocols may interfere with zealous and effective representation of the children.

available resources. Like the statewide office, the regional offices are not subject to control, supervision, or direction by the JAC, but are governed by plans such as salary and benefits.

Finally, the child representation counsel (CRC) who is the head of the regional offices must serve on a full-time basis and may not engage in private practice. Assistant child representation counsel (ACRC) must give priority to his or her duties in that position but part-time ACRC may practice dependency law provided the representation does not result in a legal or ethical conflict of interest with a case that OCR is providing representation.

Attorney for the Child (Sections 1-3 and 9)

Section 39.013(13), F.S. is amended to provide that an attorney for the child must be appointed pursuant to s. 39.831, F.S. The bill defines "attorney for the child" as an attorney providing direct representation to the child, which may include the appointment of the Office of the Child Representation, an attorney provided by an entity contracted through the Office of the Child Representation to provide direct representation, any privately retained counsel or pro bono counsel, or any other attorney who represents the child under ch. 39, F.S.

The bill creates s. 39.831, F.S., which provides that an attorney for the child:
- Must be appointed when the child has special needs as provided in s. 39.01305(3), F.S.;
- Must be appointed for any child who reaches 10 years of age or older after July 1, 2022, who is subject to a dependency proceeding or related adoption proceeding; and
- May be appointed upon a finding by the court that circumstances exist which necessitate the appointment.

The bill modifies s. 39.01305(4)(a), F.S., to provide that an attorney must be appointed as provided for in s. 39.831, F.S.

The bill relocates s. 39.01305(4)(b),F.S., to s. 39.831, F.S., which specifies that the appointment continues in effect until the attorney is allowed to withdraw, the attorney is discharged by the court, or the case is dismissed. The attorney for the child must provide all legal services required from the time the child is removed or the initial appointment through appellate proceedings. With court permission, the attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. An order appointing an attorney for the child must be in writing. The bill clarifies that the scope of the appointment of an attorney for the child is limited to representation of the child in dependency or related adoption proceedings.

The bill clarifies that the attorney must be adequately compensated as provided in s. 27.5305, F.S. The bill also relocates s. 39.01305(5), F.S., to s. 39.831, F.S., in regards to payment required to be made to an attorney for his or her representation which may not exceed $1,000 unless the attorney agrees to represent the child pro bono, and the requirement to provide access to funding for due process costs of litigation which is subject to appropriations.

The court must appoint the OCR unless the child is otherwise represented. If the OCR determines that the interests of clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the OCR must file a motion to withdraw and move the court to appoint alternative counsel. The bill provides

that OCR must not automatically determine the appointment to represent siblings as a conflict of interest. If requested, the OCR must provide the JAC with a copy of the motion at the time it is filed. The court must consider the OCR's submission regarding the conflict without requiring the disclosure of any confidential communications. The court must deny the motion if there are insufficient grounds for the request. If the motion is granted, the court must appoint an attorney as provided in s. 27.40, F.S.

Similar to the GALP, parents who are financially able must reimburse the court for the costs of the OCR representation, but reimbursement for the attorney's services may not be contingent upon successful collection by the court of reimbursement from the parent.

Upon presentation of a court order by an attorney for the child, an agency, person, or organization must allow the attorney to inspect and copy records related to the child who is the subject of the appointment, including records that are made confidential. An agency must also allow an attorney for the child to inspect and copy records that are exempt from s. 119.07(1), F.S., or s. 24(a), Art. I of the Florida Constitution, but he or she must maintain the confidential or exempt[108] status of any records shared.

The attorney for the child must review all disposition recommendations and changes in placement and file any appropriate motions at least 72 hours in advance of the hearing. The DCF must develop procedures to request that a court appoint an attorney for the child, and may adopt rules to implement the section.

Guardian ad Litem (Section 4 to 7)

Part XI is retitled to state "GUARDIAN AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD."

The bill amends s. 39.822, F.S., providing that a GAL will continue to be appointed as proscribed under current law before July 1, 2022. On or after that date:

- The GAL must be appointed at the earliest possible time to represent a child who is:
  - Younger than 10 years old and subject of a dependency proceeding or related adoption proceeding;
  - The subject of a dependency proceeding or related adoption proceeding and the subject of a criminal proceeding;
  - The subject of a termination of parental rights proceeding under Part X; or
  - A dependent child as described in s. 39.01305(3), F.S.[109]
- The GAL may be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

[108] When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[109] See below for further discussion on this section.

- The court must discharge the GALP within 60 days after the child reaches 10 years old except if:
  - The child meets one of the last three criteria for appointing a GAL summarized above; or
  - The child knowingly and voluntarily expresses a wish to have the GAL remain appointed, and the court makes such findings.

The bill amends s. 39.820, F.S., defining "related adoption proceeding" as an adoption proceeding under ch. 63, F.S., which arises from dependency proceedings under ch. 39, F.S.[110]

The GALP must develop guidelines to identify any possible conflicts of interest of a GAL when he or she is being considered for assignment to a child's case, and prohibits the GALP from appointing such GALs when a conflict is identified. "Conflict of interest" is defined as a GAL who:

- Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a GAL;
- Is in a position to derive a personal benefit from his or her role as a GAL; or
- Has a personal factor or circumstance, including a bias or prejudice, which impairs the GALs ability to fully and fairly discharge his or her duties.

The bill permits the court to order that a new GAL be assigned or, unless otherwise provided by law, that the GAL be discharged and an attorney for the child be appointed upon:

- Consent of a child who is the subject of a dependency proceeding or related adoption proceeding and who is 10 years of age or older; or
- Any party presenting evidence that there is reasonable cause to suspect the assigned GAL has a conflict of interest.

The bill also requires the GALP to identify any GAL who is experiencing any physical or mental health issues or who appears to present a danger to any child, remove such GAL from all assigned cases, and terminate his or her voluntary services with the GALP. This action must be disclosed to the court.

The GAL Qualifications Committee who nominates at least three eligible applicants for the executive director position of the GALP to the Governor is renamed to the Child Well-Being Qualifications Committee. The bill provides that the executive director may be reappointed to serve more than one term pursuant to the appointment process. Every term is for a 3 year period.

[110] In Florida, a parent may place their child for adoption with a private adoption agency, even if the child is under jurisdiction of the court and in out-of-home care as long as no final judgment of termination of parental rights has been entered. This means that birth parents can choose a private adoption placement if their parental rights are still be intact. This process is commonly referred to as an intervention and results in a private adoption entity intervening into the DCF case and handling the adoption according to the wishes of the biological parent. Section 63.082, F.S. *See also* Adoption Choice of Florida, *What is an adoption intervention?*, available at https://www.adoptionchoicesofflorida.com/blog/2019/november/what-is-an-adoption-intervention-/ (last visited March 25, 2021).

Conforming Sections (Sections 10-40)

The bill amends ss. 39.00145, 39.0139, 39.402, 39.407, 39.4085, and 39.523, F.S., in part, to change the term "attorney ad litem" or other term used to refer to an attorney appointed to represent a child to the term "attorney for the child."

The bill also amends ss. 28.345, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.502, 39.521, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065 to update reference to the attorney for the child as counsel for a party that is applicable to these sections as contemplated in the provisions in this bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill permits the attorney for the child to file a termination of parental rights petition which the GALP reports could raise constitutional issues with respect to the fundamental rights of parents.[111] However, s. 39.802, F.S., currently authorizes any party who has knowledge of the facts alleged or is informed of them and believes that they are true may file a termination of parental rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[111] The GALP Analysis at p. 14.

B. Private Sector Impact:

To the extent a parent is financially able, he or she would have to reimburse the cost of the attorney for the child pursuant to s. 39.831(1)(c), F.S.

C. Government Sector Impact:

Statewide Guardian ad Litem Office Fiscal Impact

The bill's provisions would clearly reduce the demand for services provided by the GALP, though the impact is indeterminate. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria under s. 39.822(1)(b), F.S.[112] Of the 35,160 children in out-of-home care or receiving in-home services as of February 28, 2021, 23,444 children were under 10 years old and 11,714 children were 10 years of age or older.[113] Further, the number of GALs appointed to represent children will vary depending on how many termination of parental rights petitions are filed, how many children have special needs, and whether the children have pending delinquency proceedings. The GALP did not offer an opinion on the potential fiscal impact of the provision for the creation of OCR.[114]

Justice Administrative Commission (JAC) Fiscal Impact

CS/SB 1920 will have an indeterminate, but significant, negative fiscal impact on the Justice Administrative Commission. The bill's provisions require the JAC to provide administrative support and services to the Statewide Office of Child Representation. Additional funding would be necessary for new administrative and infrastructure costs inherent in establishing and serving the new Offices of Child Representation, including employee training on the legal requirements of the OCR, procurement of office space and equipment to support the OCR, and incorporating the OCR into the existing state budgeting, finance, and IT systems. The JAC estimates that FTE costs for these functions would total $594,183 as follows:

- One-half FTE in Executive
- One FTE in Human Resources
- One FTE in Accounting
- One-half FTE in Financial Services
- One FTE in Information Technology
- One 3/4 FTE in Budget

Additionally, the JAC estimates that between $1.1 million to $5.5 million will be needed beginning in FY 2022-2023 for private court-appointed attorneys where the Offices of Child Representation have a conflict precluding representation. These costs are likely to

[112] *Id.* at p. 15.
[113] *Id.*
[114] The GALP Analysis at p. 15.

be higher in the first year of appointments while the offices are beginning implementation of this initiative.[115]
The costs to the JAC associated with the bill are also partially contingent upon the service delivery model that the JAC provides to each of the Offices of Child Representation. The bill is silent on whether a single new state entity, the Statewide Office of Child Representation, would serve its regional offices (similar to current GALP), or whether the JAC would support the statewide office and the six separate new state entities, each functioning independently, similar to the Office of Criminal Conflict and Civil Regional Counsel.

Regional Office of the Child Representation Fiscal Impact

The bill requires the creation of five regional offices of child representation, which would have a significant negative fiscal impact on state resources. The estimated costs for the regional offices are difficult to quantify due to the multiple cost drivers, including expected caseload and conflict rate of the offices. In addition to operating costs, each office would also incur start-up costs and ongoing overhead costs. The example below projects annual recurring costs of $20.9 million based on the assumptions below; however, funding scenarios could easily range from $10 to $30 million.

ASSUMPTIONS	
Number of Children Eligible	6,500
Caseload Per Attorney	60
Length of Appointment (In Months)	12
Cost Per Case Paid to Registry Attorney	$1,000
Conflict Rate	10%

[115] *2021 Agency Legislative Bill Analysis* (SB 1920) (April 2, 2021), Justice Administrative Commission (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

FTE		Total Recurring Need	Total Nonrecurring Need
6.00	Ssalaries and Benefits for Director Positions (1 Per Region + Executive Director)	$ 1,078,152	$ -
	Operations Costs for Directors (Standard # 3 w/ Law Library)	$ 63,600	$ 23,370
5.00	Salaries and Benefits for Regional "Chiefs"	$ 718,365	$ -
	Operations Costs for Chiefs (Standard # 3 w/ Law Library)	$ 53,000	$ 19,475
109.00	Salaries and Benefits for Attorneys (*Estimated at $50,000 starting salary*)	$ 7,995,695	$ -
	Operations Costs for Attorneys (Standard # 3 w/ Law Library)	$ 726,375	$ 421,958
58.00	S&B Support / Other	$ 3,754,050	$ -
	Operations for Support Positions (Standard # 3)	$ 501,584	$ 202,478
	Human Resource Outsourcing Costs	$ 41,830	$ -
	Risk Management Insurance Costs	$ 42,768	$ -
	Overhead Costs (Rent / IT Costs / Travel / Utilities / Supplies / Training)	$ 1,989,995	$ -
	Due Process Costs Per Case	$ 2,925,000	$ -
	Private Registry Attorney Fees (JAC HQ)	$ 650,000	$ -
	Private Registry Due Proccess Conflict Costs (JAC HQ)	$ 325,000	$ -
178.00		**$ 20,865,414**	**$ 667,281**

As discussed in the "Present Situation," state funding for these services could be partially offset by Title IV-E federal funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 39.001, 39.00145, 39.01, 39.013, 39.01305, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 39.820, 39.822, 39.8296, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065.

This bill creates the following sections of the Florida Statutes: 39.83 and 39.831.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 23, 2021:
The committee substitute:

- Relocates and clarifies s. 39.01305(4)(b) and (c), F.S., to s. 39.81 relating to the scope of representation and payment of the attorney for the child;
- Clarifies that the GALP must not appoint a GAL to a child when a conflict of interest is identified;
- Modifies the requirement that the OCR collect certain information about national models related to GALP to other representation models for child representation;
- Modifies the composition of the OCR training curriculum committee to only one director of circuit GAL program and one active certified GAL;
- Permits the court discretion to appoint a GAL to represent a child upon a finding that circumstances exist which require the appointment;
- Requires the OCR to establish standards and protocols for representing children with diminished capacity;
- Removes the requirement for the court to consider a child's age and maturity when deciding whether to discharge a GAL upon the child's express wishes;
- Provides for private counsel to be appointed when OCR determines that it has a conflict of interest in representing a child and establishes the process which must be followed in those instances;
- Clarifies that the scope of the appointment of an attorney for the child is limited to representation in the dependency or related adoption proceeding;
- Clarifies that the court may not discharge a GAL and appoint an attorney for the child if the law otherwise requires a GAL to be appointed;
- Removes references to the OCR or attorney for the child in various sections included in the bill that are not appropriate for such references and clarifying terminology, where appropriate; and
- Makes other technical changes to update cross-references, and modifies language for consistency.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Children, Families, and Elder Affairs; and Senator Book

586-03266-21 20211920c1

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining the term "attorney for the child"; amending ss. 39.013 and 39.01305, F.S.; conforming provisions to changes made by the act; renaming part XI of ch. 39, F.S., as "Guardians ad litem, guardian advocates, and attorney for the child"; amending s. 39.820, F.S.; defining the term "related adoption proceeding"; amending s. 39.822, F.S.; conforming provisions to changes made by the act; specifying circumstances under which a court is required, on or after a specified date, to appoint a guardian ad litem; requiring the court to appoint an attorney for the child to represent a child and to discharge the guardian ad litem under specified circumstances; authorizing the court to order that a new guardian ad litem be assigned for a child or discharge a guardian ad litem and appoint an attorney for the child under specified circumstances; amending s. 39.8296, F.S.; renaming the Guardian Ad Litem Qualifications Committee as the Child Well-Being Qualifications Committee; specifying that the executive director of the Statewide Guardian Ad Litem Office may be reappointed; clarifying that second and subsequent appointments made for the executive director of the office are for 3 years; requiring the office to develop guidelines to identify conflicts of interest of guardians ad litem; prohibiting the office from assigning such guardians; defining the term "conflicts

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of interest"; requiring the office to identify guardians ad litem who are experiencing health issues or who present a danger to the child to whom the guardian ad litem is assigned; requiring the office to remove such guardians from assigned cases, terminate their volunteer services, and disclose such actions to the circuit court; creating s. 39.83, F.S.; creating the Statewide Office of Child Representation within the Justice Administration Commission; requiring the commission to provide administrative support and services to the statewide office; providing that the statewide office is not subject to control, supervision, or direction by the commission; providing that employees of the statewide office are governed by the classification plan and salary and benefits plan approved by the commission; providing that the head of the statewide office is the executive director; providing the process for appointment; requiring that the initial executive director be appointed by a specified date; providing responsibilities of the office; authorizing the office to contract with local nonprofit agencies under certain conditions; creating a regional office of child representation within the boundaries of each of the five district courts of appeal; requiring such offices to commence fulfilling their purpose and duties on a specified date; requiring the commission to provide administrative support to the regional offices; providing that the offices are not subject to control, supervision, or

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direction by the commission; providing that employees of the offices are governed by the classification plan and salary and benefits plan for the commission; prescribing qualifications for an attorney for the child; providing certain prohibitions; creating s. 39.831, F.S.; specifying when the court is authorized or required to appoint an attorney for the child; requiring the court to appoint the Statewide Office of Child Representation; providing for the appointment of private counsel when the office has a conflict of interest; requiring an attorney for the child to be compensated and have access to funding for expenses with specified conditions; providing conditions under which a parent is required to reimburse the court for the cost of the attorney; providing for the scope of representation for court-appointed counsel; requiring agencies, persons, and organizations to allow an attorney for the child to inspect and copy certain records; defining the term "records"; providing requirements for an attorney for the child relating to hearings; requiring the Department of Children and Families to develop procedures to request that a court appoint an attorney for the child; authorizing the department to adopt rules; amending ss. 28.345, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065, F.S.;

conforming cross-references and provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (9) through (87) of section 39.01, Florida Statutes, are redesignated as subsections (10) through (88), respectively, a new subsection (9) is added to that section, and present subsections (10) and (37) are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(9) "Attorney for the child" means an attorney providing direct representation to the child, which may include the appointment of the Office of Child Representation, an attorney provided by an entity contracted through the Office of Child Representation to provide direct representation, any privately retained counsel or pro bono counsel, or any other attorney who represents the child under this chapter.

(11) ~~(10)~~ "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (55) ~~(54)~~.

(38) ~~(37)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the

child's welfare as defined in subsection (55) ~~(54)~~.

Section 2. Subsection (13) is added to section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(13) The court shall appoint an attorney for the child pursuant to s. 39.831.

Section 3. Subsections (4) and (5) of section 39.01305, Florida Statutes, are amended to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

(4)~~(a)~~ An attorney for the child appointed under this section shall be made in accordance with s. 39.831 ~~Before a court may appoint an attorney, who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the Statewide Guardian Ad Litem Office informs the court that it will not be able to recommend an attorney within that time period.~~

~~(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the~~

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~~court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.~~

~~(5) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are subject to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year~~.

Section 4. Part XI of chapter 39, Florida Statutes, entitled "GUARDIANS AD LITEM AND GUARDIAN ADVOCATES," is renamed "GUARDIANS AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD."

Section 5. Subsection (3) is added to section 39.820, Florida Statutes, to read:

39.820 Definitions.—As used in this chapter, the term:

(3) "Related adoption proceeding" means an adoption proceeding under chapter 63 which arises from dependency proceedings under this chapter.

Section 6. Section 39.822, Florida Statutes, is amended to read:

39.822 Appointment of guardian ad litem for abused, abandoned, or neglected child.—

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(1)(a) Before July 1, 2022, a guardian ad litem must ~~shall~~ be appointed by the court at the earliest possible time to represent a ~~the~~ child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.

(b) On or after July 1, 2022, a guardian ad litem:

1. Must be appointed by the court at the earliest possible time to represent a child under the following circumstances:

a. The child is younger than 10 years of age and is the subject of a dependency proceeding under this chapter or a related adoption proceeding;

b. The child is the subject of a dependency proceeding under this chapter or a related adoption proceeding and the subject of a criminal proceeding;

c. The child is the subject of a termination of parental rights proceeding under part X of this chapter; or

d. The child is a dependent child as described in s. 39.01305(3).

2. May be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

(2) On or after July 1, 2022, the court shall discharge the guardian ad litem program, if appointed, within 60 days after such child reaches 10 years of age unless:

(a) The child meets a criterion specified in sub-subparagraph (1)(b)1.b., c., or d., or subparagraph (1)(b)2. and the court orders the guardian ad litem to remain on the case; or

(b) The child expresses that he or she wishes to remain with the guardian ad litem and the court determines that the expression is voluntary and knowing.

(3) Upon request by a child who is subject to a dependency

proceeding under this chapter or a related adoption proceeding, who is 10 years of age or older, and who has a guardian ad litem assigned, or upon any party presenting evidence that there is reasonable cause to suspect the assigned guardian ad litem has a conflict of interest as defined in s. 39.8296(2)(b)9., the court may:

(a) Order that a new guardian ad litem be assigned; or

(b) Unless otherwise provided by law, discharge the child's current guardian ad litem and appoint an attorney for the child if one is not appointed.

(4) Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(5)~~(2)~~ In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services may ~~shall~~ not be contingent upon successful collection by the court from the parent or parents.

(6)~~(3)~~ Upon presentation by a guardian ad litem of a court order appointing the guardian ad litem:

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of

the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or organization, other than an agency under paragraph (a), shall allow the guardian ad litem to inspect and copy any records related to the best interests of the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records related to the best interests of the child" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(7) ~~(4)~~ The guardian ad litem or the program representative shall review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours before ~~prior to~~ the hearing.

Section 7. Subsection (2) of section 39.8296, Florida Statutes, is amended to read:

39.8296 Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.—

(2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The Justice Administrative Commission

shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Guardian Ad Litem Office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office are governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(a) The head of the Statewide Guardian Ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by the Child Well-Being ~~a Guardian Ad Litem~~ Qualifications Committee. The Child Well-Being ~~Guardian Ad Litem~~ Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian Ad Litem Office in accordance with state and federal law. The executive director

shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be reappointed ~~permitted~~ to serve more than one term in accordance with the process provided for in this paragraph. Every second or subsequent appointment shall be for a term of 3 years.

(b) The Statewide Guardian Ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.

1. The office shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. The office shall review the current guardian ad litem programs in Florida and other states.

3. The office, in consultation with local guardian ad litem offices, shall develop statewide performance measures and standards.

4. The office shall develop a guardian ad litem training program, which shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with a

degree in social work, and a social worker experienced in working with victims and perpetrators of child abuse.

5. The office shall review the various methods of funding guardian ad litem programs, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by circuit guardian ad litem programs.

6. The office shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. In an effort to promote normalcy and establish trust between a court-appointed volunteer guardian ad litem and a child alleged to be abused, abandoned, or neglected under this chapter, a guardian ad litem may transport a child. However, a guardian ad litem volunteer may not be required or directed by the program or a court to transport a child.

8. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed plan including alternatives for meeting the state's guardian ad litem and attorney ad litem needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year the office shall

provide a status report and provide further recommendations to address the need for guardian ad litem services and related issues.

9. The office shall develop guidelines to identify any possible conflicts of interest of a guardian ad litem when he or she is being considered for assignment to a child's case. The office may not assign a guardian ad litem for whom a conflict of interest has been identified to a child's case. For purposes of this subparagraph, the term "conflicts of interest" means the guardian ad litem:

a. Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a guardian ad litem;

b. Is in a position to derive a personal benefit from his or her role as a guardian ad litem; or

c. Has a particular factor or circumstance, including personal bias or prejudice against a protected class of the child or the child's family, that prevents or substantially impairs his or her ability to fairly and fully discharge the duties of the guardian ad litem.

(c) The Statewide Guardian Ad Litem Office shall identify any guardian ad litem who is experiencing an issue with his or her physical or mental health or who appears to present a danger to any child to whom the guardian ad litem is assigned. As soon as possible after identification, the office must remove such guardian ad litem from all assigned cases, terminate his or her volunteer services with the Guardian Ad Litem Program, and disclose such action to the appropriate circuit court.

Section 8. Section 39.83, Florida Statutes, is created to

read:

39.83 Statewide Office of Child Representation; qualifications, appointment, and duties of executive director and attorney for the child.—

(1) STATEWIDE OFFICE OF CHILD REPRESENTATION.—

(a) There is created a Statewide Office of Child Representation within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and services to the statewide office as directed by the executive director within the available resources of the commission. The statewide office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office are governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(b) The head of the Statewide Office of Child Representation is the executive director who must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and the social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall be appointed in accordance with the process, and serve in accordance with the terms and requirements, provided in s. 39.8296(2)(a) for the head of the Statewide Guardian Ad Litem Office. The appointment for the initial executive director must be completed by January 1, 2022.

(c) The Statewide Office of Child Representation, within available resources of the Justice Administrative Commission, is

responsible for oversight of, and for providing technical assistance to, all offices of child representation in this state. The statewide office:

1. Shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data;

2. Shall review and collect information relating to offices of child representation and other models of attorney representation of children in other states;

3. In consultation with the regional offices of child representation established under subsection (2), shall develop statewide performance measures and standards;

4. Shall develop a training program for each attorney for the child. To that end, the statewide office shall establish a curriculum committee composed of members including, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse;

5. Shall develop protocols that must be implemented to assist children who are represented by the Statewide Office of Child Representation, regional offices, or its contracted local agencies in meeting eligibility requirements to receive all available federal funding. This subparagraph may not be construed to mean that the protocols may interfere with zealous

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and effective representation of the children;

6. Shall review the various methods of funding the regional offices, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by the regional offices;

7. Shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of, and fulfill other needs of, dependent children 10 years of age and older;

8. Shall establish standards and protocols for representation of children with diminished capacity;

9. Shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court:

a. An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.

b. A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.

c. An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

(d) The department or community-based care lead agency shall take any steps necessary to obtain all available federal funding and maintain compliance with eligibility requirements.

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(e) The office may contract with a local nonprofit agency to provide direct attorney representation to a child if the office determines that the contract is the most efficient method to satisfy its statutory duties and if federal funding has been approved for this purpose. The office must ensure that reimbursement of any Title IV-E funds is properly documented.

(2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

(a) An office of child representation is created within the area served by each of the five district courts of appeal. The offices shall commence fulfilling their statutory purpose and duties on July 1, 2022.

(b) Each regional office of child representation is assigned to the Justice Administrative Commission for administrative purposes. The commission shall provide administrative support and service to the offices within the available resources of the commission. The offices are not subject to control, supervision, or direction by the commission in the performance of their duties, but the employees of the offices are governed by the classification plan and the salary and benefits plan approved by the commission.

(3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child representation counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Each assistant child representation counsel shall give priority and preference to his or her duties as assistant child representation counsel and may not otherwise engage in the practice of dependency law. However, a part-time child representation counsel may practice dependency law for private payment so long as the representation does not result in a legal

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or ethical conflict of interest with a case in which the office of child representation is providing representation.

Section 9. Section 39.831, Florida Statutes, is created to read:

39.831 Attorney for the child.—

(1) APPOINTMENT.—

(a) An attorney for the child:

1. Shall be appointed by the court as provided in s. 39.01305(3);

2. Shall be appointed by the court for any child who reaches 10 years of age or older on or after July 1, 2022, and who is the subject of a dependency proceeding under this chapter or a related adoption proceeding; or

3. May be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

(b) The court shall appoint the Statewide Office of Child Representation unless the child is otherwise represented by counsel.

(c) If, at any time during the representation of two or more children in a dependency or related adoption proceeding, a child representation counsel determines that the interests of those clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the child representation counsel shall file a motion to withdraw and move the court to appoint other counsel. Child representation counsel shall not automatically determine the appointment to represent siblings is a conflict of interest. If requested by the Justice Administrative Commission, the child representation counsel

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shall submit a copy of the motion to the Justice Administrative Commission at the time it is filed with the court. The court shall review and may inquire or conduct a hearing into the adequacy of the child representation counsel's submissions regarding a conflict of interest without requiring the disclosure of any confidential communications. The court shall deny the motion to withdraw if the court finds the grounds for withdrawal are insufficient or the asserted conflict is not prejudicial to the client. If the court grants the motion to withdraw, the court shall appoint one or more private attorneys to represent the person in accordance with the requirements and process provided for in s. 27.40. The clerk of court shall inform the child representation counsel and the commission when the court appoints private counsel.

(d) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated as provided in s. 27.5305. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are subject to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $1,000 per child per year.

(e) In cases in which one or both parents are financially able, the parent or parents, as applicable, of the child shall reimburse the court, in whole or in part, for the cost of services provided under this section; however, reimbursement for

services provided by the attorney for the child may not be contingent upon successful collection by the court of reimbursement from the parent or parents.

(f) An attorney for the child appointed pursuant to this section shall represent the child only in the dependency proceeding or related adoption proceeding. Once an attorney for the child is appointed, the appointment continues in effect until the attorney for the child is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney for the child who is appointed under this section to represent a child shall provide all required legal services in the dependency proceeding or related adoption proceeding from the time of the child's removal from home or of the attorney for the child's initial appointment through all appellate proceedings. With the permission of the court, the appointed attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney for the child under this section must be in writing.

(2) ACCESS TO RECORDS.—Upon presentation of a court order appointing an attorney for the child:

(a) An agency as defined in chapter 119 must allow the attorney for the child to inspect and copy records related to the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The attorney for the child shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or an organization, other than an agency under

paragraph (a), must allow the attorney for the child to inspect and copy any records related to the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(3) COURT HEARINGS.—The attorney for the child shall review all disposition recommendations and changes in placements and file all appropriate motions on behalf of the child at least 72 hours before the hearing.

(4) PROCEDURES.—The department shall develop procedures to request that a court appoint an attorney for the child.

(5) RULEMAKING.—The department may adopt rules to implement this section.

Section 10. Subsection (1) of section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, ~~attorney ad litem,~~ criminal conflict and civil regional counsel, court-appointed attorney for the child, ~~and private court-appointed counsel paid by the state,~~ and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an

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electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

Section 11. Paragraph (j) of subsection (3) and paragraph (a) of subsection (10) of section 39.001, Florida Statutes, are amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) The ability to contact their guardian ad litem or attorney for the child ~~attorney ad litem~~, if appointed, by having that individual's name entered on all orders of the court.

(10) PLAN FOR COMPREHENSIVE APPROACH.—

(a) The office shall develop a state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children. The Department of Children and Families, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, and the Agency for Persons with Disabilities shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community

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mental health centers; guardian ad litem programs for children under the circuit court; child representation counsel regional offices; the school boards of the local school districts; the Florida local advocacy councils; community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multidisciplinary Child Protection Teams; child day care centers; law enforcement agencies; and the circuit courts, when guardian ad litem programs and attorney for the child are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

Section 12. Subsections (2) and (4) of 39.00145, Florida Statutes, are amended to read:

39.00145 Records concerning children.—

(2) Notwithstanding any other provision of this chapter, all records in a child's case record must be made available for inspection, upon request, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney for the child ~~attorney~~.

(a) A complete and accurate copy of any record in a child's case record must be provided, upon request and at no cost, to the child who is the subject of the case record and to the

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child's caregiver, guardian ad litem, or attorney.

(b) The department shall release the information in a manner and setting that are appropriate to the age and maturity of the child and the nature of the information being released, which may include the release of information in a therapeutic setting, if appropriate. This paragraph does not deny the child access to his or her records.

(c) If a child or the child's caregiver, guardian ad litem, or attorney for the child ~~attorney~~ requests access to the child's case record, any person or entity that fails to provide any record in the case record under assertion of a claim of exemption from the public records requirements of chapter 119, or fails to provide access within a reasonable time, is subject to sanctions and penalties under s. 119.10.

(d) For the purposes of this subsection, the term "caregiver" is limited to parents, legal custodians, permanent guardians, or foster parents; employees of a residential home, institution, facility, or agency at which the child resides; and other individuals legally responsible for a child's welfare in a residential setting.

(4) Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Revenue, the school districts, the Statewide Guardian Ad Litem Office, the Statewide Office of Child Representation, and any provider contracting with such agencies,

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may share with each other confidential records or information that are confidential or exempt from disclosure under chapter 119 if the records or information are reasonably necessary to ensure access to appropriate services for the child, including child support enforcement services, or for the safety of the child. However:

(a) Records or information made confidential by federal law may not be shared.

(b) This subsection does not apply to information concerning clients and records of certified domestic violence centers, which are confidential under s. 39.908 and privileged under s. 90.5036.

Section 13. Subsections (3) and (4) of section 39.0132, Florida Statutes, are amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child, ~~and~~ the parents of the child and their attorneys, guardian ad litem, attorney for the child, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission

may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, attorney for the child, and others entitled under this chapter to receive that information, except upon order of the court.

2.a. The following information held by a guardian ad litem is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

b. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation

officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

(b) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sex offender, as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 14. Paragraphs (a) and (b) of subsection (4) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

(4) HEARINGS.—A person who meets any of the criteria set forth in paragraph (3)(a) who seeks to begin or resume contact with the child victim shall have the right to an evidentiary hearing to determine whether contact is appropriate.

(a) Before ~~Prior to~~ the hearing, the court shall appoint an attorney for the child ~~an attorney ad litem~~ or a guardian ad litem, as appropriate, for the child if one has not already been appointed. Any attorney for the child ~~attorney ad litem~~ or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) At the hearing, the court may receive and rely upon any

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relevant and material evidence submitted to the extent of its probative value, including written and oral reports or recommendations from the Child Protection Team, the child's therapist, or the child's guardian ad litem~~, or the child's attorney ad litem~~, even if these reports, recommendations, and evidence may not be admissible under the rules of evidence.

Section 15. Paragraphs (k) and (t) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of, or other identifying information with respect to, the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the child's guardian ad litem or attorney for the child.

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01(42) ~~s. 39.01(41)~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption

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entity acting on behalf of preadoptive or adoptive parents.

Section 16. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(38) or (55) ~~s. 39.01(37) or (54)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated,

whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 17. Paragraph (c) of subsection (8) and paragraph (a) of subsection (14) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child or an attorney for the child to provide direct representation as provided in part XI, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013;

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall

inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined to be the father of the child by the Department of Revenue as provided in s. 409.256.

(14) The time limitations in this section do not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the attorney for the child or the child's ~~counsel or the child's~~ guardian ad litem, if one has been appointed by the court, or, if the child is of

sufficient capacity to express reasonable consent, at the request or with the consent of the attorney for the child ~~child's attorney~~ or the child's guardian ad litem~~, if one has been appointed by the court,~~ and the child.

Section 18. Paragraphs (e) and (f) of subsection (3) and subsection (6) of section 39.407, Florida Statutes, are amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)

(e)1. If the child's prescribing physician or psychiatric nurse, as defined in s. 394.455, certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's or psychiatric nurse's medical report to the court, the child's guardian ad litem or the attorney for the child, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a

hearing within 7 days.

2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization as described in paragraph (c).

(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem~~,~~ or the child ~~attorney, or attorney ad litem who has been appointed to represent the child or the child's interests,~~ the court may review the status more frequently than required in this subsection.

2. The court may, in the best interests of the child, order the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.

(6) Children who are in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary

examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must be appointed ~~have~~ a guardian ad litem and an attorney for the child ~~appointed~~.

(a) As used in this subsection, the term:

1. "Residential treatment" means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.

2. "Least restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.

3. "Suitable for residential treatment" or "suitability" means a determination concerning a child or adolescent with an emotional disturbance as defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:

a. The child requires residential treatment.

b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.

c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability

assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.

2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department, to the guardian ad litem and attorney for the child, and, if the child is a member of a Medicaid managed care plan, to the plan that is

financially responsible for the child's care in residential treatment, all of whom must be provided with the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem, the attorney for the child, and the court having jurisdiction over the child and must provide the guardian ad litem, the attorney for the child, and the court with a copy of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, ~~and~~ to the guardian ad litem, and to the attorney for the child, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem, the attorney for the child, and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, to the attorney for the child, and to the department.

(f) Within 30 days after admission, the residential

treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem, to the attorney for the child, and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress toward achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 60 days after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 60-day review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject

of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 60-day review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child's progress toward achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

Section 19. Subsections (20) and (21) of section 39.4085, Florida Statutes, are amended to read:

39.4085 Legislative findings and declaration of intent for goals for dependent children.—The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the following goals for children in shelter or foster care:

(20) To have a guardian ad litem appointed to represent, within reason, their best interests; and, as appropriate, have an attorney for the child ~~and, where appropriate, an attorney ad litem~~ appointed to represent their legal interests.~~,~~ The guardian ad litem and attorney for the child ~~attorney ad litem~~ shall have immediate and unlimited access to the children they represent.

(21) To have all their records available for review by their guardian ad litem or attorney for the child, as applicable, ~~and attorney ad litem~~ if they deem such review necessary.

The provisions of this section establish goals and not rights. Nothing in this section shall be interpreted as requiring the delivery of any particular service or level of service in excess of existing appropriations. No person shall have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing herein shall require the expenditure of funds to meet the goals established herein except funds specifically appropriated for such purpose.

Section 20. Subsections (8), (12), (13), (14), and (17) of section 39.502, Florida Statutes, are amended to read:

39.502 Notice, process, and service.—

(8) It is not necessary to the validity of a proceeding covered by this part that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an

affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child or an attorney for the child, as appropriate.

(12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem or attorney for the child, as applicable.

(13) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department or the guardian ad litem or attorney for the child, as applicable.

(14) No fee shall be paid for service of any process or other papers by an agent of the department or the guardian ad litem or attorney for the child, as applicable. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

(17) The parent or legal custodian of the child, the attorney for the department, the guardian ad litem or attorney for the child, as applicable, the foster or preadoptive parents, and all other parties and participants shall be given reasonable notice of all proceedings and hearings provided for under this part. All foster or preadoptive parents must be provided with at least 72 hours' notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

Section 21. Paragraphs (c) and (e) of subsection (1) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(c) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal guardian or the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with

a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~ demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective

supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

4. Determine whether the child has a strong attachment to the prospective permanent guardian and whether such guardian has a strong commitment to permanently caring for the child.

(e) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem or attorney for the child if appointed, as appropriate.

6. The date, time, and location of the next scheduled

review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order must include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed

with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's child care, early education program, or any other educational placement, and to promote family preservation or reunification whenever possible.

Section 22. Paragraph (a) of subsection (2) of section 39.523, Florida Statutes, is amended to read:

39.523 Placement in out-of-home care.—

(2) ASSESSMENT AND PLACEMENT.—When any child is removed from a home and placed into out-of-home care, a comprehensive placement assessment process shall be completed to determine the level of care needed by the child and match the child with the most appropriate placement.

(a) The community-based care lead agency or subcontracted agency with the responsibility for assessment and placement must coordinate a multidisciplinary team staffing with any available individual currently involved with the child, including, but not

limited to, a representative from the department and the case manager for the child; a therapist, ~~attorney ad litem,~~ a guardian ad litem, an attorney for the child, teachers, coaches, and Children's Medical Services; and other community providers of services to the child or stakeholders as applicable. The team may also include clergy, relatives, and fictive kin if appropriate. Team participants must gather data and information on the child which is known at the time including, but not limited to:

1. Mental, medical, behavioral health, and medication history;

2. Community ties and school placement;

3. Current placement decisions relating to any siblings;

4. Alleged type of abuse or neglect including sexual abuse and trafficking history; and

5. The child's age, maturity, strengths, hobbies or activities, and the child's preference for placement.

Section 23. Paragraph (a) of subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the

following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem or attorney for the child, and, if appropriate, the child and the temporary custodian of the child.

Section 24. Paragraph (c) of subsection (1) of section 39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(c) If there is evidence of harm as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~, the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 25. Subsection (8) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

(8) During the time that a young adult is in care, the court shall maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. The court shall review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. If the young adult is appointed a guardian under chapter 744 or a guardian advocate

under s. 393.12, at the permanency review hearing the court shall review the necessity of continuing the guardianship and whether restoration of guardianship proceedings are needed when the young adult reaches 22 years of age. The court may appoint an attorney for the child ~~a guardian ad litem~~ or continue the appointment of a guardian ad litem or an attorney for the child, as applicable, with the young adult's consent. The young adult or any other party to the dependency case may request an additional hearing or review.

Section 26. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(b)1. The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months following the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem or attorney for the child, if one has been appointed, and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

2. Notwithstanding subparagraph 1., the court must retain jurisdiction over a child if the child is placed in the home with a parent or caregiver with an in-home safety plan and such safety plan remains necessary for the child to reside safely in the home.

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(b) *Submission and distribution of reports.*—

1. A copy of the social service agency's written report and the written report of the guardian ad litem, and a report of the attorney for the child, if he or she has prepared one, must be served on all parties whose whereabouts are known; to the foster parents or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with a copy of the written report does not apply to those parents who have voluntarily surrendered their child for adoption or who have had their parental rights to the child terminated.

2. In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

3. In addition to or in lieu of any written statement provided to the court, the foster parent or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.

Section 27. Paragraph (g) of subsection (5) of section 39.702, Florida Statutes, is amended to read:

39.702 Citizen review panels.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(5) The independent not-for-profit agency authorized to administer each citizen review panel shall:

(g) Establish policies to ensure adequate communication with the parent, the foster parent or legal custodian, the guardian ad litem or attorney for the child, and any other person deemed appropriate.

Section 28. Paragraph (a) of subsection (3) and subsections (5), (6), and (7) of section 39.801, Florida Statutes, are amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered

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pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

8. The attorney for the child, if appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(5) All process and orders issued by the court must be served or executed as other process and orders of the circuit

court and, in addition, may be served or executed by authorized agents of the department, ~~or~~ the guardian ad litem, or the attorney for the child.

(6) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served or executed by authorized agents of the department, ~~or~~ of the guardian ad litem, or of the attorney for the child.

(7) A fee may not be paid for service of any process or other papers by an agent of the department, ~~or~~ the guardian ad litem, or the attorney for the child. If any process, orders, or other papers are served or executed by any sheriff, the sheriff's fees must be paid by the county.

Section 29. Subsection (1) of section 39.802, Florida Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

(1) All proceedings seeking an adjudication to terminate parental rights pursuant to this chapter must be initiated by the filing of an original petition by the department, the guardian ad litem, the attorney for the child, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

Section 30. Subsection (2) of section 39.808, Florida Statutes, is amended to read:

39.808 Advisory hearing; pretrial status conference.—

(2) At the hearing the court shall inform the parties of their rights under s. 39.807, shall appoint counsel for the parties in accordance with legal requirements, and shall appoint

a guardian ad litem or an attorney for the child as provided for in s. 39.831 to represent the interests of the child if one has not already been appointed.

Section 31. Subsection (11) of section 39.810, Florida Statutes, is amended to read:

39.810 Manifest best interests of the child.—In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child. This consideration shall not include a comparison between the attributes of the parents and those of any persons providing a present or potential placement for the child. For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:

(11) The recommendations for the child provided by the child's guardian ad litem ~~or legal representative~~.

Section 32. Subsection (9) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(9) After termination of parental rights, the court shall retain jurisdiction over any child for whom custody is given to a social service agency until the child is adopted. The court shall review the status of the child's placement and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the attorney for the child or guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

Section 33. Subsection (4) of section 39.812, Florida

Statutes, is amended to read:

39.812 Postdisposition relief; petition for adoption.—

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the attorney for the child or guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child. When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:

(a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;

(b) Thirty days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; or

(c) The foster parent or custodian agrees to the child's removal.

Section 34. Subsections (5), (6), and (7) of section 43.16, Florida Statutes, are amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(5) The duties of the commission shall include, but not be limited to, the following:

(a) The maintenance of a central state office for administrative services and assistance when possible to and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem Program, and the Statewide Office of Child Representation.

(b) Each state attorney, public defender, ~~and~~ criminal conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem Program, and the Statewide Office of Child Representation shall continue to prepare necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans, but will forward such items to the commission for recording and submission to the proper state officer. However, when requested by a state attorney, a public defender, a criminal conflict and civil regional counsel, ~~or~~ the Guardian Ad Litem Program, or the Statewide Office of Child Representation, the commission will either assist in the preparation of budget requests, voucher schedules, and other forms and reports or accomplish the entire project involved.

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, ~~and~~ the Guardian Ad Litem

Program, and the Statewide Office of Child Representation shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

(7) The provisions contained in this section shall be supplemental to those of chapter 27, relating to state attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel; to those of chapter 39, relating to the Guardian Ad Litem Program and the Statewide Office of Child Representation; or to other laws pertaining hereto.

Section 35. Paragraph (a) of subsection (2) of section 63.085, Florida Statutes, is amended to read:

63.085 Disclosure by adoption entity.—

(2) DISCLOSURE TO ADOPTIVE PARENTS.—

(a) At the time that an adoption entity is responsible for selecting prospective adoptive parents for a born or unborn child whose parents are seeking to place the child for adoption or whose rights were terminated pursuant to chapter 39, the adoption entity must provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity by the parents, legal custodian, or the department. This subsection applies only if the adoption entity identifies the prospective

adoptive parents and supervises the placement of the child in the prospective adoptive parents' home. If any information cannot be disclosed because the records custodian failed or refused to produce the background information, the adoption entity has a duty to provide the information if it becomes available. An individual or entity contacted by an adoption entity to obtain the background information must release the requested information to the adoption entity without the necessity of a subpoena or a court order. In all cases, the prospective adoptive parents must receive all available information by the date of the final hearing on the petition for adoption. The information to be disclosed includes:

1. A family social and medical history form completed pursuant to s. 63.162(6).

2. The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.

3. A complete set of the child's medical records documenting all medical treatment and care since the child's birth and before placement.

4. All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement.

5. The child's educational records, including all records concerning any special education needs of the child before placement.

6. Records documenting all incidents that required the department to provide services to the child, including all orders of adjudication of dependency or termination of parental rights issued pursuant to chapter 39, any case plans drafted to

address the child's needs, all protective services investigations identifying the child as a victim, and all guardian ad litem reports or attorney for the child reports filed with the court concerning the child.

7. Written information concerning the availability of adoption subsidies for the child, if applicable.

Section 36. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 37. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care;

programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

Section 38. Section 627.746, Florida Statutes, is amended to read:

627.746 Coverage for minors who have a learner's driver license; additional premium prohibited.—An insurer that issues an insurance policy on a private passenger motor vehicle to a named insured who is a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~ may not charge an additional premium for coverage of the minor while the minor is operating the insured vehicle, for the period of time that the minor has a learner's driver license, until such time as the minor obtains a driver license.

Section 39. Paragraph (c) of subsection (1) of section 934.255, Florida Statutes, is amended to read:

934.255 Subpoenas in investigations of sexual offenses.—

(1) As used in this section, the term:

(c) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(78) ~~s. 39.01(77)~~.

Section 40. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that

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person is a victim of sexual exploitation of a child as defined in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

Section 41. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill 1920**, relating to Child Welfare, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Senator Lauren Book
Florida Senate, District 32

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

SB 1920
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Jay Lally

Job Title Volunteer Guardian ad Litem / Attorney

Address 1503 Lee Ave
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Tallahassee FL 32303
City *State* *Zip*

Phone 850-933-2736

Email Jlally@gbwlegal.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

1920
Bill Number (if applicable)

Topic SB 1920

Amendment Barcode (if applicable)

Name Betty Hiraga

Job Title

Address 4301 River Chase
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Tallahassee, FL 32309
City *State* *Zip*

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Email bthiraga@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing 2nd Circuit GAL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/2021
Meeting Date

SB 1920
Bill Number (if applicable)

Topic GUARDIAN AD LITEM

Amendment Barcode (if applicable)

Name KATHLEEN JAEGER

Job Title GAL

Address 113 HOFFMAN DR
Street

TALLAHASSEE FL 32312
City *State* *Zip*

Phone 321-480-4493

Email KJAEGER3250@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing GUARDIAN AD LITEM PROGRAM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/19/21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic Guardian Ad Litem

Amendment Barcode (if applicable)

Name James Maxwell

Job Title Retired

Address 113 Hoffman Dr
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Tallahassee FL 32312
City *State* *Zip*

Phone 850-354-2106

Email jmax333@ymail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

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4/19/21
Meeting Date

1920
Bill Number (if applicable)

Topic STATE SENATE BILL # 1920

Amendment Barcode (if applicable)

Name STUART ZIRIN

Job Title GAL VOLUNTEER

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TALLAHASSEE FL 32312
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Email ZIRINS@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing GUARDIAN AD LITEM

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-19-21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Melanie Wiciuski, PhD

Job Title Volunteer Guardian Ad Litem

Address 2501 Twain Drive
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Tallahassee, FL 32311
City *State* *Zip*

Phone 813-404-9759

Email melanie.wiciuski@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-19-2021
Meeting Date

1920
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Dawn Buncer

Ch 119 Exempt

Job Title Volunteer, GAL

Address 3059 Waterford Dr
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Phone 850 251 5242

Tallahassee, FL 32309
City State Zip

Email dbbuncer1@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-19-21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic Representing children in dependency

Amendment Barcode (if applicable)

Name Barbara Bushari's

Job Title Volunteer Guardian ad Litem

Address 2033 Atascadero Ct
Street

Phone

City *State* 32317 *Zip*

Email bbushari's@hotmail.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

SB 1920
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Jane Dallet

Job Title Retired - Librarian

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Tallahassee FL 32308
City State Zip

Phone 850-386-5084

Email janedallet@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Public

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2021
Meeting Date

SB 1920
Bill Number (if applicable)

Topic CHILD ADVOCACY

Amendment Barcode (if applicable)

Name EVELYN SAVARY

Job Title GUARDIAN AD LITEM VOLUNTEER

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City *State* *Zip*

Email EVELYNSAVARY@COMCAST.NET

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic SB 1920

Amendment Barcode (if applicable)

Name Michael Cusick

Job Title

Address 3555 Commonwealth Blvd.
Street

Tallahassee FL 32303
City *State* *Zip*

Phone (850) 222-5620

Email mike@michaelcusick.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Boys Town of North Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

5/19/20
Meeting Date

SB 1920
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Linville Atkins

Job Title Attorney (former GAL atty/G.C.)

Address 1545 Lee Ave
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone 850 445 4678

Email linvilleatkins@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Maria Augustyniak

Job Title _____

Address 3612 Greens Battery Ct.
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-559-3061

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

SB 1920
Bill Number (if applicable)

Topic Appointing attorneys to dependent children

Amendment Barcode (if applicable)

Name Patricia Sanzone

Job Title Guardian ad Litem Volunteer

Address 1933 Lawson Road
Street

Phone 850-510-0354

Tallahassee FL 32308
City *State* *Zip*

Email pattis@nettally.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1944
INTRODUCER:	Appropriations Committee and Senator Albritton
SUBJECT:	Utility and Communications Poles
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Sanders	Sadberry	AP	**Fav/CS**

I. Summary:

CS/SB 1944 creates a process for handling redundant utility poles and abandoned pole attachments and vests the Florida Public Service Commission (commission) with jurisdiction to administer the bill's provisions.

The bill revises section 120.80(13), Florida Statutes, to exempt the commission's adopted rules related to statements of estimated regulatory costs from the requirements of section 120.541, Florida Statutes.

The bill defines the terms "attaching entity," "communications services," "pole," "pole attachments," "pole owner," and "redundant pole."

Under the bill, the commission is authorized to adopt rules, regulate and enforce rates, terms, and conditions for pole attachments when parties are unable to reach an agreement; and to regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles and pole attachments. The bill requires the commission to establish cost-based rates, terms, and conditions for pole attachments using Federal Communications Commissions (FCC) decisions, orders and appellate decisions in FCC cases unless a pole owner or attaching entity establishes an alternative cost is appropriate and in the public interest. The commission must hear and resolve complaints concerning charges, terms, conditions, voluntary agreements, or denial of access to pole attachment under 47 United States Code, section 224,[1] The bill provides the FCC precedent is not binding upon the commission in such hearings.

[1] United States Code, Title 47 – Telecommunications, s. 224: Pole Attachments, available at https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title47-section224&num=0&edition=prelim (last visited Apr. 19, 2021).

The bill delineates circumstances in which a pole owner may deny access on a nondiscriminatory basis to its poles, including insufficient capacity, safety and reliability, and when required by generally applicable engineering purposes. Such evaluation must consider relevant construction and reliability standards approved by the commission and may include financial and performance-related capabilities of the entity requesting access.

The bill requires the commission to allow petitioning pole owners or attaching entities to participate as intervenors in the first five formal administrative proceedings.

The commission is required to adopt procedural rules by January 1, 2022, to administer and implement the provisions of the bill and to provide certification to the FCC.

The bill requires the commission to adopt rules by April 1, 2022, that consider the interests of the subscribers. The rules must include:

- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management requirements for poles owned by communications providers; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules; and

The bill provides the commission authority to access books and records of communications services providers under limited conditions; if such documents are confidential and exempt as proprietary confidential business information, they will retain that status.

The bill creates section 366.97, Florida Statutes, relating to redundant poles and transfer of ownership. The bill:

- Requires pole attachments to be removed from a redundant pole within 180 calendar days of receipt of written notice to do so;
- Requires the commission to create a process for pole owners to provide notification to attaching entities of major hardening projects and provides certain requirements for notice and review of the project;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense after failure to remove the attachment within the 90 days of receiving written notice;
- Requires an attaching entity to reimburse the pole owner within 60 days of receiving the pole owner's invoice.
- Allows the right for repayment to be enforced in circuit court, subject to prejudgment interest, attorneys' fees and costs.
- Requires the non-compliant attaching party to indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees against all liability, except for negligence or willful misconduct.
- Allows a pole owner to remove and sell or dispose of a noncompliant attaching entity's pole attachment at the noncompliant entity's expense unless excused by an event of force majeure or other good cause.
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal,

transfer, or disposal of the attachment, unless an existing agreement expressly provides for or disclaims security agreements.
- Authorizes the commission to issue orders, upon petition by the pole owner, to require the removal or transfer of pole attachments by noncompliant attaching entities.
- Provides parties may enter into pole attachments contracts without commission approval and that existing contract rights under valid pole agreements entered into before the bill's effective date are not impaired.
- Authorizes the commission to adopt rules by April 1, 2022, to implement provisions relating to the timely and coordinated removal of all pole attachments from redundant poles; and establishing monetary penalties to be imposed against any entity in violation of the rules.

The bill has a negative impact to state revenues and expenditures. The commission estimates it will take eight full-time equivalent positions and recurring costs of $460,668 and nonrecurring costs of $31,828 in order to implement this bill. Fiscal Year 2021-2022 legislative budget conference agreed to appropriate the commission's original estimated cost associated with implementing the bill, as originally filed, contingent on SB 1944, House Bill 1567, or similar legislation becoming law. (See V. Fiscal Impact.)

The bill is effective upon becoming a law.

II. Present Situation:

Regulation of Pole Attachment

First deployed in America in 1844 to extend telegraph service, utility poles provide the scaffolding for the technology of the twenty-first century. In the mid-nineteenth and early twentieth centuries, many states adopted laws granting rights-of-way (ROW) to construct utility poles, wires, and facilities to transmit electricity and communications signals. First telegraph, then telephone, electricity, cable, wireless, and Internet Service Providers have sought to attach facilities to wooden, and later steel or composite, utility poles.[2]

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.[3] The space requested for a pole attachment is typically one foot.

[2] Catherine J.K. Sandoval, Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks, 69 Cath. U. L. Rev. 473, 474–75 (2020), https://scholarship.law.edu/cgi/viewcontent.cgi?article=3552&context=lawreview (last visited Apr. 5, 2021).
[3] American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations (last visited Apr. 5, 2021).

Pole attachments, originally by mutual agreement, but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers (e.g. cable TV, local exchange carriers) with access to a utility's distribution poles, conduits, and right-of-way for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.[4]

In 1978, Congress passed the "Pole Attachment Act," which added s. 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish rates, terms, and conditions for pole attachments for the cable industry.[5]

In 1996, the "Telecommunications Act" added provisions making access to utility poles mandatory for telecommunications services providers, providing for nondiscriminatory access, unless there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[6] Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.[7] The term "utility" is defined as:

> [A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.[8]

A state, however, can assume regulation of pole attachment through a process known as "reverse preemption." This requires a state to expressly assert jurisdiction through state legislation, followed by certifying to the FCC that "in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services."[9] As of March 19, 2020, 22 states and the District of Columbia have reverse preemption.[10] Florida does not presently regulate pole attachments.

FCC Section 224 Pole Attachment Complaints

There are currently five pending "Section 224 Pole Attachment Complaints" filed with the FCC.[11] Four of the pending complaints concern BellSouth Telecommunications LLC, d/b/a

[4] Edison Electric Institute, *Pole Attachments 101*, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Apr. 5, 2021).
[5] Pub. L. No. 95-234, *codified* at 47 U.S.C. s. 224.
[6] Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).
[7] 47 U.S.C. s. 224(a)(1).
[8] *Id*.
[9] 47 U.S.C. s. 224(c)(2).
[10] Federal Communications Commission, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, Mar. 19, 2020, https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2 (last visited Apr. 6, 2021).
[11] *See* Federal Communications Commission, *EB - Market Disputes Resolution Division Pending Complaints*, https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints (last visited Apr. 6, 2021).

AT&T Florida (AT&T); of which two are against Florida Power and Light Company (FPL),[12] and two are against Duke Energy affiliated companies.

The complaint filed by AT&T against FPL on July 1, 2019, alleged the rate paid to attach AT&T's facilities to FPL was unjust and unreasonable under the FCC rules and orders issued pursuant to 47 U.S.C. s. 224.[13] The FCC granted the complaint in part, finding AT&T was entitled to a reduced rate for the period ending on December 31, 2018.[14] Under the order, the parties were unable to agree as to the proper calculation of the reduced rate and the FCC further decided AT&T was entitled to a refund of any overpayments for the period of July 1, 2014, to December 31, 2018.[15] The FCC established the pole attachments rate under its last order.[16]

Third-Party Pole Attachment and Joint Use

A third-party pole attachment is a communications attachment by a "third-party attacher," such as a cable television system or provider of telecommunications service, to a pole, duct, conduit, or right-of-way owned or controlled by a utility.[17] On April 7, 2011, the FCC approved its pole attachment order.[18] Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC's jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.[19]

"Joint use" refers to sharing use of a utility pole by agreement between pole-owning utilities.[20] "Pole attachments" relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.[21] This provides non-pole owning utilities with access to a utility's distribution poles, conduits, and rights-of-way for installation of facilities and

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[12] *See* Federal Communications Commission, *Memorandum Opinion and Order, DA-21-57*, Jan. 14, 2021, https://docs.fcc.gov/public/attachments/DA-21-57A1.pdf (last visited Apr. 6, 2021). After release of the bureau order in BellSouth Telecommunications LLC, d/b/a AT&T Florida (AT&T) vs Florida Power and Light Company (FPL), the parties were unable resolve their differences and AT&T then filed a second complaint against FPL with the FCC asserting the provisions invoked by FPL in its Notice of Termination are unjust and unreasonable under section 224 and requested that they be amended.

[13] *Id.*, at 1 n.1.

[14] Federal Communications Commission, *Grants, in Part, AT&T Pole Attachment. Complaint Against FL P&L: Memorandum Opinion and Order*, DA-20-529, May 20, 2020, https://www.fcc.gov/document/fcc-grants-part-att-pole-attach-complaint-against-fl-pl (last visited Apr. 6, 2021).

[15] Federal Communications Commission, *EB Grants in Part and Stays in Part AT&T Florida's Complaint Memorandum Opinion and Order*: *DA-21-57*, January 14, 2021, https://www.fcc.gov/document/eb-grants-part-and-stays-part-att-floridas-complaint (last visited Apr. 6, 2021).

[16] *Id.*

[17] 47 U.S.C. s. 224(a)(4).

[18] Federal Communications Commission, *FCC Reforms Pole Attachment Rules to Boost Broadband Deployment*, FCC 11-50, Apr. 7, 2011, https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment (last visited Apr. 6, 2021).

[19] *See* American Public Power Association, *Preserving the Municipal Exemption from Federal Pole Attachment Regulations*, https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations#:~:text=In%201978%2C%20Congress%20passed%20the%20Pole%20Attachment%20Act%2C,for%20pole%20attachments%20for%20the%20then-new%20cable%20industry (last visited Apr. 6, 2021).

[20] *See* Edison Electric Institute, *Pole Attachments 101*, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Apr. 6, 2021). While joint use is usually governed by contracts, the terms and conditions for detachment from a pole are usually handled in the form of an amendment to the original contract.

[21] *Id.*

equipment in order to build an interconnected network with reduced cost to consumers.[22] Other benefits of joint use and pole attachments include the ability to share the high cost of infrastructure; minimizing the visual impact of two separate pole networks; and minimizing roadway hazards.

According to the Edison Electric Institute, the mandatory nature of providing non-pole-owning utilities with access to poles has resulted in a number of issues such as:

- "Overlashing," where existing attachments are made without notification;
- Compromised safety and reliability requirements for the installation of cable or telecommunications facilities;
- Failure to support utility efforts to inspect for safety violations and capacity overloading;
- Failed cooperation among the pole owner and attaching entities as it pertains to repairs, the expedited transfer of attachments to newly erected hardened poles, and undergrounding; and
- Electric utilities primarily bearing the burden of costs, particularly as it relates to weathering and storm damage.[23]

National Joint Utilities Notification System

The National Joint Utilities Notification System (NJUNS) is a consortium of utility companies formed for the purpose of improving communication among utilities as it relates to pole transfers and replacements.[24] After a tragic incident occurred during a pole transfer, it was decided certified letters and phone calls were no longer a suitable way to provide notice.[25] The NJUNS provides a dashboard system that allows members to generate tickets and track pole transfers.[26] Florida has been a member of the NJUNS since 1992.[27]

Florida Public Service Commission

The Florida Public Service Commission (commission) is an arm of the legislative branch of government.[28] The role of the commission is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[29] In order to do so, the commission exercises authority over public utilities in one or more of the following areas: rate or economic regulation; market competition oversight; and/or monitoring of safety, reliability, and service issues.[30]

The commission monitors the safety and reliability of the electric power grid[31] and may order the addition or repair of infrastructure as necessary.[32] The commission has broad jurisdiction over

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[22] *Id*.
[23] *Id*.
[24] National Joint Utilities Notification System, *About: Who We are*, https://web.njuns.com/about/ (last visited Apr. 6, 2021).
[25] *Id*.
[26] *See* National Joint Utilities Notification System, *Best Practices*, https://web.njuns.com/njuns-best-practices/ (last visited Apr. 6, 2021).
[27] National Joint Utilities Notification System, *Members*, https://web.njuns.com/members/ (last visited Apr. 6, 2021).
[28] Section 350.001, F.S.
[29] *See* Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Apr. 6, 2021).
[30] *Id*.
[31] Section 366.04(5) and (6), F.S.
[32] Section 366.05(1) and (8), F.S.

the rates and service of investor-owned utilities. Currently, the commission does not have the authority to regulate pole attachments, absent the Legislature expressly conferring this jurisdiction on the commission.[33] "Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the [L]egislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan."[34]

Telecommunications carriers in Florida are subject to limited regulation under ch. 364, F.S. During the 2011 legislative session the "Regulatory Reform Act" (Act), was passed and signed into law by the Governor, effective July 1, 2011.[35] Under the Act, the Legislature eliminated most of the commission's retail oversight authority over the telecommunications wireline companies, yet maintained the commission's authority over wholesale intercarrier issues. The Act eliminated most of the retail regulation of local exchange telecommunications services by the commission, including the elimination of rate caps on all retail telecommunications services, elimination of telecommunications-related consumer protection and assistance duties of the commission, and elimination of the commission's remaining oversight of telecommunications service quality.[36] As a result of the deregulation of telecommunications companies, the commission did not require local exchange telecommunications companies to continue performing pole inspections after July 1, 2011.[37]

Currently, the commission does not have jurisdiction over the rates, charges, terms, and conditions of pole attachments or detachments. Pole owners and attaching entities govern the price, terms, and conditions of pole attachment agreements. Disputes are adjudicated before the FCC.[38]

Electric Utilities

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.[39] Investor-owned electric utility rates and revenues are regulated by the commission.[40] Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the commission to monitor earnings levels on an ongoing basis and adjust customer

[33] *See Teleprompter Corp. v. Hawkins*, 384 So. 2d 648, 650 (Fla. 1980) (citing *Radio Tel. Commc'ns, Inc. v. Se. Tel. Co.*, 170 So. 2d 577, 581 (Fla. 1964)), "The commission did not have jurisdiction over radio communication service, notwithstanding the interconnection of such radio service with a regulated utility's telephone landline. [T]he [L]egislature of Florida has never conferred upon this commission any general authority to regulate public utilities."
[34] *Hawkins*, 384 So. 2d at 650.
[35] Ch. 2011-36, Laws of Florida
[36] Florida Public Service Commission, *Local Competition*, http://www.psc.state.fl.us/Telecommunication/TelecomLocalCompetition (last visited Apr. 6, 2021).
[37] Florida Public Service Commission, *Bill Analysis for SB 1944 / HB 1567* (April 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[38] *Id*.
[39] *Id*.
[40] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Apr. 6, 2021).

rates quickly if a company appears to be overearning.[41] As of year-end 2020, Florida's electric utilities owned a collective 2,867,025 poles, which had 2,837,881 attachments from other entities.[42]

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial, or industrial customers, usually within the boundaries of the municipality.[43] Municipally owned utility rates and revenues are regulated by their city commission.[44] The commission does not fully regulate publicly owned municipal electric utilities.[45] However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[46]

In total, there are 34 municipal electric companies in Florida.[47] Most municipal electric utilities are represented by the Florida Municipal Electric Association, which serves over three million Floridians.[48]

Rural Electric Cooperative Utilities

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.[49] Rates and revenues for a cooperative utility are regulated by their elected cooperative officers.[50] Most cooperatives have been financed by the Rural Electrification Association and most, in Florida, are represented by the Florida Electric Cooperatives Association, Inc.[51]

In total there are 18 rural electric cooperatives in Florida.[52] The commission does not regulate the rates and service quality of cooperatives, however, it does have jurisdiction as to rate structure, territorial boundaries, bulk power supply operations, and power supply planning.[53]

Telecommunications Companies

In 2011, the Florida Legislature deregulated telecommunications companies and consequently, the commission lost its authority to require telecommunications companies to continue performing pole inspections after July 1, 2011. Prior to losing jurisdiction, the commission had issued an order in 2006, requiring telecommunications companies to implement an eight year

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[41] Florida Public Service Commission, *2020 FPSC Annual Report*, http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Apr. 6, 2021).
[42] Florida Public Service Commission, *2019 Distribution Reliability Reports for IOUs in Florida*, *Initiative 2*, http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability (last visited Apr. 6, 2021).
[43] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.
[44] *Id*.
[45] Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.
[46] *Id*.
[47] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.
[48] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited Apr. 6, 2021).
[49] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 28.
[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] Florida Public Service Commission, *2020 Annual Report*, *supra* at n. 29.

inspection program of its wooden poles based on the requirements of the National Electrical Safety Code.[54] Section 364.011, F.S., expressly exempts the following services from commission oversight:

- Intrastate interexchange telecommunications services;
- Broadband services, regardless of the provider, platform, or protocol;
- VoIP;
- Wireless telecommunications, including commercial mobile radio service providers;
- Basic service; and
- Nonbasic services or comparable services offered by any telecommunications company.

III. Effect of Proposed Changes:

Section 1 amends s. 120.80, F.S., to exempt rules adopted to implement the provisions of the bill by the Public Service Commission (commission) from being subject to statements of estimated regulatory costs from s. 120.541, F.S.

Section 2 amends s. 366.02, F.S., to define the term:

- "Attaching entity," to mean a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator who owns or controls pole attachments.
- "Communications services," to have the same meaning as in s. 202.11, F.S., which includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals.
- "Pole," to mean a pole used for electric distribution service, streetlights, communications services, or cable television services which is owned in whole or in part by a pole owner. The term does not include a pole used solely to support wireless communications services facilities.
- "Pole attachments," to mean an attachment by a public utility, local exchange carrier, communications services provider, broadband provider, or cable television operator attached to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.
- "Pole owner," to mean a local exchange carrier, a public utility, a communications services provider, or a cable television operator, which owns a pole; and
- "Redundant pole," to mean a pole owned within 50 feet of a new pole intended to replace an old pole from which attachments have not been removed or transferred, that is left standing after the pole owner relocated its facilities underground or to another location.

Section 3 amends s. 366.04, F.S., relating to the commission's jurisdiction, granting the authority to regulate and enforce rates, charges, terms, and conditions for pole attachments, including attachments to streetlight fixtures, owned by a public utility or a communications services provider.

The bill provides the commission's authority includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c), relating to pole attachments.

[54] *See* Florida Public Service Commission, Order No. PSC-2006-0168-PAA-TL, Mar. 1, 2006, Docket No. 20060077-TP, http://www.psc.state.fl.us/library/filings/2006/01762-2006/01762-2006.PDF (last visited Apr. 6, 2021).

The bill provides:

- Legislative intent that parties be encouraged to enter into voluntary pole attachment agreements without commission approval and that parties not be prevented from voluntarily entering into such contracts without commission approval.
- Circumstances in which a pole owner, on a non-discriminatory basis, may deny access to its poles, including insufficient capacity, safety, reliability, and engineering requirements. Also provides a pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider the commission's approved construction and reliability standards.
- Jurisdiction for the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of pole attachment in which the Federal Communications Commission (FCC) precedent is not binding.
- Requires the commission to establish just and reasonable cost-based rates when exercising its jurisdiction to hear such cases and to apply the decisions and orders of the FCC and any appellate court decisions reviewing FCC orders regarding pole attachment rates, terms or conditions in determining just and reasonable pole attachment rates, terms or conditions.
- A pole owner or attaching entity may provide evidence, subject to proceedings conducted pursuant to s. 120.369, F.S., and s. 120.57, F.S., to establish that an alternative cost of service-based pole attachment rate is appropriate and in the public interest.
- The commission must authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights in the first five formal administrative proceedings to determine pole attachment rates, so as to provide commission precedent to establish pole attachment rates and help guide negotiations toward voluntary pole attachment agreements.
- Pole attachment rate proceedings are limited to the specific pole owner and pole attaching entity involved in and directly affected by the specific pole attachment rate after the fifth formal administrative proceeding is concluded by final order.
- The commission must regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, of communications services providers own poles.

The commission is required to adopt procedural rules by January 1, 2022, in order to administer and implement changes to rates, charges, terms, and conditions for pole attachments and requires the commission to provide certification to the Federal Communications Commission (FCC).

The bill requires the commission to adopt rules by April 1, 2022, which consider the interests of the subscribers and users. The rules must include:

- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management requirements; and
- Monetary penalties imposed on communications services providers for failure to comply with commission rules, consistent with s. 366.095, F.S., which limits fines to $5,000 per offense.

The bill provides the commission with authority to access books and records of communications services providers under limited conditions; if such, any proprietary confidential business information received by the commission that is confidential or exempt under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the Florida Constitution, retains its confidential and exempt status.

Section 4 creates s. 366.97, F.S., relating to redundant poles and transfer of ownership.

The bill provides procedures for dealing with redundant or abandoned poles which:

- Requires the commission to establish by rule a process for pole owners to provide advance notice to attaching entities of major hardening projects to replace poles within 180 calendar days of receiving written notice to do so.
- Requires hardening notices to include:
  - The scope of the major hardening project, the location of affected poles, the expected start date, and the expected completion date; and
  - The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the major hardening project details, including the types of poles to be used. The field meeting must occur no sooner than 15 days after but no later than 60 days after notice and must include sufficient information to enable the attaching entity to locate the affected poles and identify the owner of any facilities attached to the poles,
- Requires an attaching entity to remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or written notice from a pole owner requesting removal. The commission is required to determine by rule the sufficiency of and requirements for removal notice and may use a joint use notification software program to accomplish removal notification.
- Allows a pole owner, if an attaching entity fails to remove a pole attachment, to remove, transfer, or relocate an attachment to a new pole at the attachment owner's expense. The bill clarifies this provision does not apply to an electric utility's pole attachments. Requires an attaching entity to submit payment to the pole owner within 60 days of receiving a transfer of attachment invoice.
- Authorizes a pole owner to seek enforcement of payment in circuit court and provides the pole owner is entitled to prejudgment interest, attorneys' fees and costs.
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense, and requires the attaching party to indemnify, defend, and hold the pole owner, its directors, officers, agents, and employees harmless, barring a finding of negligence or willful misconduct arising in connection with the transfer.
- Allows the commission to require by rule that an attaching entity post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment; and clarifies:
  - The rules do not apply to existing agreements between the pole owners and the attaching entity if the agreement expressly provides for, or disclaims, security requirements;
  - The commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities upon petition by a pole owner;
  - The bill does not prevent a party from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment;
  - It is the Legislature's intent to encourage parties to enter into voluntary agreements without commission approval; and
  - The contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act is not impaired.

The bill directs the commission to adopt rules by April 1, 2022, to implement Section 3 of the bill, including rules for the timely and coordinated removal of attachments from redundant poles and the establishment of monetary penalties.

Section 5 directs the Division of Law Revision to replace references to "the effective date of this act," with the date the bill becomes a law.

Section 6 provides the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The financial and legal responsibilities of parties to pole attachment arrangements in Florida could substantially change depending on the implementation of the Florida Public Service Commission's (commission) authority over pole attachments. The commission's adoption of rules and implementation of this new authority will likely involve litigation between the affected parties. However, any pole attachment disputes will be adjudicated by the commission, rather than the Federal Communications Commission (FCC).

Entities with attachments on redundant poles may face negative financial impacts not contemplated in current negotiated pole attachment agreements

C. Government Sector Impact:

The bill has a negative impact to state revenues and expenditures. The commission estimates implementation of the bill will require eight full-time equivalent (FTE) positions and $460,668 ($31,160 in nonrecurring) in additional budget authority.[55] A breakdown of positions and funding is provided below.

Category	Amount
Recurring Costs:	
Salaries and Benefits (eight new FTEs)	$408,884
- Three Public Utility Analysts	
- Three Engineer Specialists	
- One Sr. Attorney and One Attorney	
Expense Package for eight new FTEs	$50,784
Salary Rate: - 503,618 for eight new FTEs	503,618
Total Recurring Costs	**$460,668 / 503,618 Salary Rate**
Nonrecurring Costs:	
Expense Package: eight new FTEs	$31,160
Total Nonrecurring Costs	**$31,160**
Total Costs for Fiscal Year 2021-2022[56]	**$491,828[57]**

Fiscal Year 2021-2022 legislative budget conference agreed to appropriate, 13 positions and $925,566 ($739,433 recurring) from the Regulatory Trust Fund contingent on SB 1944, House Bill 1567, or similar legislation becoming law.[58] This appropriation was based upon the Public Service Commission's (commission) estimated cost to implement the new regulatory provisions contained within SB 1944, as originally filed.

The commission is authorized to assess monetary penalties for violations of provisions of the bill; however, the number and amount of monetary penalties is unknown. (*See* VII. Related Issues.)

VI. Technical Deficiencies:

None.

[55] Florida Public Service Commission, *Bill Analysis for SB 1944 / HB 1567 - Revised* (April 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[56] *Id*.
[57] Email from Adam Potts, Legislative Director, Public Services Commission, to Michelle Sanders, Legislative Analyst, Senate Appropriations Subcommittee on Agriculture, Environment, and General Government (April 19, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government)
[58] The Florida Senate, Appropriations (Budget) by Committee Subject Area, Agriculture, Environment, and General Government, State Administration and Technology, *Conference Committee on Senate Agriculture, Environment, and General Government Appropriations/House State Administration & Technology Appropriations, Senate Offer #2, Budget Spreadsheet and Senate Offer #1, Proviso* (April 19, 2021), https://www.flsenate.gov/Session/Appropriations/2021 (last visited Apr. 21, 2021).

VII. Related Issues:

Lines 191-194 and lines 296-300 of the bill provide the commission may adopt rules related to monetary penalties imposed upon communication services providers who fail to comply with any such rule of the commission, but is silent as to other types of utilities which may also have attachments on utility poles.

Traditionally, the cost associated with regulatory requirements established in Florida law have been assessed to the utilities and telecommunications companies subject to the commission's authority. The bill does not establish authority to assess regulatory assessment fees to the communication services providers that would become subject to the commissions' authority under the bill.[59]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 366.02 and 366.04.

This bill creates section 366.97 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 19, 2021:
The committee substitute:

- Amends s. 120.80, F.S., to exempt the Public Service Commission (commission) rules adopt under sections 3 and 4 of the bill from the requirements of s. 120.541, F.S., relating to statements of estimated regulatory costs.
- Removes electric utilities and adds broadband service providers to the definition of "attaching entity."
- Revises the term "pole," to include those used for local exchange services and cable television services; and excludes ducts, conduits, right-of-ways, and poles that are used solely to support wireless communications services facilities.
- Revises the term "pole attachment," to include attachments by local exchange carriers, broadband providers, and public utilities; and expands the term to include attachments to a pole owner's ducts, conduits, or rights-of-way.
- Expands the term "pole owner" to include local exchange carriers.
- Expands the commission's jurisdiction to include regulation and enforcement of rates, charges, terms, and conditions for pole attachments in general, as opposed to just disagreements between parties relating to pole attachments.
- Requires the commission to establish cost-based rates, terms, and conditions for pole attachments using Federal Communications Commission (FCC) decisions, orders, and appellate decisions in FCC cases; unless, a pole owner or attaching entity establishes that an alternative cost is appropriate and in the public interest.

[59] *Id*.

- Extends the deadline for rulemaking to January 1, 2022, for provisions relating to rates, charges, terms, and conditions for pole attachments; and requires the commission to submit its pole attachment regulation certification to the FCC upon adoption of such rules.
- Deletes the provision allowing the commission to assume jurisdiction of a complaint proceeding pending before the FCC.
- Requires the commission to allow petitioning pole owners or attaching entities to participate as intervenors in the first five administrative proceedings conducted under the bill's provisions.
- Revises the scope of the rules that the commission must adopt prior to FCC certification to only include procedural rules.
- Removes conduits, ducts, pipes, pole attachments, wires, cables, and related plants and equipment regulation by the commission.
- Extends the deadlines for rulemaking to April 1, 2022, for provisions relating to safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration; and provides that such rules do not apply to communications services providers that do not own poles.
- Requires monetary penalties to be consistent with s. 366.095, F.S., which limits penalties to not more than $5,000, per offense.
- Grants the commission authority to access books and records of communications services providers.
- Deletes legislative findings.
- Removes the requirement for communications services providers to establish storm reserve funds.
- Eliminates a pole owner's ability to deny access to a pole based on an evaluation of the financial and performance-related capabilities of the entity requesting attachment.
- Extends the timeframe for removal of a pole attachment from 90 days to 180 days.
- Requires the commission to create a process for pole owners to provide notice to attaching entities of major hardening projects; specifies certain requirements for the notice including a time for entities to review and discuss the project, which must occur no sooner than 15 days after but no later than 60 days after notice.
- Requires a removal notice to include information that allows an attaching entity to locate and identify the affected pole and the owner of attachments.
- Requires an attaching entity to submit payment to the pole owner within 60 days of receiving an invoice for transfer of an attachment; this right is enforceable in circuit court and subject to prejudgment interest, attorney fees, and costs.
- Deletes provisions relating to the transfer of title to a redundant pole from the pole owner to the noncompliant attaching entity.
- Extends the deadlines for rulemaking to April 1, 2022, for provisions relating to removal of pole attachments from redundant poles and the establishment of monetary penalties.
- Clarifies that rules requiring the posting of a security instrument do not apply to existing agreements.
- Deletes provisions requiring the commission to impose monetary penalties for failure to comply with the bills redundant pole section and eliminates broadband grant provisions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/20/2021	.	
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The Committee on Appropriations (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (g) is added to subsection (13) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(g) Rules adopted by the Florida Public Service Commission to implement ss. 366.04(8) and (9) and 366.97 are not subject to

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s. 120.541.

Section 2. Subsections (4) through (9) are added to section 366.02, Florida Statutes, to read:

366.02 Definitions.—As used in this chapter:

(4) "Attaching entity" means a person that is a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator that owns or controls pole attachments.

(5) "Communications services" has the same meaning as in s. 202.11(1).

(6) "Pole" means a pole used for electric distribution service, streetlights, communications services, local exchange services, or cable television services which is owned in whole or in part by a pole owner. The term does not include a pole used solely to support wireless communications services facilities.

(7) "Pole attachment" means any attachment by a public utility, local exchange carrier communications services provider, broadband provider, or cable television operator to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.

(8) "Pole owner" means a local exchange carrier, a public utility, a communications services provider, or a cable television operator that owns a pole.

(9) "Redundant pole" means a pole owned or controlled by a pole owner which is:

(a) Within 50 feet of a new pole that is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new

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pole;

(b) Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

(c) Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Section 3. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions for pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In developing such rules, the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without

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commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission and may include an evaluation of the financial and performance-related capabilities of the entity requesting attachment.

(e) The commission shall hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments with regard to the types of attachments regulated under 47 U.S.C. s. 224, attachments to streetlight fixtures, or attachments owned by a communications services provider. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection. The commission shall establish cost-based rates and charges for pole attachments and shall apply the decisions and orders of the Federal Communications Commission in determining pole attachment rates unless a pole owner or attaching entity establishes by competent substantial evidence pursuant to proceedings conducted pursuant to ss. 120.569 and 120.57 that an alternative cost of service-based pole attachment rate is appropriate and in the public interest.

(f) Upon commencement of its authority under this

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subsection, the commission, upon the request of a party to a complaint proceeding pending before the Federal Communications Commission, shall assume jurisdiction over the matter if it is not yet subject to a final order of the Federal Communications Commission at the time of the request.

(g) The commission shall adopt rules by January 1, 2022, to administer and implement this subsection, including one or more appropriate formulae for apportioning costs, and shall, upon adoption of such rules, provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plants and equipment of communication services providers. This paragraph does not apply to a communications services provider that owns no poles.

(b) The commission shall adopt rules by April 1, 2022, to administer and implement this subsection, including, but not limited to:

1. Mandatory pole inspections, including repair or replacement; vegetation management requirements for poles owned by providers of communications services; and the timely removal of pole attachments; and

2. Monetary penalties to be imposed upon any communications services provider that fails to comply with any such rule of the commission.

(c) The commission may access the books and records of communications services providers to the limited extent

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necessary to perform its functions and to exercise its authority under subsection (8), this subsection, and s. 366.97(4). Upon request by a communications services provider, any records that are shown and found to be proprietary confidential business information that is confidential or exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution which are received by the commission under this paragraph shall retain their confidential or exempt status when held by the commission.

Section 4. Section 366.97, Florida Statutes, is created to read:

366.97 Redundant poles; transfer of ownership; penalties.—

(1) The Legislature finds that:

(a) It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to withstand extreme weather conditions by, among other things, replacing older poles with newer, stronger poles; however, this work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.

(b) Pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles.

(c) Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create

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overcrowding of, and unsafe conditions in, the public rights-of-way and easements.

(d) It is in the public interest to timely remove pole attachments from redundant poles.

(2) The commission by rule shall determine a process by which pole owners shall provide at least 180 calendar days' electronic or written advance notice to affected attaching entities of major hardening projects the purpose of which is to replace poles to ensure the poles meet extreme wind loading requirements. The advance hardening project notice must include:

(a) The scope of the major hardening project, to the extent determined, the locations of the affected poles, the expected start date, and the expected completion date of the major hardening project; and

(b) The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the planned major hardening project details, including the types of replacement poles to be used. The field meeting must occur no sooner than 15 calendar days after the date of the notice and no later than 45 calendar days after the notice.

(3)(a) An attaching entity must remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or a written notice from the pole owner requesting such removal. The commission shall determine by rule the sufficiency of, and requirements for, such removal notice and may consider the use of a joint use notification software program to accomplish such removal notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent

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excused by an event of force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.

(c) If a pole attachment is no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment, except to the extent the attaching entity's noncompliance is excused by an event of force majeure or other good cause as determined by the commission. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal,

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transfer, sale, or disposal of pole attachments.

(4) The commission shall impose monetary penalties upon any entity subject to its jurisdiction which is found to be in violation of this section. Upon petition by a pole owner, the commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities and shall impose monetary penalties in accordance with this section.

(5) All monetary penalties assessed by the commission pursuant to this section must be used by the commission to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The commission shall establish criteria for the award of grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas. The commission may disburse monies from the fund to grant recipients selected by the commission in accordance with its criteria.

(6) This section may not be construed to do any of the following:

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity’s pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

(b) Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of

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this act.

(7) The commission shall adopt rules by April 1, 2022, to implement this section, including rules providing for the timely and coordinated removal of all pole attachments from redundant poles and establishing monetary penalties to be imposed against any entity in violation of this section.

Section 5. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 6. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to utility and communications poles; amending s. 120.80, F.S.; exempting certain rules adopted by the Public Service Commission from legislative ratification requirements; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; requiring the commission to hear and resolve complaints concerning rates, charges, terms,

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conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission to establish cost-based rates and charges for pole attachments and apply certain decisions and orders of the Federal Communications Commission; requiring the commission, at the request of a party, to assume jurisdiction over certain complaints before the Federal Communications Commission; requiring the commission to adopt rules by a specified date and provide certification to the Federal Communications Commission upon such adoption; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for certain plants and equipment of communications services providers; providing an exception; requiring the commission to adopt rules, including monetary penalties, by a specified date; authorizing the commission to access the books and records of communications services providers for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; creating s. 366.97, F.S.; providing legislative findings; requiring the commission by rule to create a process requiring advance hardening project notice; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of

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electronic or written notice from the pole owner; requiring the commission to provide the form and requirements for such notice by rule; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing a pole owner to remove and sell or dispose of certain abandoned pole attachments; authorizing the commission to require attaching entities to post certain security instruments by rule; requiring the commission to impose monetary penalties for violations; requiring the commission to provide grants to construct and install broadband infrastructure in this state from any monetary penalty collected; providing construction; requiring the commission to adopt rules by a specified date; providing a directive to the Division of Law Revision; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Albritton) recommended the following:

Senate Substitute for Amendment (529128) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (g) is added to subsection (13) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(g) Rules adopted by the Florida Public Service Commission

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to implement ss. 366.04(8) and (9) and 366.97 are not subject to s. 120.541.

Section 2. Subsections (4) through (9) are added to section 366.02, Florida Statutes, to read:

366.02 Definitions.—As used in this chapter:

(4) "Attaching entity" means a person that is a local exchange carrier, a public utility, a communications services provider, a broadband service provider, or a cable television operator that owns or controls pole attachments.

(5) "Communications services" has the same meaning as in s. 202.11(1).

(6) "Pole" means a pole used for electric distribution service, streetlights, communications services, local exchange services, or cable television services which is owned in whole or in part by a pole owner. The term does not include a pole used solely to support wireless communications services facilities.

(7) "Pole attachment" means any attachment by a public utility, local exchange carrier communications services provider, broadband provider, or cable television operator to a pole, duct, conduit, or right-of-way owned or controlled by a pole owner.

(8) "Pole owner" means a local exchange carrier, a public utility, a communications services provider, or a cable television operator that owns a pole.

(9) "Redundant pole" means a pole owned or controlled by a pole owner which is:

(a) Within 50 feet of a new pole that is intended to replace the old pole from which some or all of the pole

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attachments have not been removed and transferred to the new pole;

(b) Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

(c) Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery of service.

Section 3. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions of pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, attachments to poles owned by a public utility, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In developing such rules, the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without

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commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission.

(e) The commission shall hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments with regard to the types of attachments regulated under 47 U.S.C. s. 224, attachments to streetlight fixtures, or attachments owned by a communications services provider. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection. When taking action upon such complaints, the commission shall establish just and reasonable cost-based rates, terms, and conditions for pole attachments and shall apply the decisions and orders of the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission regarding pole attachment rates, terms, or conditions in determining just and reasonable pole attachment rates, terms, and conditions unless a pole owner or attaching entity establishes by competent substantial evidence pursuant to proceedings conducted pursuant to ss. 120.569 and 120.57 that an alternative cost of service-based

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pole attachment rate is appropriate and in the public interest.

(f) In the administration and implementation of this subsection, the commission shall authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under chapter 120 in the first five formal administrative proceedings conducted to determine pole attachment rates under this section. These initial five proceedings are intended to provide commission precedent on the establishment of pole attachment rates by the commission and help guide negotiations toward voluntary pole attachment agreements. After the fifth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate.

(g) The commission shall adopt procedural rules by January 1, 2022, to administer and implement this subsection and, upon adoption of such rules, shall provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers. This subsection does not apply to a communications services provider that owns no poles.

(b) The commission shall adopt rules by April 1, 2022, to administer and implement this subsection, including, but not limited to:

1. Mandatory pole inspections, including repair or

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replacement; vegetation management requirements for poles owned by providers of communications services; and

2. Monetary penalties to be imposed upon any communications services provider that fails to comply with any such rule of the commission. Monetary penalties imposed by the commission must be consistent with s. 366.095.

(c) The commission may access the books and records of communications services providers to the limited extent necessary to perform its functions and to exercise its authority under subsection (8), this subsection, and s. 366.97(4). Upon request by a communications services provider, any records that are shown and found to be proprietary confidential business information that is confidential or exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution which are received by the commission under this paragraph shall retain their confidential or exempt status when held by the commission.

Section 4. Section 366.97, Florida Statutes, is created to read:

366.97 Redundant poles; transfer of ownership.—

(1) The commission by rule shall determine a process by which pole owners shall provide at least 180 calendar days' electronic or written advance notice to affected attaching entities of major hardening projects the purpose of which is to replace poles to ensure the poles meet extreme wind loading requirements. The advance hardening project notice must include:

(a) The scope of the major hardening project, to the extent determined, the locations of the affected poles, the expected start date, and the expected completion date of the major

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hardening project; and

(b) The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the planned major hardening project details, including the types of replacement poles to be used. The field meeting must occur no sooner than 15 calendar days after the date of the notice and no later than 60 calendar days after the notice and, at a minimum, must include sufficient information to enable the attaching entity to locate the affected poles and identify the owner of any facilities attached to the poles.

(2)(a) An attaching entity must remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or a written notice from the pole owner requesting such removal. The commission shall determine by rule the sufficiency of, and requirements for, such removal notice and may consider the use of a joint use notification software program to accomplish such removal notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the noncompliant attaching entity’s expense. This subsection does not apply to an electric utility’s pole attachments. An attaching entity shall submit payment to the pole owner within 60 days after receipt of the pole owner’s invoice. A pole owner may seek to enforce its right to payment under this paragraph in circuit court and is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court

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costs. Upon receipt by the pole owner of written notice that complies with the commission rule, the noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.

(c) If a pole attachment is no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment, except to the extent the attaching entity's noncompliance is excused by an event of force majeure or other good cause as determined by the commission. An attaching entity shall submit payment to the pole owner within 60 days after receipt of the pole owner's invoice. A pole owner may seek to enforce its right to payment under this paragraph in circuit court and is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court costs. Upon receipt by the pole owner of written notice that complies with the commission rule, the noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

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(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments. The rules do not apply to existing agreements between the pole owners and the attaching entity if the agreement expressly provides for, or disclaims, security requirements.

(3) Upon petition by a pole owner, the commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities.

(4) This section may not be construed to do any of the following:

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

(b) Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act.

(5) The commission shall adopt rules by April 1, 2022, to implement this section, including rules providing for the timely and coordinated removal of all pole attachments from redundant poles and establishing monetary penalties to be imposed against any entity in violation of this section.

Section 5. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 6. This act shall take effect upon becoming a law.

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========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to utility and communications poles; amending s. 120.80, F.S.; exempting certain rules adopted by the Public Service Commission from legislative ratification requirements; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; requiring the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission to establish cost-based rates and charges for pole attachments and apply certain decisions and orders of the Federal Communications Commission; requiring the commission to authorize certain parties to participate as an intervenor in a specified number of administrative proceedings; requiring the commission to adopt rules by a specified date and provide certification to the Federal Communications Commission

upon such adoption; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communications services providers; providing an exception; requiring the commission to adopt rules, including monetary penalties, by a specified date; authorizing the commission to access the books and records of communications services providers for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; creating s. 366.97, F.S.; requiring the commission by rule to create a process requiring advance hardening project notice; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of electronic or written notice from the pole owner; requiring the commission to provide the form and requirements for such notice by rule; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; requiring attaching entities to submit payment within a specified timeframe; authorizing pole owners to seek enforcement of such payment; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing a pole

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owner to remove and sell or dispose of certain abandoned pole attachments; authorizing the commission to require attaching entities to post certain security instruments by rule; authorizing the commission to issue orders for the removal or transfer of pole attachments by noncompliant attaching entities upon petition by a pole owner; providing construction; requiring the commission to adopt rules by a specified date; providing a directive to the Division of Law Revision; providing an effective date.

By Senator Albritton

26-01453-21 20211944__

A bill to be entitled

An act relating to utility and communications poles; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; authorizing the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission, at the request of a party, to assume jurisdiction over certain complaints before the Federal Communications Commission; requiring the commission to adopt rules by a specified date; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for certain plants and equipment of communications services providers; requiring the commission to adopt rules, including monetary penalties, by a specified date; creating s. 366.97, F.S.; providing legislative findings; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of a written notice from the pole owner; requiring the commission to provide the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26-01453-21 20211944__

form and requirements for such notice; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; authorizing a pole owner to remove and sell or dispose of certain abandoned pole attachments; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing the commission to require attaching entities to post certain security instruments by rule; authorizing certain pole owners to transfer legal title of a redundant pole to an attaching entity that has not removed a pole attachment within a specified timeframe; providing for such transfer of title; providing for the transfer of obligation, responsibility, and liability of a pole to the new owner upon such a transfer of title; requiring the commission to impose monetary penalties for violations; requiring the commission to provide grants to install and upgrade broadband infrastructure in this state from any monetary penalty collected; providing construction; requiring the commission to adopt rules by a specified date; providing a directive to the Division of Law Revision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 1. Subsection (4) through (9) are added to section 366.02, Florida Statutes, to read:

366.02 Definitions.—As used in this chapter:

(4) "Attaching entity" means a person that is a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments.

(5) "Communications services" has the same meaning as in s. 202.11.

(6) "Pole" means a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.

(7) "Pole attachments" means local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.

(8) "Pole owner" means a local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.

(9) "Redundant pole" means a pole owned or controlled by a pole owner which is:

1. Within 50 feet of a new pole which is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;

2. Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

3. Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery service.

Section 2. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions for pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In developing the rules, the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission and may include an evaluation of the financial and performance-related capabilities of the entity requesting attachment.

(e) The commission may hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments with regard to the types of attachments regulated under 47 U.S.C. s. 224, attachments to streetlight fixtures, or attachments owned by a communications services provider. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection.

(f) Upon commencement of its authority under this subsection, the commission, upon the request of a party to a complaint proceeding pending before the Federal Communications Commission, shall assume jurisdiction over the matter if it is not yet subject to a final order of the Federal Communications Commission at the time of the request.

(g) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including one or more appropriate formulae for apportioning costs.

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers. The commission shall require communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters.

(b) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including, but not limited to:

1. Mandatory pole inspections, including repair or replacement; vegetation management requirements for poles owned by providers of communications services; the establishment of storm reserve funds; and the sequential and timely removal of pole attachments; and

2. Monetary penalties to be imposed upon any communication services provider that fails to comply with any such rule of the commission.

Section 3. Section 366.97, Florida Statutes, is created to read:

366.97 Redundant poles; transfer of ownership; penalties.—

(1) The Legislature finds that:

(a) It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to withstand extreme weather conditions, by and among other things, replacing older poles with newer, stronger poles; however, this

work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.

(b) Pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles. Such pole owners continue to incur liability as owners of poles they no longer use or want, but which continue to be used by other entities.

(c) Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create overcrowding of, and unsafe conditions in, the public rights-of-way and easements.

(d) It is in the public interest to timely and sequentially remove pole attachments from redundant poles and to transfer the ownership of poles from pole owners that are no longer using the poles to entities that continue to attach facilities to the poles.

(2)(a) An attaching entity must remove its pole attachments from a redundant pole within 90 calendar days after receipt of written notice from the pole owner requesting such removal. The commission shall provide the form and requirements for such notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the

non-compliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments.

(c) If a pole attachment is abandoned or no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

(3)(a) When a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground, in lieu of removal, transfer, sale, or disposal of the pole attachments as provided in subsection (2), the pole owner may transfer legal title of the redundant pole to an attaching entity that has not removed a pole attachment within 90 days after receipt of a notice to remove.

(b) Transfer of title shall occur by operation of law upon the date a written notice of title transfer is sent by the pole owner. The notice of title transfer must include pole identification numbers, if applicable, and must describe with

specificity the locations of the pole or poles to be transferred and their corresponding remaining book value.

(c) Within 60 days after transferring title, the attaching entity shall remit payment to the transferor pole owner an amount equal to the total of the remaining book value for all poles listed in the notice of title transfer.

(d) A transferor pole owner may seek to enforce its rights under this subsection, including its right to payment, in the circuit court in whose jurisdiction the transferred poles are located. The transferor pole owner is entitled to prejudgment interest at the prevailing statutory rate, and the prevailing party in any such action is entitled to recover its reasonable attorney fees and court costs.

(e) Upon transfer of title, all obligation, responsibility, and liability incumbent upon a pole owner in this state including, but not limited to, safety, vegetation management, repair, replacement, maintenance, relocation, removal, emergency response, storm restoration, taxes, and third-party liability, shall immediately become the legal obligation, responsibility, and liability of the new pole owner. The transferor pole owner is relieved of all such obligation, responsibility, and liability immediately upon transfer of title.

(4) The commission shall impose monetary penalties upon any entity subject to its jurisdiction which is found to be in violation of this section. Upon petition by a pole owner, the commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities and shall impose monetary penalties in accordance with this section.

(5) All monetary penalties assessed by the commission

pursuant to this section must be used by the commission to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The commission shall establish criteria for the award of grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas.

(6) This section may not be construed to do any of the following:

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

(b) Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act.

(7) The commission shall adopt rules by October 1, 2021, to implement this section, including rules providing for the sequential removal of all pole attachments from redundant poles and establishing monetary penalties to be imposed against any entity in violation of this section.

Section 4. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2021

I respectfully request that **Senate Bill #1944**, relating to Utility and Communications Poles, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

1944
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Com + Utility Poles

Name Christie Mason

Job Title Dir. Govt. Affairs

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Email christie.a.pontis@Lumen.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Lumen (parent co. CenturyLink)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/91
Meeting Date

SB 1944
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility and Communications Poles

Name Charlie Dudley

Job Title Attorney

Address 108 S Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

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Email cdudley@flapartners.com

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Internet and Television

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Apr. 19, 2017
Meeting Date

SB 1944
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Utility and Communications Poles

Name Charles Zdebski

Job Title Attorney

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Email czdebski@eckertseamans.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florida Power & Light

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

SB 1944
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Communications-Utility Poles

Name Tracy Hatch

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Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AT&T

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

S-001 (10/14/14)

This form is part of the public record for this meeting.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7068
INTRODUCER:	Appropriations Committee and Finance and Tax Committee
SUBJECT:	Tax Administration
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Bruno	Babin		**FT Submitted as Comm. Bill/Fav**
1.	Babin	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7068:

- Provides an 8-day "back-to-school" tax holiday from July 31 through August 7, 2021, for certain clothing, school supplies, and personal computers.
- Provides a 10-day "disaster preparedness" tax holiday from May 28 through June 6, 2021, for specified disaster preparedness items.
- Creates a 2-year Internship Tax Credit Program to provide corporate income tax credits to businesses that employ and retain interns.
- Creates the Strong Families Tax Credit Program to provide tax credits to taxpayers that make contributions to certain family counseling charities.
- Increases the property tax exemption for multifamily project property that provides affordable housing from 50 percent to 100 percent.
- Extends the property tax exemption for educational property to certain leaseholds used by schools that teach motion picture production and related activities or services.
- Extends the property tax exemption for educational property to church property used for educational purposes.
- Creates a property tax exemption for municipally-owned motorsport entertainment complexes.
- Extends the application period for certain data centers to obtain a sales and use tax exemption on electricity and tangible personal property from June 30, 2022, to June 30, 2027.
- Clarifies the property tax treatment of property used for exempt and nonexempt purposes.
- Clarifies the property tax treatment of property damaged by calamity or misfortune.

- Allows owners of property to remove joint owners and deceased persons from deeds without reassessing the real property at just value and resetting applicable assessment limitations.
- Repeals Hospital Community Benefit Reporting requirements that take effect January 1, 2022.
- Removes the June 30, 2021, date after which no new businesses can be certified for the Qualified Target Industry Program.
- Clarifies that the modification of an interest rate index in a document upon which documentary stamp tax has already been paid is not subject to additional documentary stamp taxes.
- Removes the penalty for taxpayers who opt to prepay their property taxes in installments but submit their first payment after the due date.
- Provides an alternate method of determining the severance tax rate for titanium dioxide when the current price index cannot be used.
- Creates a process to allow freight forwarding agents to receive a Certificate of Freight Forwarding Agent Address which can be used to avoid payment of sales tax on tangible personal property to be exported.
- Requires dealers to provide records in an electronic format when the dealer currently maintains those records in an electronic format.
- Allows the aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes.

The bill reduces total state and local government revenue by $84.3 million ($34.7 recurring) in Fiscal Year 2021-2022. *See* Section V.

The bill appropriates $208,000 in General Revenue funds to the Department of Revenue to implement the Strong Families Tax Credit program.

The bill takes effect July 1, 2021.

II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1 – Hospital Community Benefit Reporting

Present situation: Florida exempts from property taxation the property of nonprofit hospitals qualified as 501(c)(3) charitable organizations.[1] Under federal law, a 501(c)(3) charitable organization must annually report the amount of community benefit the organization gives to the community. For hospitals, community benefit includes unreimbursed charity care, health research, health education, etc.

[1] Section 196.197, F.S.

In 2020, the Legislature created a process to compare the value of a nonprofit hospital's tax exemption to the value of the hospital's community benefit. If the hospital's tax exemption was more valuable for two consecutive years, the hospital's tax exemption is limited to the value of its community benefit. The process was created in s. 193.019, F.S., and begins January 1, 2022.

Proposed change: The bill repeals s. 193.019, F.S.

Section 2 – Change of Ownership

Present situation: Each year, the Save our Homes assessment limitation limits the assessed value growth of homestead property to 3 percent or less.[2] However, homestead property is reassessed at just value following a change of ownership. A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title. However, Florida law makes a few exceptions. For example, the transfer of property between a husband and wife is not considered a change of ownership.

Proposed change: The bill amends s. 193.155, F.S., to create two additional situations when a change in the ownership of homestead property would not result in the property being reassessed at just value. A change of ownership would not occur when the owner entitled to the homestead exemption is both grantor and grantee, and when one or more other individuals who held title as joint tenants with rights of survivorship with the owner are removed from the title.

The bill also provides that a change of ownership does not occur when:
- Multiple owners hold title as joint tenants with rights of survivorship;
- One or more owners were entitled to an received the homestead exemption on the property;
- The death of one or more owners occurs; and
- Following the transfer, the surviving owner or owners previously entitled to receive the homestead exemption continue to be entitled to and receive the homestead exemption.

Sections 2 through 5 – Property Damaged by Calamity or Misfortune

Present situation: In general, changes, additions, or improvements to real property are assessed at just value as of the first January 1 after they are substantially completed.[3]

However, when property is damaged or destroyed by calamity or misfortune, the property may be repaired or replaced without the change, addition, or improvement being assessed at just value; rather, the change, addition, or improvement is assigned the taxable value and other tax characteristics (i.e. assessment limitation) that the damaged or replaced property had before being damaged or destroyed. This treatment has certain limitations. For instance, the change, addition, or improvement may not exceed 110 percent of the square footage of the property before it was damaged or destroyed.[4] Any square footage greater than 110 percent of the replaced property is assessed at just value. For residential property, the 110 percent limitation does not apply if the change, addition, or improvement is to property no larger than 1,500 square feet.[5]

[2] *See* s. 193.155(1), F.S.
[3] Sections 193.155(4)(a), 193.1554(6)(a), and 193.1555(6)(a), F.S.
[4] Sections 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S.
[5] Section 193.155(4)(b), F.S.

While the treatment under current law is relatively clear regarding the main structures on property, such as residences and other buildings, the current statutes are less clear with regard to ancillary improvements such as piers, docks, etc.[6]

Proposed change: The bill clarifies that ancillary improvements may also be repaired or replaced without the change, addition, or improvement being assessed at just value and that the assessment made for repaired or replaced property must be calculated based on the assessed value as of the January 1 immediately before the damage or destruction occurred.

In addition, the changes made by the bill regarding property damaged or destroyed by calamity or misfortune are remedial and clarifying and may not affect any assessment for tax rolls before 2021, unless the assessment is under review by a value adjustment board or a Florida court. For property repaired or replaced prior to 2021 and not assessed as provided by the bill, a property appraiser must recalculate the just and assessed value for each subsequent year so that the 2021 tax roll and subsequent rolls are assessed as provided by the bill.

Sections 6 and 7 – Application of the Property Tax Exemption for Certain Exempt Property

Present situation: The State Constitution allows the Legislature to exempt from ad valorem taxation "such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes."[7] To determine whether a property's use qualifies for such exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities or other uses of the property.[8]

Proposed change: The bill clarifies that a property's ad valorem tax exemption granted to those portions of property predominantly used for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of such property is for such charitable, religious, scientific, or literary purposes.

Section 8 – Affordable Housing Property Tax Exemption

Present situation: Florida provides a 50 percent discount from the amount of ad valorem tax otherwise owed for those portions of property in a multifamily project[9] that serve families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004, F.S. Such discount occurs after the 15th completed year of the term of an agreement with the Florida Housing Finance Corporation.[10] Applicants are required to submit an application to the property appraiser by March 1. The discount applies to the assessed value remaining after all other exemptions are granted.

[6] *See* ss. 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S.
[7] FLA. CONST. art. VII, s. 3(a).
[8] Section 196.196(1), F.S.
[9] Multifamily projects must contain more than 70 units that are used to provide affordable housing to qualify for the discount. *See* s. 196.1978(2)(a)1., F.S.
[10] Section 196.1978(2)(a), F.S.

Proposed change: The bill exempts those portions of property in a multifamily project that provide affordable housing to families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004, F.S.

Sections 9 and 10– Educational Institution Property Tax Exemption

Present situation: Florida exempts from ad valorem tax property owned by an educational institution and used exclusively for educational purposes.[11] The exemption applies to any educational institution that uses the property for educational purposes; the institution can be for-profit or private. The exemption has been expanded to include unique ownership situations. For instance, land, buildings, and other improvements used exclusively for educational purposes is deemed to be owned by an educational institution (and therefore exempt) if the entity that owns the land is a nonprofit entity and the land is leased by an educational institution that is a 501(c)(3) entity that provides education limited to kindergarten through grade 8.[12]

An entity, institution, or organization that teaches students to perform services in connection with motion picture production may receive a sales tax exemption for their purchase or lease of tangible personal property or real property. Such institution must have enrolled at least 500 students and conduct classes at a fixed location in this state.[13]

Proposed change: The bill amends s. 196.198, F.S., to provide that land, buildings, and other improvements used exclusively for educational purposes shall be deemed owned by an educational institution if the educational institution that currently uses the land, buildings, and other improvements for educational purposes is an educational institution described under s. 212.0602, F.S, and, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land, buildings, and other improvements. The educational institution must receive the full benefit of the exemption. The owner of the property must disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring that the educational institution receives the benefit.

The bill also amends s. 196.198, F.S., to provide that property owned by a house of public worship and used by an educational institution for educational purposes limited to students in preschool through grade 8 shall be exempt. The bill provides that the provisions related to houses of public worship clarifies existing law and applies to actions pending as of July 1, 2021.

Section 11 – Municipally-owned Motorsports Entertainment Complexes

Present situation: All property owned by a municipality and used exclusively by it for municipal or public purposes is exempt from taxation.[14] Generally, all other leasehold interests in municipal property will be subject to tax; however, Florida law exempts municipally-owned property leased to nongovernmental lessees when such lessee performs a governmental, municipal, or

[11] Section 196.198, F.S.
[12] *Id.*
[13] Section 212.0606, F.S.
[14] FLA. CONST. art. VII, s. 3(a)

public purpose or is an organization using the property exclusively for literary, scientific, religious, or charitable purposes.[15]

Proposed change: The bill creates s. 196.199, F.S., to exempt from property tax municipal property used for a motorsports entertainment complex if the municipality is liable for payment of the tax pursuant a lease agreement entered into before January 1, 2020. The provision expires January 1, 2033.

Section 12 – Prepayment of Property Tax by Installment Method

Present Situation: Taxpayers are generally allowed to prepay property taxes in installments and to receive discounts on the first three of those payments. If the taxpayer elects to prepay his or her taxes, but is late with the first payment, the tax collector may either accept or not accept the first installment of the prepayment if made prior to July 31. If the tax collector chooses to accept the first installment then the discount is lost and the payment must be accompanied by a 5 percent penalty. If the tax collector chooses not to accept the late first installment, the taxpayer is not eligible to participate in the prepayment program for that tax year.

Proposed Change: The bill amends s. 197.222, F.S., to specify that tax collectors must accept late payments of a first installment if made prior to July 31 and removes the 5 percent penalty.

Section 13 – Documentary Stamp Tax on Interest Rate Index Changes

Present situation: The London Interbank Offered Rate (LIBOR) is an interest rate benchmark (reference rate) calculated daily from an average of estimated borrowing rates submitted by certain international banks.[16] LIBOR is the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[17] LIBOR's regulator, the Financial Control Authority of the United Kingdom (FCA), indicated that LIBOR is expected to cease after the end of 2021.[18] The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are recommending that banks cease entering into new contracts that use LIBOR as a reference rate by 2021.[19] According to the United States Securities and Exchange Commission, many legacy contracts have interest rate

[15] Section 196.199(2)(a) and (c), F.S.
[16] Forbes, What Is Libor And Why Is It Being Abandoned? (December 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited April 1, 2021).
[17] Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (October 17, 2019), https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/ (last visited April 14, 2021).
[18] Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited April 14, 2021).
[19] Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited April 14, 2021).

provisions referencing LIBOR that, when drafted, did not contemplate the permanent discontinuation of LIBOR.[20]

Florida imposes a documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida and on mortgages, liens, and other evidences of indebtedness filed or recorded in Florida.[21] Renewals of previously taxed documents are also subject to the documentary stamp tax unless an exception or exemption applies.[22] Documents on which documentary stamp tax were paid and which use LIBOR as a reference rate may require modification to use a different reference rate.

Proposed change: The bill amends s. 201.08, F.S., to specify that a modification of an original document, on which the documentary stamp tax was previously paid, for the sole purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to documentary stamp tax.

Sections 14, 21, 23 through 26, and 29 through 31 – Strong Families Tax Credit

Present situation: Florida currently does not offer tax credits relating to child welfare.

Proposed change: The bill creates s. 402.62, F.S., the Strong Families Tax Credit, which provides tax credits against various Florida taxes to businesses that make monetary contributions to certain eligible charitable organizations that provide services focused on child welfare and well-being. The structure of the Strong Families Tax Credit is modeled after the existing Florida Tax Credit Scholarship Program, providing credits against severance taxes on oil and gas production; the self-accrued sales tax liability of direct pay permit holders; the state corporate income tax; alcoholic beverage taxes; or the insurance premium tax.

The bill specifies requirements for an eligible charitable organization, which must be an s. 501(c)(3) organization under the Internal Revenue Code, must be a Florida entity with its principal office in Florida, and must provide services to:

- Prevent child abuse, neglect, abandonment, or exploitation;
- Assist fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children's lives;
- Provide books to the homes of children eligible for a free or reduced-price meal program or those testing below grade level in kindergarten through fifth grade;
- Assist families who have children with a chronic illness or a physical, intellectual, developmental, or emotional disability; or
- Provide workforce development services to families of children eligible for a free or reduced-price meal program.

An eligible charitable organization cannot:

[20] United States Securities and Exchange Commission, *Staff Statement on LIBOR Transition*, Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant, July 12, 2019, *available at* https://www.sec.gov/news/public-statement/libor-transition (last visited April 14, 2021).
[21] Section 201.08(1), F.S.
[22] Section 201.08(1)(a) and (b), F.S., specifies the documents that are taxable as well as "for each renewal of the same."

- Provide, pay for, or provide coverage for abortions, or
- Receive more than 50 percent of its total annual revenue from the Department of Children and Families (DCF), either directly or indirectly in the prior fiscal year.

The bill specifies procedures and requirements for organizations to apply with the DCF, requires eligible charitable organizations to conduct criminal history background screening on all volunteers and staff working directly with children in any program funded by eligible contributions, requires the organizations to spend 100 percent of eligible contributions for the services listed above, and requires the organizations to submit annual audit reports to the DCF. The bill specifies requirements and procedures for, and limitations on, receiving, using, or transferring the tax credits, including applying with the Department of Revenue. Relating to the created state corporate income tax credit, the bill amends:

- Section 220.02, F.S., to specify the order in which the state corporate income tax credit is applied in relation to other corporate income tax credits;
- Section 220.13, F.S., to require a taxpayer to add claimed state corporate income tax credit amounts back to its taxable income, which prevents the taxpayer from claiming the amount as both a credit and a deduction; and
- Section 220.186, F.S., to specify that the Strong Families Tax Credit is not included in the calculation of the Florida alternative minimum tax credit.

The tax credit is capped at $5 million in each state fiscal year.

Section 15 – Titanium Dioxide Severance Tax Rate

Present situation: Florida imposes a tax on the severance of heavy minerals from the soils or waters of this state for commercial use. The heavy minerals tax rate is calculated each year based on the producer price index for titanium dioxide published by the U.S. Bureau of Labor Statistics. Due to a lack of data, this index is no longer created.[23] The Department of Revenue is permitted to adopt a comparable index by rule. However, the department is unable to identify a comparable index.

Proposed change: The bill amends s. 211.3106, F.S., to specify that if the producer price index is discontinued or cannot be calculated and if there is no comparable index, then the tax rate from the immediately preceding year must be used.

Sections 16 and 22 – Certificate of Forwarding Agent Address

Present situation: Tangible personal property delivered by the seller to a licensed exporter or common carrier for export outside Florida is not subject to sales tax.[24]

Certain forwarding agents receive tangible personal property at their place of business within Florida, consolidate the property for shipment, and deliver the property to a common carrier for shipment outside Florida. These transactions are exempt from sales tax under current law.

[23] U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Synthetic Dye and Pigment Manufacturing: Titanium Dioxide, Composite and Pure (DISCONTINUED) [PCU325130325130111*], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/PCU32513032513011 (last visited April 14, 2021).
[24] Section 212.06(5)(a)1., F.S.

However, the original vendor delivering the property to the Florida address frequently charges tax for these purchases as verifying the tax-exempt status can be difficult.

Proposed change: Generally, the bill amends s. 212.13, F.S., to create a process that allows forwarding agents to receive a certificate that can be provided to vendors to document the exempt nature of sales for export.

The bill defines the following terms:

- "Certificate" means a Florida Certificate of Forwarding Agent Address.
- "Facilitating" means preparation for or arranging for export.
- "Forwarding agent" means a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons.
- "NAICS" means those classifications contained in the North American Industry Classification System as published in 2007 by the Office of Management and Budget, Executive Office of the President.

A forwarding agent engaged in international export may apply to the Department of Revenue for a Certificate of Forwarding Agent address. The application must include specified information concerning the forwarding agent's location and export activities. Each certificate expires five years after issue and requires the forwarding agent to update the application if material changes to the information contained in the application occur.

The bill amends s. 212.06, F.S., to add a forwarding agent who has received a Certificate of Forwarding Agent Address as a defined "dealer."

The bill specifies recordkeeping requirements and requires that records be stored in an electronic format.

The bill directs the department to verify that forwarding agents who possess a certificate are actively engaged in facilitating export of property. The bill also provides that the certificate cannot be used to fraudulently avoid sales tax and gives the department the authority to revoke certificates. The bill further provides that fraudulent activity is subject to liability for the tax and civil and criminal penalties.

The bill provides that a certificate may be accepted by a dealer in lieu of collecting and remitting sales tax. It further directs the department to create an online system for verification of certificates.

Section 17 – Data Center Sales Tax Exemption

Present situation: Data centers provide a central location for a business to house all of the necessary computer hardware—servers, server racks, cables and other infrastructure, and cooling components—and computer software required to organize, process, store and disseminate large amounts of data. Currently, approximately 111 data centers and colocation data centers are

located in Florida.[25] The majority of data centers located in Florida are in South Florida, Orlando, Tampa, and Jacksonville.[26] Currently, Florida exempts from the sales and use tax electricity used by a data center and the property purchased, rented, or leased by a data center's owners and tenants when used to construct, maintain, and operate computer server equipment at a data center. The data center's owners and tenants must make a cumulative capital investment of $150 million and the data center must have at least 15 megawatts of total power capacity and at least 1 megawatt of power capacity dedicated to each individual owner and tenant of the data center. Additionally, a datacenter must meet the requisite investment requirements no later than June 30, 2022, must submit to subsequent periodic review by the department to assure continued qualification, and is subject to revenue claw back provisions if it improperly utilizes the tax exemption.

Proposed change: The bill extends the ability to participate in the exemption from June 30, 2022, to June 30, 2027.

Section 18 – Sales Tax Exemption for Independent Living Items

Present situation: Sales and use tax applies to sales of tangible personal property, unless exempted. Florida currently does not exempt sales of items that assist in independent living.

Proposed change: The bill amends s. 212.08(5), F.S., to exempt from sales tax bed transfer handles selling for $60 or less; bed rails selling for $110 or less; grab bars selling for $100 or less; and shower seats selling for $100 or less. However, the exemption does not apply to purchases made by businesses, including medical institutions and assisted living facilities.

Section 19 – Electronic Records/Sales Tax Audit

Present situation: Sales and use tax dealers are required to maintain certain records and make those records available to the Department of Revenue for inspection during reasonable hours at the dealer's place of business.[27] Many dealers maintain records in an electronic format. However, the department has encountered dealers who refuse to share their records without a physical visit. Due to the pandemic, physical visits are limited.

It is unknown how many dealers keep their records in an electronic format. However, the department provided that approximately 85 percent of dealers file their taxes electronically.

Proposed change: The bill amends s. 212.13(2), F.S., to require dealers to provide electronic records, when requested by the department, if the dealer already maintains the records in an electronic format. The bill removes language referencing a physical visit requirement from s. 212.13(2), F.S.

[25] Data Center Map, *Colocation Florida*, https://www.datacentermap.com/usa/florida/ (last visited April 14, 2021).
[26] *Id.*
[27] Section 212.13(2), F.S.

Section 20 – Theft of State Funds

Present situation: When a dealer collects sales tax from customers but fails to remit those taxes to the state, the dealer can be prosecuted for theft of sales tax.[28] These prosecutions often involve multiple collection periods for which the dealer has collected but failed to remit taxes. Aggregation of collection periods is not specifically provided for in sales tax law. However, the general theft statute in Florida does allow the aggregation of amounts stolen from a similar course of conduct.[29]

Proposed change: The bill amends s. 212.15(2), F.S., providing specific authority for aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes, mirroring the construction of the general theft statute.

Sections 23, 24, and 27 – Internship Tax Credit

Present situation: Florida currently does not offer tax credits relating to student internships.

Proposed change: The bill creates s. 220.198, F.S., the Florida Internship Tax Credit Program, which authorizes a state corporate income tax credit of $2,000 for each student intern employed by a qualified business, up to a maximum of $10,000 in any taxable year, for taxable years beginning on or after January 1, 2022.

The bill amends s. 220.02, F.S., to specify the order in which the credit is applied in relation to other corporate income tax credits. The bill amends s. 220.13, F.S., to require a taxpayer to add claimed credit amounts back to its taxable income, which prevents the taxpayer from claiming the amount as both a credit and a deduction.

The bill defines a "student intern" as a person who has completed at least 60 credit hours at a state university or a Florida College System institution, regardless of whether the student intern receives course credit for the internship; a person who is enrolled in a career center operated by a school district under s. 1001.44, F.S., or a charter technical career center; or any graduate student enrolled at a state university. The bill defines "full time" as at least 30 hours per week. The bill defines a "qualified business" as a business that is in existence and has been continuously operating for at least three years.

The bill authorizes a qualified business to receive a credit against Florida corporate income tax liability in the amount of $2,000 per student intern employed by the qualified business. Under the bill, a business would qualify to receive the tax credit if:

- The business employed at least one student in an internship in which the student worked full time for at least nine consecutive weeks, and the qualified business provides the department documentation evidencing each internship claimed.
- At the start of an internship, each student intern provides the qualified business with verification by the student intern's state university, Florida College System institution, career center operated by a school district under s. 1001.44, F.S., or charter technical career center

[28] Section 212.15(2), F.S.
[29] Section 812.012(10)(c), F.S.

that the student intern is enrolled and maintains a minimum grade point average of 2.0 on a 4.0 scale, if applicable. The qualified business may accept a letter from the applicable educational institution stating that the student intern is enrolled as evidence that the student meets these requirements.

- The qualified business provides the department documentation for the current taxable year to show that at least 20 percent of the business's full-time employees were previously employed by that business as student interns, or the business:
  - For the three prior years on average, employed ten or fewer full-time employees;
  - Previously hired at least one student intern; and
  - For the current taxable year, employs on a full-time basis at least one employee who was previously employed by the business as a student intern.

The bill establishes a maximum credit of $10,000 in any taxable year and authorizes a qualified business to carry forward any unused portion of the tax credit for up to two taxable years. The combined total amount of tax credits which may be granted is capped at $2.5 million in each of state Fiscal Years 2021-2022 and 2022-2023. The department must approve the tax credit prior to the taxpayer taking the credit on a return, and must approve credits on a first-come, first-served basis.

The bill authorizes the Department of Revenue to adopt rules governing the manner and form of applications for the tax credit and establishing qualification requirements for the tax credit.

Sections 28 – Qualified Target Industry Businesses Tax Refund Program

Present situation: The Qualified Target Industry (QTI) Tax Refund Program was created by the Legislature in 1994 to encourage the creation and retention of high-quality, high-wage jobs by providing a state grant equal to the amount paid for certain state and local taxes[30] to eligible businesses creating jobs in certain target industries.[31] The amount of the tax refund awarded through the program is determined by, among other factors, the number of jobs created by, the average annual wages paid by, and the location of, the eligible business.[32] As of June 30, 2020, no additional applicants may be certified under the program; existing agreements made prior to this date will continue in effect according to their terms.[33]

In order to be eligible to receive a grant, a business must apply to be certified as a QTI business with the Department of Economic Opportunity (DEO). Businesses must be engaged in one of Florida's target industries as identified by the DEO and Enterprise Florida, Inc.[34] The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology;

[30] Tax refunds may be claimed for the following taxes paid: sales and use taxes, corporate income taxes, insurance premium taxes, intangible personal property taxes, excise taxes, ad valorem taxes, certain state communication services taxes, excise taxes on documents. *See* s. 288.106(3)(d), F.S.
[31] Section 288.106(1), F.S.
[32] Section 288.106(3)(b), F.S.
[33] Section 288.106(9), F.S.
[34] Section 288.106(2)(q), F.S. Every three years, beginning January 1, 2011, the DEO must consult with EFI, economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists to review and revise the list of target industries. Target industries are determined according to criteria found in statute.

defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development.[35]

A business applying for certification as a QTI business generally must meet certain job creation and minimum average wage requirements and receive a local funding match, paid by public or private sources, equal to 20 percent of the annual tax refund. QTI businesses are eligible to receive a tax refund equal to $3,000 per newly created job. If a business is located in a rural community or an enterprise zone, the amount is increased to $6,000 per created job. QTI businesses may also receive certain additional tax refund payments based on meeting certain average annual wage or local financial support thresholds or other specified requirements.[36]

A qualified target industry business cannot receive more than $1.5 million in any fiscal year, or more than $2.5 million in any fiscal year if the business is located in an enterprise zone.[37] The total state share of payments under the QTI Tax Refund Program plus under the qualified defense contractor and space flight business tax refund program[38] may not exceed $35 million.[39]

In Fiscal Year 2019-2020, the last fiscal year during which applicants could be certified under the program, 7,890 jobs were created by 159 businesses actively participating in the program. The total number of jobs created exceeded the number of total new jobs expected to be created by 3,068.[40]

Proposed change: The bill repeals s. 288.106(9), F.S., which prohibits the certification of applicants after June 30, 2020. In effect, the bill permanently reauthorizes the QTI program.

Section 32 – "Back-to-School" Sales Tax Exemption

Present situation: Florida has enacted a "back-to-school" sales tax holiday 19 times since 1998. The Florida Residents' Tax Relief Act of 1998 established Florida's first tax holiday, during which clothing purchases of $50 or less were exempt from tax.[41] Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for $750 or less, purchased for noncommercial home or personal use. The duration of "back-to-school" sales tax holidays has varied from three to ten days. The type and value of exempt items have also varied.

Florida's 75 school district began the 2020-21 school year between August 10 and August 31, 2020.[42]

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[35] Florida Department of Economic Opportunity, *2020 Incentives Report*, 12, *available at* http://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited April 14, 2021).
[36] Section 288.106(3)(b), F.S.
[37] Section 288.106(3)(c), F.S.
[38] Section 288.1045, F.S.
[39] Section 288.095(3)(a), F.S.
[40] *Supra* note 38, at 7-8.
[41] Chapter 98-341, Laws of Fla.
[42] Florida Department of Education, *PK-12 Public School Data Publications and Reports, School District Calendars, available at* http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml (last visited April 14, 2021).

Proposed change: The bill establishes an 8-day period, from July 31 to August 7, 2021, during which time the following items that cost $60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts various "school supplies" that cost $15 or less per item and the first $1,000 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones and furniture, and devices or software intended primarily for recreational use, are not exempted.

The exemptions provided for in the "back-to-school" holiday do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

A dealer may choose not to participate in the sales tax holiday if less than 5 percent of the dealer's gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the bill. If a dealer chooses not to participate in the tax holiday, the dealer must, by July 24, 2021, notify the Department of Revenue in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The department is authorized to adopt emergency rules to implement the provisions of the tax holidays.

Section 33 – Sales Tax Exemption for Items Related to Disaster Preparedness

Present situation: Florida has enacted a "disaster preparedness" sales tax holiday seven times since 2006, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and the length of the exemption periods has varied from 3 to 12 days.

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.[43]

Proposed change: The bill establishes a 10-day sales tax holiday, from May 28 to June 6, 2021, for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for $20 or less;

[43] Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit, available at* https://www.floridadisaster.org/planprepare/hurricane-supply-checklist/ (last visited April 14, 2021).

- A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less;
- A ground anchor system or tie-down kit selling for $50 or less;
- A gas or diesel fuel tank selling for $25 or less;
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less;
- A nonelectric food storage cooler selling for $30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for $750 or less; and
- Reusable ice selling for $10 or less.

The exemptions provided for in this sales tax holiday do not apply to the following sales:
- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The Department of Revenue is authorized to adopt emergency rules to implement the provisions of the tax holidays.

Sections 34 through 37 reenact provisions to incorporate amendments made by this act.

Section 38 authorizes the Department of Revenue to adopt emergency rules to implement the Strong Families Tax Credit and the Internship Tax Credits.

Section 39 appropriates $208,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the Strong Families Tax Credit.

Section 40 requires the Florida Institute for Child Welfare to analyze the use of funding provided by the Strong Families Tax Credit and to provide a report to the Governor, President of the Senate, and Speaker of the House by October 31, 2025.

Section 41 provides for severability.

Section 42 provides that the bill is effective on July 1, 2021, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or limits their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise

revenue in the aggregate. However, the mandates requirements do not apply to laws having an insignificant fiscal impact[44,45] which for Fiscal Year 2021-2022, is forecast at $2.2 million or less.[46]

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by $8.9 million in Fiscal Year 2021-2022. The bill also reduces local government revenues from ad valorem taxes by $8.8 million. Therefore, the mandates provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply

E. Other Constitutional Issues:

Florida exempts all property owned by a municipality and used exclusively by it for municipal or public purposes.[47] "Governmental, municipal, or public purpose" has been defined to include, in relevant part:

> "the use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission."[48]

However, the Florida Supreme Court in *Sebring*[49] affirmed the Second District Court of Appeal's opinion[50] that the above provision is unconstitutional and "would have created

[44] FLA. CONST. art. VII, s. 18(d).
[45] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact at p. 1, (September 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited April 14, 2021).
[46] Based on the Demographic Estimating Conference's April 1, 2021, estimated population, adopted on March 3, 2021,. The conference packet is *available* at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited April 14, 2021).
[47] FLA. CONST. art. VII, s. 3(a).
[48] Section 196.012(6), F.S.
[49] *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001)
[50] *Sebring Airport Authority v. McIntyre*, 718 So.2d 296 (Fla. 2d DCA 1998)

an ad valorem tax exemption for situations where private enterprise leases governmental property to be utilized for profit-making endeavors…."[51] To the extent that provisions of the bill granting an exemption to municipal property rely on such property meeting a public purpose as described in s. 196.012(6), F.S., the provisions may raise constitutional questions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill reduces revenues in Fiscal Year 2021-2022 by $84.3 million ($34.7 million recurring); General Revenue Fund receipts are reduced by $59.8 million ($9.0 million recurring), state trust fund receipts are reduced by an amount less than $50,000, and local government revenue is reduced by $24.5 million ($25.7 million recurring), as displayed in the table below.

Total tax reductions are represented by the sum of the recurring impacts (reflecting the annual value of permanent tax cuts when fully implemented) and the pure nonrecurring impacts (reflecting temporary tax reductions). The total tax reduction of $110.5 million is the sum of $34.7 million (recurring), and $75.8 million (pure nonrecurring in Fiscal Year 2021-2022, excluding appropriations).

[51] *Sebring*, *supra* note 49, at 240.

	Issues	General Revenue 1st Yr.	General Revenue Recur.	State Trust Funds 1st Yr.	State Trust Funds Recur.	Local/Other 1st Yr.	Local/Other Recur.	Total 1st Yr.	Total Recur.
1	Sales Tax: Back-to-School Sales Tax Holiday-8 days; 60/15/ first $1k	(44.9)	-	(*)	-	(13.5)	-	(58.4)	-
2	Sales Tax: Disaster Holiday-10 days	(6.0)		(*)		(1.8)		(7.8)	
3	Sales Tax: Independent Living Items	(1.2)	(2.9)	(*)	(*)	(0.4)	(0.9)	(1.6)	(3.8)
4	Sales Tax: Data Center Extension	-	(1.1)	-	(*)	-	(0.3)	-	(1.4)
5	Ad Valorem: Affordable Housing 50% to 100%	-	-	-	-	-	(22.8)	-	(22.8)
6	Ad Valorem: Education Exemption - Media Production Educational	-	-	-	-	(0.6)	(0.6)	(0.6)	(0.6)
7	Ad Valorem: Motorsports Entertainment Complexes	-	-	-	-	(0.6)	(0.6)	(0.6)	(0.6)
8	Ad Valorem: Houses of Worship/Educational Property	-	-	-	-	(7.6)	(0.5)	(7.6)	(0.5)
9	Ad Valorem: Nonprofit Taxation	-	-	-	-	-	+/- ins.	-	+/- ins.
10	Ad Valorem: Change of Ownership/Calamity and Misfortune	-	-	-	-	(**)	(**)	(**)	(**)
11	Ad Valorem: Hospitals Community Benefit Reporting	-	-	-	-	-	(**)	-	(**)
12	Various: Tax Refund Program for Qualified Target Industry Businesses	-	-	-	-	-	-	-	-
13	Doc. Stamp: Documentary Stamp Tax Exemption--LIBOR	(**)	(**)	(**)	(**)	-	-	(**)	(**)
14	Corp. Inc. Tax: Internship Tax Credit Program	(2.5)	-	-	-	-	-	(2.5)	-
15	Various Taxes: Strong Families Tax Credit	(5.0)	(5.0)	-	-	-	-	(5.0)	(5.0)
16	DOR Tax Administration Concepts								
17	Installment plan penalties	-	-	-	-	-	0/(*)	-	0/(*)
18	Appropriations: Strong Families Tax Credit (21-22)	(0.2)	-	-	-	-	-	(0.2)	-
	2021-22	**(59.8)**	**(9.0)**	**(*)**	**(*)**	**(24.5)**	**(25.7)**	**(84.3)**	**(34.7)**

(*) Impact less than $50,000; (**) Impact is indeterminate; (+/- ins) Impact is insignificant and will be positive or negative.
(1) Ad valorem tax impacts assume current rates.
(2) Recurring tax cut total (excl. appropriations) = -$34.7 million
Pure nonrecurring tax cuts in FY 2021-22 = -$75.8 million
-$110.5 million

Pure Nonrecurring = (75.8)
Recurring + Pure Nonrecurring (2) = (110.5)

Appropriations Detail - The $208,000 in general revenue appropriations included in the bill is to implement the Strong Families Tax Credit.

B. Private Sector Impact:

The bill provides for an 8-day sales tax holiday for purchases of certain priced clothing, school supplies, and personal computers; a 10-day sales tax holiday for purchases of

various items relating to disaster preparedness; a sales tax exemption for independent living items; property tax exemptions for affordable housing and certain education facilities; a tax credit program to incentivize the hiring of interns; and a tax credit program to incentivize donations to organizations that provide services focused on child welfare and well-being.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 192.001, 193.019, 193.155, 193.1554, 193.1555, 196.196, 196.1978, 196.198, 196.199, 197.222, 201.08, 211.3106, 212.06, 212.08, 212.13, 212.15, 213.053, 220.02, 220.13, 220.186, and 288.106.

The bill creates the following sections of the Florida Statutes: 211.0252, 212.1833, 220.1876, 220.198, 402.62, 561.1212, and 624.51056.

The bill reenacts the following sections of the Florida Statutes: 192.0105, 193.1557, 212.07, and 212.08.

The bill creates seven undesignated sections of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 19, 2021:
The committee substitute:

- Provides an 8-day "back-to-school" tax holiday.
- Provides a 10-day "disaster preparedness" tax holiday.
- Creates a 2-year Internship Tax Credit Program.
- Creates the Strong Families Tax Credit Program.
- Increases the property tax exemption for certain affordable housing property.
- Extends the property tax exemption for educational property to certain leaseholds and certain church property used for educational purposes.
- Creates a property tax exemption for municipally owned motorsport complexes.
- Extends the application period for the data center sales tax exemption.

- Clarifies the property tax treatment of property used for exempt purposes.
- Clarifies the property tax treatment of property damaged by calamity or misfortune.
- Allows property owners to remove joint owners and deceased persons from deeds without reassessing the property.
- Repeals Hospital Community Benefit Reporting requirements.
- Allows new businesses to qualify for the Qualified Target Industry Program.
- Clarifies that the modification of an interest rate index in certain documents is not subject to additional documentary stamp taxes.
- Removes the penalty for taxpayers who opt to prepay their property taxes.
- Provides an alternate method of determining the severance tax rate for titanium dioxide.
- Creates a process for freight forwarders to document exempt exported sales.
- Requires dealers to provide records in an electronic format when available.
- Allows the aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Effective upon this act becoming a law, section 193.019, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (3) and paragraph (b) of subsection (4) of section 193.155, Florida Statutes, are amended to read:

193.155 Homestead assessments.—Homestead property shall be

assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(3)(a) Except as provided in this subsection or subsection (8), property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except if any of the following apply:

1. Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

a. The transfer of title is to correct an error;

b. The transfer is between legal and equitable title or equitable and equitable title and no additional person applies for a homestead exemption on the property;

c. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application is considered a change of ownership; ~~or~~

d. The change or transfer is by means of an instrument in

which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property and one or more other individuals, all of whom held title as joint tenants with rights of survivorship with the owner, are named only as grantors and are removed from the title; or

e. The person is a lessee entitled to the homestead exemption under s. 196.041(1).

2. Legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage;

3. The transfer occurs by operation of law to the surviving spouse or minor child or children under s. 732.401; ~~or~~

4. Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and who is legally or naturally dependent upon the owner; or

5. The transfer occurs with respect to a property where all of the following apply:

a. Multiple owners hold title as joint tenants with rights of survivorship;

b. One or more owners were entitled to and received the homestead exemption on the property;

c. The death of one or more owners occurs; and

d. Subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

(4)

(b)1. Changes, additions, or improvements that replace all or a portion of homestead property, including ancillary

improvements, damaged or destroyed by misfortune or calamity shall be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the homestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (1) and (2), when:

a. The square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction; or~~.~~

b. ~~Additionally, the homestead property's assessed value shall not increase if~~ The total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1).~~

2. The homestead property's assessed value must ~~shall~~ be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet.

3. Homestead property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the damage or destruction shall be assessed pursuant to subsection (5).

4. Changes, additions, or improvements assessed pursuant to

this paragraph must be reassessed pursuant to subsection (1) in subsequent years. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead.

Section 3. Paragraph (b) of subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(6)

(b)1. Changes, additions, or improvements that replace all or a portion of nonhomestead residential property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the nonhomestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (3) and (4), when:

a. The square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction; or~~.~~

b. ~~Additionally, the property's assessed value shall not increase if~~ The total square footage of the property as changed or improved does not exceed 1,500 square feet. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (3).~~

2. The property's assessed value must ~~shall~~ be increased by

the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction or of that portion exceeding 1,500 square feet.

3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8).

4. Changes, additions, or improvements assessed pursuant to this paragraph shall be reassessed pursuant to subsection (3) in subsequent years. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

Section 4. Paragraph (b) of subsection (6) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(6)

(b)1. Changes, additions, or improvements that replace all or a portion of nonresidential real property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the nonresidential real property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (3) and (4), when:

a. The square footage of the property as changed or

improved does not exceed 110 percent of the square footage of the property before the damage or destruction; and

b. The changes, additions, or improvements do not change the property's character or use. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction and do not change the property's character or use shall be reassessed as provided under subsection (3).~~

2. The property's assessed value must ~~shall~~ be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction.

3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8).

4. Changes, additions, or improvements assessed pursuant to this paragraph must be reassessed pursuant to subsection (3) in subsequent years. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

Section 5. (1) The amendments made by this act to sections 193.155(4), 193.1554, and 193.1555, Florida Statutes, are remedial and clarifying in nature, but the amendments may not affect any assessment for tax rolls before 2021 unless the assessment is under review by a value adjustment board or a Florida court as of July 1, 2021. If changes, additions, or improvements that replaced all or a portion of property damaged

or destroyed by misfortune or calamity were not assessed in accordance with this act as of the January 1 immediately after they were substantially completed, the property appraiser must determine the assessment for the year they were substantially completed and recalculate the just and assessed value for each subsequent year so that the 2021 tax roll and subsequent tax rolls will be corrected.

(2) The amendments made by this act to ss. 193.155(4), 193.1554, and 193.1555, Florida Statutes, apply to assessments made on or after January 1, 2021.

Section 6. Subsection (2) of section 196.196, Florida Statutes, is amended to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.—

(2) Only those portions of property used predominantly for charitable, religious, scientific, or literary purposes are ~~shall be~~ exempt. The portions of property which are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt. An exemption for the portions of property used for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of such property is for charitable, religious, scientific, or literary purposes. In no event shall an incidental use of property either qualify such property for an exemption or impair the exemption of an otherwise exempt property.

Section 7. The amendment made by this act to s. 196.196, Florida Statutes, first applies to the 2022 tax roll and does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July

1, 2021.

Section 8. Subsection (2) of section 196.1978, Florida Statutes, is amended to read:

196.1978 Affordable housing property exemption.—

(2)(a) Notwithstanding ss. 196.195 and 196.196, property in a multifamily project that meets the requirements of this paragraph is considered property used for a charitable purpose and is exempt ~~shall receive a 50 percent discount~~ from ~~the amount of~~ ad valorem tax ~~otherwise owed~~ beginning with the January 1 assessment after the 15th completed year of the term of the recorded agreement on those portions of the affordable housing property that provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004. The multifamily project must:

1. Contain more than 70 units that are used to provide affordable housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004; and

2. Be subject to an agreement with the Florida Housing Finance Corporation recorded in the official records of the county in which the property is located to provide affordable housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004.

This exemption ~~discount~~ terminates if the property no longer serves extremely-low-income, very-low-income, or low-income persons pursuant to the recorded agreement.

(b) To receive the exemption ~~discount~~ under paragraph (a), a qualified applicant must submit an application to the county property appraiser by March 1.

(c) The property appraiser shall apply the exemption to ~~discount by reducing the taxable value on~~ those portions of the affordable housing property that provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004 before certifying the tax roll to the tax collector.

~~1. The property appraiser shall first ascertain all other applicable exemptions, including exemptions provided pursuant to local option, and deduct all other exemptions from the assessed value.~~

~~2. Fifty percent of the remaining value shall be subtracted to yield the discounted taxable value.~~

~~3. The resulting taxable value shall be included in the certification for use by taxing authorities in setting millage.~~

~~4. The property appraiser shall place the discounted amount on the tax roll when it is extended.~~

Section 9. Section 196.198, Florida Statutes, is amended to read:

196.198 Educational property exemption.—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes are exempt from taxation.

(1) Sheltered workshops providing rehabilitation and retraining of individuals who have disabilities and exempted by a certificate under s. (d) of the federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in

purpose and are exempt from certification, accreditation, and membership requirements set forth in s. 196.012.

(2) Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process are exempt from ad valorem taxation.

(3) The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and is exempt from ad valorem taxation to the extent of such use.

(4) Property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property, or if the entity owning 100 percent of the educational institution and the entity owning the property are owned by the identical natural persons.

(5) Land, buildings, and other improvements to real property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the land is a nonprofit entity and the land is used, under a ground lease or other contractual arrangement, by an educational institution that owns the buildings and other improvements to the real property, is a nonprofit entity under s. 501(c)(3) of the Internal Revenue Code, and provides education limited to students in prekindergarten through grade 8.

(6) Land, buildings, and other improvements to real

property used exclusively for educational purposes are deemed owned by an educational institution if the educational institution that currently uses the land, buildings, and other improvements for educational purposes is an educational institution described in s. 212.0602, and, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land, buildings, and other improvements. For such leasehold properties, the educational institution shall receive the full benefit of the exemption. The owner of the property shall disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring that the educational institution receives the benefit.

(7) Notwithstanding ss. 196.195 and 196.196, property owned by a house of public worship and used by an educational institution for educational purposes limited to students in preschool through grade 8 shall be exempt from ad valorem taxes.

(8) If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a sublease or other contractual agreement with that lessee.

(9) If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution

for purposes of this exemption.

(10) Property owned by an educational institution shall be deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use.

Section 10. The amendment made by this act to s. 196.198, Florida Statutes, relating to certain property owned by a house of public worship, is intended to clarify existing law and applies to actions pending as of July 1, 2021.

Section 11. Effective upon this act becoming a law, paragraph (e) is added to subsection (1) of section 196.199, Florida Statutes, to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(e) All property of a municipality used for a motorsports entertainment complex, as defined in s. 288.1171(1), is exempt from ad valorem taxation, if the municipality is liable for payment of such ad valorem taxation pursuant to a lease agreement entered into before January 1, 2020. This paragraph does not apply to property for which the motorsports entertainment complex or other tenant is liable for payment of such ad valorem taxation. This paragraph expires January 1,

2033.

Section 12. Paragraph (a) of subsection (1) of section 197.222, Florida Statutes, is amended to read:

197.222 Prepayment of estimated tax by installment method.—

(1) Taxes collected pursuant to this chapter may be prepaid in installments as provided in this section. A taxpayer may elect to prepay by installments for each tax notice for taxes estimated to be more than $100. A taxpayer who elects to prepay shall make payments based upon an estimated tax equal to the actual taxes levied upon the subject property in the prior year. In order to prepay by installments, the taxpayer must complete and file an application for each tax notice with the tax collector on or before April 30 of the year in which the taxpayer elects to prepay the taxes. After submission of an initial application, a taxpayer is not required to submit additional annual applications as long as he or she continues to elect to prepay taxes in installments. However, if in any year the taxpayer does not so elect, reapplication is required for a subsequent election. Installment payments shall be made according to the following schedule:

(a) The first payment of one-quarter of the total amount of estimated taxes due must be made by June 30 of the year in which the taxes are assessed. A 6 percent discount applied against the amount of the installment shall be granted for such payment. The tax collector shall ~~may~~ accept a late payment of the first installment through July 31~~, and the late payment must be accompanied by a penalty of 5 percent of the amount of the installment due~~.

Section 13. Subsection (5) of section 201.08, Florida

Statutes, is amended to read:

201.08 Tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.—

(5) For purposes of this section, a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Modifications to documents which do not modify the terms of the indebtedness evidenced such as those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee are not renewals and are not subject to tax pursuant to this section. A modification of an original document, on which tax under this section was previously paid, for the sole purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to tax pursuant to this section. If the taxable amount of a mortgage is limited by language contained in the mortgage or by the application of rules limiting the tax base when there is collateral in more than one state, then a modification which changes such limitation or tax base shall be taxable only to the extent of any increase in the limitation or tax base attributable to such modification. This subsection shall not be

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interpreted to exempt from taxation an original mortgage that would otherwise be subject to tax pursuant to paragraph (1)(b).

Section 14. Section 211.0252, Florida Statutes, is created to read:

211.0252 Credit for contributions to eligible charitable organizations.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to an eligible charitable organization under s. 402.62 against any tax due under s. 211.02 or s. 211.025. However, the combined credit allowed under this section and s. 211.0251 may not exceed 50 percent of the tax due on the return on which the credit is taken. If the combined credit allowed under this section and s. 211.0251 exceeds 50 percent of the tax due on the return, the credit must first be taken under s. 211.0251. Any remaining liability must be taken under this section, but may not exceed 50 percent of the tax due. For purposes of the distributions of tax revenue under s. 211.06, the department shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund. Section 402.62 applies to the credit authorized by this section.

Section 15. Effective upon becoming a law, paragraph (e) of subsection (3) of section 211.3106, Florida Statutes, is amended to read:

211.3106 Levy of tax on severance of heavy minerals; rate, basis, and distribution of tax.—

(3)

(e) If ~~In the event~~ the producer price index for titanium

dioxide is discontinued or can no longer be calculated, ~~then~~ a comparable index must ~~shall~~ be selected by the department and adopted by rule. If there is no comparable index, the tax rate for the immediately preceding year must be used.

Section 16. Effective January 1, 2022, paragraph (m) is added to subsection (2) of section 212.06, Florida Statutes, and subsection (5) of that section, as amended by CS/CS/SB 50, 2021 Regular Session, is amended, to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(2)

(m) The term "dealer" also means a forwarding agent as defined in subparagraph (5)(b)1. who has applied for and received a Florida Certificate of Forwarding Agent Address from the department.

(5)(a)1. Except as provided in subparagraph 2., it is not the intention of this chapter to levy a tax upon tangible personal property imported, produced, or manufactured in this state for export, provided that tangible personal property may not be considered as being imported, produced, or manufactured for export unless the importer, producer, or manufacturer delivers the same to a forwarding agent ~~licensed exporter~~ for exporting or to a common carrier for shipment outside this ~~the~~ state or mails the same by United States mail to a destination outside this ~~the~~ state; or, in the case of aircraft being exported under their own power to a destination outside the continental limits of the United States, by submission to the department of a duly signed and validated United States customs

declaration, showing the departure of the aircraft from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; or in the case of parts and equipment installed on aircraft of foreign registry, by submission to the department of documentation as ~~,~~ ~~the extent of which shall be~~ provided by rule, showing the departure of the aircraft from the continental United States; nor is it the intention of this chapter to levy a tax on any sale that ~~which~~ the state is prohibited from taxing under the Constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale is ~~shall be~~ presumed to have been delivered in this state.

2.a. Notwithstanding subparagraph 1., a tax is levied on each sale of tangible personal property to be transported to a cooperating state as defined in sub-subparagraph c., at the rate specified in sub-subparagraph d. However, a Florida dealer is ~~will be~~ relieved from the requirements of collecting taxes pursuant to this subparagraph if the Florida dealer obtains from the purchaser an affidavit providing ~~setting forth~~ the purchaser's name, address, state taxpayer identification number, and a statement that the purchaser is aware of his or her state's use tax laws, is a registered dealer in Florida or another state, or is purchasing the tangible personal property for resale or is otherwise not required to pay the tax on the transaction. The department may, by rule, provide a form to be used for the purposes of this sub-subparagraph ~~set forth herein~~.

b. For purposes of this subparagraph, the term "~~a~~ cooperating state" means a state ~~is one~~ determined by the executive director of the department to cooperate satisfactorily

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with this state in collecting taxes on remote sales. To be determined a cooperating state, a ~~No~~ state must meet ~~shall be so determined unless it meets~~ all the following minimum requirements:

(I) It levies and collects taxes on remote sales of property transported from that state to persons in this state, as described in s. 212.0596, upon request of the department.

(II) The tax so collected is ~~shall be~~ at the rate specified in s. 212.05, not including any local option or tourist or convention development taxes collected pursuant to s. 125.0104 or this chapter.

(III) Such state agrees to remit to the department all taxes so collected no later than 30 days from the last day of the calendar quarter following their collection.

(IV) Such state authorizes the department to audit dealers within its jurisdiction who make remote sales that are the subject of s. 212.0596, or makes arrangements deemed adequate by the department for auditing them with its own personnel.

(V) Such state agrees to provide to the department records obtained by it from retailers or dealers in such state showing delivery of tangible personal property into this state upon which no sales or use tax has been paid in a manner similar to that provided in sub-subparagraph g.

c. For purposes of this subparagraph, the term "sales of tangible personal property to be transported to a cooperating state" means remote sales to a person who is in the cooperating state at the time the order is executed, from a dealer who receives that order in this state.

d. The tax levied by sub-subparagraph a. shall be at the

rate at which such a sale would have been taxed pursuant to the cooperating state's tax laws if consummated in the cooperating state by a dealer and a purchaser, both of whom were physically present in that state at the time of the sale.

e. The tax levied by sub-subparagraph a., when collected, shall be held in the State Treasury in trust for the benefit of the cooperating state and shall be paid to it at a time agreed upon between the department, acting for this state, and the cooperating state or the department or agency designated by it to act for it; however, such payment shall in no event be made later than 30 days from the last day of the calendar quarter after the tax was collected. Funds held in trust for the benefit of a cooperating state are ~~shall~~ not ~~be~~ subject to the service charges imposed by s. 215.20.

f. The department is authorized to perform such acts and to provide such cooperation to a cooperating state with reference to the tax levied by sub-subparagraph a. as is required of the cooperating state by sub-subparagraph b.

g. In furtherance of this act, dealers selling tangible personal property for delivery in another state shall make available to the department, upon request of the department, records of all tangible personal property so sold. Such records must ~~shall~~ include a description of the property, the name and address of the purchaser, the name and address of the person to whom the property was sent, the purchase price of the property, information regarding whether sales tax was paid in this state on the purchase price, and such other information as the department may by rule prescribe.

(b)1. As used in this subsection, the term:

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a. "Certificate" means a Florida Certificate of Forwarding Agent Address.

b. "Facilitating" means preparation for or arranging for export.

c. "Forwarding agent" means a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons.

d. "NAICS" means those classifications contained in the North American Industry Classification System as published in 2007 by the Office of Management and Budget, Executive Office of the President.

e. "Principal business activity" means the activity from which the person or business derives the highest percentage of its total receipts.

2. A forwarding agent engaged in international export may apply to the department for a certificate.

3. Each application must include:

a. The designation of an address for the forwarding agent.

b. A certification that:

(I) The tangible personal property delivered to the designated address for export originates with a United States vendor;

(II) The tangible personal property delivered to the designated address for export is irrevocably committed to export out of the United States through a continuous and unbroken exportation process; and

(III) The designated address is used exclusively by the forwarding agent for such export.

c. A copy of the forwarding agent's last filed federal

income tax return showing the entity's principal business activity classified under NAICS code 488510, except as provided under subparagraph 4. or subparagraph 5.

d. A statement of the total revenues of the forwarding agent.

e. A statement of the amount of revenues associated with international export of the forwarding agent.

f. A description of all business activity that occurs at the designated address.

g. The name and contact information of a designated contact person of the forwarding agent.

h. The forwarding agent's website address.

i. Any additional information the department requires by rule to demonstrate eligibility for the certificate and a signature attesting to the validity of the information provided.

4. An applicant that has not filed a federal return for the preceding tax year under NAICS code 488510 shall provide all of the following:

a. A statement of estimated total revenues.

b. A statement of estimated revenues associated with international export.

c. The NAICS code under which the forwarding agent intends to file a federal return.

5. If an applicant does not file a federal return identifying a NAICS code, the applicant shall provide documentation to support that its principal business activity is that of a forwarding agent and that the applicant is otherwise eligible for the certificate.

6. A forwarding agent that applies for and receives a

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certificate shall register as a dealer with the department.

7. A forwarding agent shall remit the tax imposed under this chapter on any tangible personal property shipped to the designated forwarding agent address if no tax was collected and the tangible personal property remained in this state or if delivery to the purchaser or purchaser's representative occurs in this state. This subparagraph does not prohibit the forwarding agent from collecting such tax from the consumer of the tangible personal property.

8. A forwarding agent shall maintain the following records:

a. Copies of sales invoices or receipts between the vendor and the consumer when provided by the vendor to the forwarding agent. If sales invoices or receipts are not provided to the forwarding agent, the forwarding agent must maintain export documentation evidencing the value of the purchase consistent with the federal Export Administration Regulations, 15 C.F.R. parts 730-774.

b. Copies of federal returns evidencing the forwarding agent's NAICS principal business activity code.

c. Copies of invoices or other documentation evidencing shipment to the forwarding agent.

d. Invoices between the forwarding agent and the consumer or other documentation evidencing the ship-to destination outside the United States.

e. Invoices for foreign postal or transportation services.

f. Bills of lading.

g. Any other export documentation.

Such records must be kept in an electronic format and made

available for the department's review pursuant to subparagraph 9. and ss. 212.13 and 213.35.

9. Each certificate expires 5 years after the date of issuance, except as specified in this subparagraph.

a. At least 30 days before expiration, a new application must be submitted to renew the certificate and the application must contain the information required in subparagraph 3. Upon application for renewal, the certificate is subject to the review and reissuance procedures prescribed by this chapter and department rule.

b. Each forwarding agent shall update its application information annually or within 30 days after any material change.

c. The department shall verify that the forwarding agent is actively engaged in facilitating the international export of tangible personal property.

d. The department may suspend or revoke the certificate of any forwarding agent that fails to respond within 30 days to a written request for information regarding its business transactions.

10. The department shall provide a list on the department's website of forwarding agents that have applied for and received a Florida Certificate of Forwarding Agent Address from the department. The list must include a forwarding agent's entity name, address, and expiration date as provided on the Florida Certificate of Forwarding Agent Address.

11. A dealer may accept a copy of the forwarding agent's certificate or rely on the list of forwarding agents' names and addresses on the department's website in lieu of collecting the

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tax imposed under this chapter when the property is required by terms of the sale to be shipped to the designated address on the certificate. A dealer who accepts a valid copy of a certificate or relies on the list of forwarding agents' names and addresses on the department's website in good faith and ships purchased tangible personal property to the address on the certificate is not liable for any tax due on sales made during the effective dates indicated on the certificate.

12. The department may revoke a forwarding agent's certificate for noncompliance with this paragraph. Any person found to fraudulently use the address on the certificate for the purpose of evading tax is subject to the penalties provided in s. 212.085.

13. The department may adopt rules to administer this paragraph, including, but not limited to, rules relating to procedures, application and eligibility requirements, and forms.

(c)1. Notwithstanding the provisions of paragraph (a), it is not the intention of this chapter to levy a tax on the sale of tangible personal property to a nonresident dealer who does not hold a Florida sales tax registration, provided such nonresident dealer furnishes the seller a statement declaring that the tangible personal property will be transported outside this state by the nonresident dealer for resale and for no other purpose. The statement must ~~shall~~ include, but not be limited to, the nonresident dealer's name, address, applicable passport or visa number, arrival-departure card number, and evidence of authority to do business in the nonresident dealer's home state or country, such as his or her business name and address, occupational license number, if applicable, or any other

suitable requirement. The statement must ~~shall~~ be signed by the nonresident dealer and must ~~shall~~ include the following sentence: "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief."

2. The burden of proof of subparagraph 1. rests with the seller, who must retain the proper documentation to support the exempt sale. The exempt transaction is subject to verification by the department.

(d) ~~(c)~~ Notwithstanding ~~the provisions of~~ paragraph (a), it is not the intention of this chapter to levy a tax on the sale by a printer to a nonresident print purchaser of material printed by that printer for that nonresident print purchaser when the print purchaser does not furnish the printer a resale certificate containing a sales tax registration number but does furnish to the printer a statement declaring that such material will be resold by the nonresident print purchaser.

Section 17. Paragraph (s) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(s) *Data center property.*—

1. As used in this paragraph, the term:

a. "Critical IT load" means that portion of electric power

capacity, expressed in terms of megawatts, which is reserved solely for owners or tenants of a data center to operate their computer server equipment. The term does not include any ancillary load for cooling, lighting, common areas, or other equipment.

b. "Cumulative capital investment" means the combined total of all expenses incurred by the owners or tenants of a data center after July 1, 2017, in connection with acquiring, constructing, installing, equipping, or expanding the data center. However, the term does not include any expenses incurred in the acquisition of improved real property operating as a data center at the time of acquisition or within 6 months before the acquisition.

c. "Data center" means a facility that:

(I) Consists of one or more contiguous parcels in this state, along with the buildings, substations and other infrastructure, fixtures, and personal property located on the parcels;

(II) Is used exclusively to house and operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data; or that is necessary for the proper operation of equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data;

(III) Has a critical IT load of 15 megawatts or higher, and a critical IT load of 1 megawatt or higher dedicated to each individual owner or tenant within the data center; and

(IV) Is constructed on or after July 1, 2017.

d. "Data center property" means property used exclusively

at a data center to construct, outfit, operate, support, power, cool, dehumidify, secure, or protect a data center and any contiguous dedicated substations. The term includes, but is not limited to, construction materials, component parts, machinery, equipment, computers, servers, installations, redundancies, and operating or enabling software, including any replacements, updates and new versions, and upgrades to or for such property, regardless of whether the property is a fixture or is otherwise affixed to or incorporated into real property. The term also includes electricity used exclusively at a data center.

2. Data center property is exempt from the tax imposed by this chapter, except for the tax imposed by s. 212.031. To be eligible for the exemption provided by this paragraph, the data center's owners and tenants must make a cumulative capital investment of $150 million or more for the data center and the data center must have a critical IT load of 15 megawatts or higher and a critical IT load of 1 megawatt or higher dedicated to each individual owner or tenant within the data center. Each of these requirements must be satisfied no later than 5 years after the commencement of construction of the data center.

3.a. To receive the exemption provided by this paragraph, the person seeking the exemption must apply to the department for a temporary tax exemption certificate. The application must state that a qualifying data center designation is being sought and provide information that the requirements of subparagraph 2. will be met. Upon a tentative determination by the department that the data center will meet the requirements of subparagraph 2., the department must issue the certificate.

b.(I) The certificateholder shall maintain all necessary

books and records to support the exemption provided by this paragraph. Upon satisfaction of all requirements of subparagraph 2., the certificateholder must deliver the temporary tax certificate to the department together with documentation sufficient to show the satisfaction of the requirements. Such documentation must include written declarations, pursuant to s. 92.525, from:

(A) A professional engineer, licensed pursuant to chapter 471, certifying that the critical IT load requirement set forth in subparagraph 2. has been satisfied at the data center; and

(B) A Florida certified public accountant, as defined in s. 473.302, certifying that the cumulative capital investment requirement set forth in subparagraph 2. has been satisfied for the data center.

The professional engineer and the Florida certified public accountant may not be professionally related with the data center’s owners, tenants, or contractors, except that they may be retained by a data center owner to certify that the requirements of subparagraph 2. have been met.

(II) If the department determines that the subparagraph 2. requirements have been satisfied, the department must issue a permanent tax exemption certificate.

(III) Notwithstanding s. 212.084(4), the permanent tax exemption certificate remains valid and effective for as long as the data center described in the exemption application continues to operate as a data center as defined in subparagraph 1., with review by the department every 5 years to ensure compliance. As part of the review, the certificateholder shall, within 3 months

before the end of any 5-year period, submit a written declaration, pursuant to s. 92.525, certifying that the critical IT load of 15 megawatts or higher and the critical IT load of 1 megawatt or higher dedicated to each individual owner or tenant within the data center required by subparagraph 2. continues to be met. All owners, tenants, contractors, and others purchasing exempt data center property shall maintain all necessary books and records to support the exemption as to those purchases.

(IV) Notwithstanding s. 213.053, the department may share information concerning a temporary or permanent data center exemption certificate among all owners, tenants, contractors, and others purchasing exempt data center property pursuant to such certificate.

c. If, in an audit conducted by the department, it is determined that the certificateholder or any owners, tenants, contractors, or others purchasing, renting, or leasing data center property do not meet the criteria of this paragraph, the amount of taxes exempted at the time of purchase, rental, or lease is immediately due and payable to the department from the purchaser, renter, or lessee of those particular items, together with the appropriate interest and penalty computed from the date of purchase in the manner prescribed by this chapter. Notwithstanding s. 95.091(3)(a), any tax due as provided in this sub-subparagraph may be assessed by the department within 6 years after the date the data center property was purchased.

d. Purchasers, lessees, and renters of data center property who qualify for the exemption provided by this paragraph shall obtain from the data center a copy of the tax exemption certificate issued pursuant to sub-subparagraph a. or sub-

subparagraph b. Before or at the time of purchase of the item or items eligible for exemption, the purchaser, lessee, or renter shall provide to the seller a copy of the tax exemption certificate and a signed certificate of entitlement. Purchasers, lessees, and renters with self-accrual authority shall maintain all documentation necessary to prove the exempt status of purchases.

e. For any purchase, lease, or rental of property that is exempt pursuant to this paragraph, the possession of a copy of a tax exemption certificate issued pursuant to sub-subparagraph a. or sub-subparagraph b. and a signed certificate of entitlement relieves the seller of the responsibility of collecting the tax on the sale, lease, or rental of such property, and the department must look solely to the purchaser, renter, or lessee for recovery of the tax if it determines that the purchase, rental, or lease was not entitled to the exemption.

4. After June 30, 2027 ~~2022~~, the department may not issue a temporary tax exemption certificate pursuant to this paragraph.

Section 18. Effective January 1, 2022, paragraph (u) is added to subsection (5) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(u) *Items that assist in independent living.*—

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1. The following items, when purchased for noncommercial home or personal use, are exempt from the tax imposed by this chapter:

a. A bed transfer handle selling for $60 or less.

b. A bed rail selling for $110 or less.

c. A grab bar selling for $100 or less.

d. A shower seat selling for $100 or less.

2. This exemption does not apply to a purchase made by a business, including, but not limited to, a medical institution or an assisted living facility.

Section 19. Subsection (2) of section 212.13, Florida Statutes, is amended to read:

212.13 Records required to be kept; power to inspect; audit procedure.—

(2) Each dealer, as defined in this chapter, shall secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter.~~,~~ All such records must be made available to the department at reasonable times and places and by reasonable means, including in an electronic format when so kept by the dealer ~~which are located or maintained in this state shall be open for inspection by the department at all reasonable hours at such dealer's store, sales office, general office, warehouse, or place of business located in this state. Any dealer who maintains such books and records at a point outside this state~~

~~must make such books and records available for inspection by the department where the general records are kept~~. Any dealer subject to ~~the provisions of~~ this chapter who violates this subsection commits ~~these provisions is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the state of any tax revenues, such subsequent offense is ~~shall be~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 20. Subsection (2) of section 212.15, Florida Statutes, is amended to read:

212.15 Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.—

(2) Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected under this chapter commits theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than $1,000, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is $1,000 or more, but less than $20,000, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083,

or s. 775.084.

(c) If the total amount of stolen revenue is $20,000 or more, but less than $100,000, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is $100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The amount of stolen revenue may be aggregated in determining the grade of the offense.

Section 21. Section 212.1833, Florida Statutes, is created to read:

212.1833 Credit for contributions to eligible charitable organizations.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to an eligible charitable organization under s. 402.62 against any tax imposed by the state and due under this chapter from a direct pay permitholder as a result of the direct pay permit held pursuant to s. 212.183. For purposes of the dealer’s credit granted for keeping prescribed records, filing timely tax returns, and properly accounting and remitting taxes under s. 212.12, the amount of tax due used to calculate the credit shall include any eligible contribution made to an eligible charitable organization from a direct pay permitholder. For purposes of the distributions of tax revenue under s. 212.20, the department shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in

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distributions to the General Revenue Fund. Section 402.62 applies to the credit authorized by this section. A dealer who claims a tax credit under this section must file his or her tax returns and pay his or her taxes by electronic means under s. 213.755.

Section 22. Effective January 1, 2022, subsection (5) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(5) This section does not prevent the department from doing any of the following:

(a) Publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns; ~~or~~

(b) Publishing a list of forwarding agents who have received a Florida Certificate of Forwarding Agent Address. The list must include each forwarding agent's entity name, address, and certificate expiration date on the department's website pursuant to s. 212.06(5)(b)10.; or

(c) ~~(b)~~ Using telephones, e-mail, facsimile machines, or other electronic means to do any of the following:

1. Distribute information relating to changes in law, tax rates, interest rates, or other information that is not specific to a particular taxpayer;

2. Remind taxpayers of due dates;

3. Respond to a taxpayer to an electronic mail address that does not support encryption if the use of that address is authorized by the taxpayer; or

4. Notify taxpayers to contact the department.

Section 23. Subsection (8) of section 220.02, Florida

Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 220.195, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.1876, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, those enumerated in s. 220.194, ~~and~~ those enumerated in s. 220.196, and those enumerated in s. 220.198.

Section 24. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1.a. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

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b. Notwithstanding sub-subparagraph a., if a credit taken under s. 220.1875 or s. 220.1876 is added to taxable income in a previous taxable year under subparagraph 11. and is taken as a deduction for federal tax purposes in the current taxable year, the amount of the deduction allowed shall not be added to taxable income in the current year. The exception in this sub-subparagraph is intended to ensure that the credit under s. 220.1875 or s. 220.1876 is added in the applicable taxable year and does not result in a duplicate addition in a subsequent year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of

the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount taken as a credit under s. 220.195 which is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.1875 or s. 220.1876. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.193.

13. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and

taken as a credit against income tax pursuant to s. 288.9916.

14. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

15. The amount taken as a credit for the taxable year pursuant to s. 220.194.

16. The amount taken as a credit for the taxable year under s. 220.196. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. The addition is not intended to result in adding the same expense back to income more than once.

17. The amount taken as a credit for the taxable year pursuant to s. 220.198.

Section 25. Subsection (2) of section 220.186, Florida Statutes, is amended to read:

220.186 Credit for Florida alternative minimum tax.—

(2) The credit pursuant to this section shall be the amount of the excess, if any, of the tax paid based upon taxable income determined pursuant to s. 220.13(2)(k) over the amount of tax which would have been due based upon taxable income without application of s. 220.13(2)(k), before application of this credit without application of any credit under s. 220.1875 or s. 220.1876.

Section 26. Section 220.1876, Florida Statutes, is created to read:

220.1876 Credit for contributions to eligible charitable organizations.—

(1) For taxable years beginning on or after January 1,

2022, there is allowed a credit of 100 percent of an eligible contribution made to an eligible charitable organization under s. 402.62 against any tax due for a taxable year under this chapter after the application of any other allowable credits by the taxpayer. An eligible contribution must be made to an eligible charitable organization on or before the date the taxpayer is required to file a return pursuant to s. 220.222.

(2) A taxpayer who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1) may be allowed the credit on a consolidated return basis.

(3) Section 402.62 applies to the credit authorized by this section.

(4) If a taxpayer applies and is approved for a credit under s. 402.62 after timely requesting an extension to file under s. 220.222(2):

(a) The credit does not reduce the amount of tax due for purposes of the department's determination as to whether the taxpayer was in compliance with the requirement to pay tentative taxes under ss. 220.222 and 220.32.

(b) The taxpayer's noncompliance with the requirement to pay tentative taxes shall result in the revocation and rescindment of any such credit.

(c) The taxpayer shall be assessed for any taxes, penalties, or interest due from the taxpayer's noncompliance with the requirement to pay tentative taxes.

Section 27. Section 220.198, Florida Statutes, is created to read:

220.198 Internship tax credit program.—

(1) This section may be cited as the "Florida Internship

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Tax Credit Program."

(2) As used in this section, the term:

(a) "Full time" means at least 30 hours per week.

(b) "Qualified business" means a business that is in existence and has been continuously operating for at least 3 years.

(c) "Student intern" means a person who has completed at least 60 credit hours at a state university or a Florida College System institution, regardless of whether the student intern receives course credit for the internship; a person who is enrolled in a career center operated by a school district under s. 1001.44 or a charter technical career center; or any graduate student enrolled at a state university.

(3) For taxable years beginning on or after January 1, 2022, a qualified business is eligible for a credit against the tax imposed by this chapter in the amount of $2,000 per student intern if all of the following apply:

(a) The qualified business employed at least one student intern in an internship in which the student intern worked full time in this state for at least 9 consecutive weeks, and the qualified business provides the department documentation evidencing each internship claimed.

(b) The qualified business provides the department documentation for the current taxable year showing that at least 20 percent of the business' full-time employees were previously employed by that business as student interns.

(c) At the start of an internship, each student intern provides the qualified business with verification by the student intern's state university, Florida College System institution,

career center operated by a school district under s. 1001.44, or charter technical career center that the student intern is enrolled and maintains a minimum grade point average of 2.0 on a 4.0 scale, if applicable. The qualified business may accept a letter from the applicable educational institution stating that the student intern is enrolled as evidence that the student meets these requirements.

(4) Notwithstanding paragraph (3)(b), a qualified business that, on average for the 3 immediately preceding years, employed 10 or fewer full-time employees may receive the tax credit if it provides documentation that it previously hired at least one student intern and, for the current taxable year, that it employs on a full-time basis at least one employee who was previously employed by that qualified business as a student intern.

(5)(a) A qualified business may not claim a tax credit of more than $10,000 in any one taxable year.

(b) The combined total amount of tax credits which may be granted to qualified businesses under this section is $2.5 million in each of state fiscal years 2021-2022 and 2022-2023. The department must approve the tax credit prior to the taxpayer taking the credit on a return. The department must approve credits on a first-come, first-served basis.

(6) The department may adopt rules governing the manner and form of applications for the tax credit and establishing qualification requirements for the tax credit.

(7) A qualified business may carry forward any unused portion of a tax credit under this section for up to 2 taxable years.

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Section 28. Subsection (9) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

~~(9) EXPIRATION.—An applicant may not be certified as qualified under this section after June 30, 2020. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.~~

Section 29. Section 402.62, Florida Statutes, is created to read:

402.62 Strong Families Tax Credit.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Annual tax credit amount" means, for any state fiscal year, the sum of the amount of tax credits approved under paragraph (5)(b), including tax credits to be taken under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056, which are approved for taxpayers whose taxable years begin on or after January 1 of the calendar year preceding the start of the applicable state fiscal year.

(b) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(c) "Eligible charitable organization" means an organization designated by the Department of Children and Families to be eligible to receive funding under this section.

(d) "Eligible contribution" means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible charitable organization. The taxpayer making the contribution may not designate a specific child

assisted by the eligible charitable organization as the beneficiary of the contribution.

(e) "Tax credit cap amount" means the maximum annual tax credit amount that the Department of Revenue may approve for a state fiscal year.

(2) STRONG FAMILIES TAX CREDITS; ELIGIBILITY.—

(a) The Department of Children and Families shall designate as an eligible charitable organization an organization that meets all of the following requirements:

1. Is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code.

2. Is a Florida entity formed under chapter 605, chapter 607, or chapter 617 and whose principal office is located in this state.

3. Provides services to:

a. Prevent child abuse, neglect, abandonment, or exploitation;

b. Assist fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children's lives;

c. Provide books to the homes of children eligible for a federal free or reduced-price meals program or those testing below grade level in kindergarten through grade 5;

d. Assist families with children who have a chronic illness or a physical, intellectual, developmental, or emotional disability; or

e. Provide workforce development services to families of children eligible for a federal free or reduced-price meals program.

4. Provides to the Department of Children and Families accurate information, including, at a minimum, a description of the services provided by the organization which are eligible for funding under this section; the total number of individuals served through those services during the last calendar year and the number served during the last calendar year using funding under this section; basic financial information regarding the organization and services eligible for funding under this section; outcomes for such services; and contact information for the organization.

5. Annually submits a statement, signed under penalty of perjury by a current officer of the organization, that the organization meets all criteria to qualify as an eligible charitable organization, has fulfilled responsibilities under this section for the previous fiscal year if the organization received any funding through this credit during the previous year, and intends to fulfill its responsibilities during the upcoming year.

6. Provides any documentation requested by the Department of Children and Families to verify eligibility as an eligible charitable organization or compliance with this section.

(b) The Department of Children and Families may not designate as an eligible charitable organization an organization that:

1. Provides abortions or pays for or provides coverage for abortions; or

2. Has received more than 50 percent of its total annual revenue from the Department of Children and Families, either directly or via a contractor of the department, in the prior

fiscal year.

(3) RESPONSIBILITIES OF ELIGIBLE CHARITABLE ORGANIZATIONS.—An eligible charitable organization that receives a contribution under this section must do all of the following:

(a) Apply for admittance into the Department of Law Enforcement's Volunteer and Employee Criminal History System and, if accepted, conduct background screening on all volunteers and staff working directly with children in any program funded under this section pursuant to s. 943.0542. Background screening shall use level 2 screening standards pursuant to s. 435.04 and additionally include, but need not be limited to, a check of the Dru Sjodin National Sex Offender Public Website.

(b) Expend 100 percent of any contributions received under this section for direct services to state residents for the purposes specified in subparagraph (2)(a)3.

(c) Annually submit to the Department of Children and Families:

1. An audit of the eligible charitable organization conducted by an independent certified public accountant in accordance with auditing standards generally accepted in the United States, government auditing standards, and rules adopted by the Auditor General. The audit report must include a report on financial statements presented in accordance with generally accepted accounting principles. The audit report must be provided to the Department of Children and Families within 180 days after completion of the eligible charitable organization's fiscal year; and

2. A copy of the eligible charitable organization's most recent federal Internal Revenue Service Return of Organization

Exempt from Income Tax form (Form 990).

(d) Notify the Department of Children and Families within 5 business days after the eligible charitable organization ceases to meet eligibility requirements or fails to fulfill its responsibilities under this section.

(e) Upon receipt of a contribution, provide the taxpayer that made the contribution with a certificate of contribution. A certificate of contribution must include the taxpayer's name and, if available, its federal employer identification number, the amount contributed, the date of contribution, and the name of the eligible charitable organization.

(4) RESPONSIBILITIES OF THE DEPARTMENT.—The Department of Children and Families shall do all of the following:

(a) Annually redesignate eligible charitable organizations that have complied with all requirements of this section.

(b) Remove the designation of organizations that fail to meet all requirements of this section. An organization that has had its designation removed by the department may reapply for designation as an eligible charitable organization, and the department shall redesignate such organization, if it meets the requirements of this section and demonstrates through its application that all factors leading to its removal as an eligible charitable organization have been sufficiently addressed.

(c) Publish information about the tax credit program and eligible charitable organizations on a Department of Children and Families website. The website must, at a minimum, provide all of the following:

1. The requirements and process for becoming designated or

redesignated as an eligible charitable organization.

2. A list of the eligible charitable organizations that are currently designated by the department and the information provided under subparagraph (2)(a)4. regarding each eligible charitable organization.

3. The process for a taxpayer to select an eligible charitable organization as the recipient of funding through a tax credit.

(d) Compel the return of funds that are provided to an eligible charitable organization that fails to comply with the requirements of this section. Eligible charitable organizations that are subject to return of funds are ineligible to receive funding under this section for a period 10 years after final agency action to compel the return of funding.

(5) STRONG FAMILIES TAX CREDITS; APPLICATIONS, TRANSFERS, AND LIMITATIONS.—

(a) Beginning in fiscal year 2021-2022, the tax credit cap amount is $5 million in each state fiscal year.

(b) Beginning October 1, 2021, a taxpayer may submit an application to the Department of Revenue for a tax credit or credits to be taken under one or more of s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056.

1. The taxpayer shall specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year for a credit under s. 220.1876 or s. 624.51056 or the applicable state fiscal year for a credit under s. 211.0252, s. 212.1833, or s. 561.1212. For purposes of s. 220.1876, a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return

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for that year pursuant to s. 220.222. For purposes of s. 624.51056, a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that prior taxable year pursuant to ss. 624.509 and 624.5092. The application must specify the eligible charitable organization to which the proposed contribution will be made. The Department of Revenue shall approve tax credits on a first-come, first-served basis and must obtain the division's approval before approving a tax credit under s. 561.1212.

2. Within 10 days after approving or denying an application, the Department of Revenue shall provide a copy of its approval or denial letter to the eligible charitable organization specified by the taxpayer in the application.

(c) If a tax credit approved under paragraph (b) is not fully used within the specified state fiscal year for credits under s. 211.0252, s. 212.1833, or s. 561.1212 or against taxes due for the specified taxable year for credits under s. 220.1876 or s. 624.51056 because of insufficient tax liability on the part of the taxpayer, the unused amount must be carried forward for a period not to exceed 10 years. For purposes of s. 220.1876, a credit carried forward may be used in a subsequent year after applying the other credits and unused carryovers in the order provided in s. 220.02(8).

(d) A taxpayer may not convey, transfer, or assign an approved tax credit or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, a tax credit under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 may be conveyed, transferred, or assigned

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between members of an affiliated group of corporations if the type of tax credit under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 remains the same. A taxpayer shall notify the Department of Revenue of its intent to convey, transfer, or assign a tax credit to another member within an affiliated group of corporations. The amount conveyed, transferred, or assigned is available to another member of the affiliated group of corporations upon approval by the Department of Revenue. The Department of Revenue shall obtain the division's approval before approving a conveyance, transfer, or assignment of a tax credit under s. 561.1212.

(e) Within any state fiscal year, a taxpayer may rescind all or part of a tax credit approved under paragraph (b). The amount rescinded shall become available for that state fiscal year to another eligible taxpayer as approved by the Department of Revenue if the taxpayer receives notice from the Department of Revenue that the rescindment has been accepted by the Department of Revenue. The Department of Revenue must obtain the division's approval before accepting the rescindment of a tax credit under s. 561.1212. Any amount rescinded under this paragraph must become available to an eligible taxpayer on a first-come, first-served basis based on tax credit applications received after the date the rescindment is accepted by the Department of Revenue.

(f) Within 10 days after approving or denying the conveyance, transfer, or assignment of a tax credit under paragraph (d), or the rescindment of a tax credit under paragraph (e), the Department of Revenue shall provide a copy of its approval or denial letter to the eligible charitable

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organization specified by the taxpayer. The Department of Revenue shall also include the eligible charitable organization specified by the taxpayer on all letters or correspondence of acknowledgment for tax credits under s. 212.1833.

(g) For purposes of calculating the underpayment of estimated corporate income taxes under s. 220.34 and tax installment payments for taxes on insurance premiums or assessments under s. 624.5092, the final amount due is the amount after credits earned under s. 220.1876 or s. 624.51056 for contributions to eligible charitable organizations are deducted.

1. For purposes of determining if a penalty or interest under s. 220.34(2)(d)1. will be imposed for underpayment of estimated corporate income tax, a taxpayer may, after earning a credit under s. 220.1876, reduce any estimated payment in that taxable year by the amount of the credit.

2. For purposes of determining if a penalty under s. 624.5092 will be imposed, an insurer, after earning a credit under s. 624.51056 for a taxable year, may reduce any installment payment for such taxable year of 27 percent of the amount of the net tax due as reported on the return for the preceding year under s. 624.5092(2)(b) by the amount of the credit.

(6) PRESERVATION OF CREDIT.—If any provision or portion of this section, s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 or the application thereof to any person or circumstance is held unconstitutional by any court or is otherwise declared invalid, the unconstitutionality or invalidity shall not affect any credit earned under s. 211.0252,

s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 by any taxpayer with respect to any contribution paid to an eligible charitable organization before the date of a determination of unconstitutionality or invalidity. The credit shall be allowed at such time and in such a manner as if a determination of unconstitutionality or invalidity had not been made, provided that nothing in this subsection by itself or in combination with any other provision of law may result in the allowance of any credit to any taxpayer in excess of one dollar of credit for each dollar paid to an eligible charitable organization.

(7) ADMINISTRATION; RULES.—

(a) The Department of Revenue, the division, and the Department of Children and Families may develop a cooperative agreement to assist in the administration of this section, as needed.

(b) The Department of Revenue may adopt rules necessary to administer this section and ss. 211.0252, 212.1833, 220.1876, 561.1212, and 624.51056, including rules establishing application forms, procedures governing the approval of tax credits and carryforward tax credits under subsection (5), and procedures to be followed by taxpayers when claiming approved tax credits on their returns.

(c) The division may adopt rules necessary to administer its responsibilities under this section and s. 561.1212.

(d) The Department of Children and Families may adopt rules necessary to administer this section, including, but not limited to, rules establishing application forms for organizations seeking designation as eligible charitable organizations under this act.

(e) Notwithstanding any provision of s. 213.053 to the contrary, sharing information with the division related to this tax credit is considered the conduct of the Department of Revenue's official duties as contemplated in s. 213.053(8)(c), and the Department of Revenue and the division are specifically authorized to share information as needed to administer this program.

Section 30. Section 561.1212, Florida Statutes, is created to read:

561.1212 Credit for contributions to eligible charitable organizations.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to an eligible charitable organization under s. 402.62 against any tax due under s. 563.05, s. 564.06, or s. 565.12, except excise taxes imposed on wine produced by manufacturers in this state from products grown in this state. However, a credit allowed under this section may not exceed 90 percent of the tax due on the return on which the credit is taken. For purposes of the distributions of tax revenue under ss. 561.121 and 564.06(10), the division shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund. The provisions of s. 402.62 apply to the credit authorized by this section.

Section 31. Section 624.51056, Florida Statutes, is created to read:

624.51056 Credit for contributions to eligible charitable organizations.—

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(1) For taxable years beginning on or after January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to an eligible charitable organization under s. 402.62 against any tax due for a taxable year under s. 624.509(1) after deducting from such tax deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220; and the credit allowed under s. 624.509(5), as such credit is limited by s. 624.509(6). An eligible contribution must be made to an eligible charitable organization on or before the date the taxpayer is required to file a return pursuant to ss. 624.509 and 624.5092. An insurer claiming a credit against premium tax liability under this section is not required to pay any additional retaliatory tax levied under s. 624.5091 as a result of claiming such credit. Section 624.5091 does not limit such credit in any manner.

(2) Section 402.62 applies to the credit authorized by this section.

Section 32. Subsection (7) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(7) Credits and deductions against the tax imposed by this section shall be taken in the following order: deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220 and the credit allowed under subsection (5), as these credits are limited by subsection (6); the credit allowed under s. 624.51056; all other available credits and deductions.

Section 33. Clothing, wallets, or bags; school supplies, personal computers, and personal computer-related accessories; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from July 31, 2021, through August 7, 2021, on the retail sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $60 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of $15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from July 31, 2021, through August 7, 2021, on the first $1,000 of the sales price of personal computers or personal computer-related accessories purchased for noncommercial home or personal use. As used in

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this subsection, the term:

(a) "Personal computers" includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers. The term does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, software, monitors with a television tuner, or peripherals that are designed or intended primarily for recreational use.

(3) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(4) The tax exemptions provided in this section may apply at the option of a dealer if less than 5 percent of the dealer's gross sales of tangible personal property in the prior calendar year consisted of items that would be exempt under this section. If a qualifying dealer chooses not to participate in the tax holiday, by July 24, 2021, the dealer must notify the Department of Revenue in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business.

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(5) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing this section. Notwithstanding any other provision of law, emergency rules adopted pursuant to this subsection are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(6) This section shall take effect upon this act becoming a law.

Section 34. Disaster preparedness supplies; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from May 28, 2021, through June 6, 2021, on the sale of:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weather-band radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) An item normally sold as, or generally advertised as, a ground anchor system or tie-down kit selling for $50 or less.

(e) A gas or diesel fuel tank selling for $25 or less.

(f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less.

(g) A nonelectric food storage cooler selling for $30 or less.

(h) A portable generator used to provide light or communications or preserve food in the event of a power outage selling for $750 or less.

(i) Reusable ice selling for $10 or less.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing this section. Notwithstanding any other provision of law, emergency rules adopted pursuant to this subsection are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(4) This section shall take effect upon this act becoming a law.

Section 35. For the purpose of incorporating the amendment made by this act to section 197.222, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 192.0105, Florida Statutes, is reenacted to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer’s Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement

processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(3) THE RIGHT TO REDRESS.—

(a) The right to discounts for early payment on all taxes and non-ad valorem assessments collected by the tax collector, except for partial payments as defined in s. 197.374, the right to pay installment payments with discounts, and the right to pay delinquent personal property taxes under a payment program when implemented by the county tax collector (see ss. 197.162, 197.3632(8) and (10)(b)3., 197.222(1), and 197.4155).

Section 36. For the purpose of incorporating the amendments made by this act to sections 193.155, 193.1554, and 193.1555, Florida Statutes, in references thereto, section 193.1557, Florida Statutes, is reenacted to read:

193.1557 Assessment of certain property damaged or destroyed by Hurricane Michael.—For property damaged or destroyed by Hurricane Michael in 2018, s. 193.155(4)(b), s.

193.1554(6)(b), or s. 193.1555(6)(b) applies to changes, additions, or improvements commenced within 5 years after January 1, 2019. This section applies to the 2019-2023 tax rolls and shall stand repealed on December 31, 2023.

Section 37. For the purpose of incorporating the amendment made by this act to section 212.06, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 212.07, Florida Statutes, is reenacted to read:

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1)

(c) Unless the purchaser of tangible personal property that is incorporated into tangible personal property manufactured, produced, compounded, processed, or fabricated for one’s own use and subject to the tax imposed under s. 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1. extends a certificate in compliance with the rules of the department, the dealer shall himself or herself be liable for and pay the tax.

Section 38. For the purpose of incorporating the amendment made by this act to section 212.13, Florida Statutes, in a reference thereto, paragraph (f) of subsection (18) of section 212.08, Florida Statutes, is reenacted to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

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(18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT.—

(f) Purchasers shall maintain all documentation necessary to prove the exempt status of purchases and fabrication activity and make such documentation available for inspection pursuant to the requirements of s. 212.13(2).

Section 39. (1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendment made by this act to s. 212.06, Florida Statutes, and the creation of ss. 211.0252, 212.1833, 220.1876, 220.198, 402.62, and 624.51056, Florida Statutes, by this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon becoming a law and expires January 1, 2025.

Section 40. For the 2021-2022 fiscal year, the sum of $208,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing the provisions related to the Strong Families Tax Credit created by this act.

Section 41. The Florida Institute for Child Welfare shall analyze the use of funding provided by the tax credit authorized under s. 402.62, Florida Statutes, as created by this act, and submit a report to the Governor, the President of the Senate,

and the Speaker of the House of Representatives by October 31, 2025. The report must, at a minimum, include the total funding amount and categorize the funding by type of program, describe the programs that were funded, and assess the outcomes that were achieved using the funding.

Section 42. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 43. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to taxation; repealing s. 193.019, F.S., relating to hospitals and community benefit reporting; amending s. 193.155, F.S.; adding exceptions to the definition of the term "change of ownership" for purposes of a certain homestead assessment limitation; providing that changes, additions, or improvements, including ancillary improvements, to homestead property damaged or destroyed by misfortune or calamity must be assessed

upon substantial completion; specifying that the assessed value of the replaced homestead property must be calculated using the assessed value of the homestead property on a certain date before the date on which the damage or destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; amending s. 193.1554, F.S.; providing that changes, additions, or improvements, including ancillary improvements, to nonhomestead residential property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; specifying that the assessed value of the replaced nonhomestead residential property must be calculated using the assessed value of the nonhomestead residential property on a certain date before the date on which the damage or destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; amending s. 193.1555, F.S.; providing that changes, additions, or improvements, including ancillary improvements, to certain nonresidential real property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; specifying that the assessed value of the replaced nonresidential real property shall be calculated using the assessed value of the residential and nonresidential real property on a certain date before the date on which the damage or

destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; providing construction and applicability; amending s. 196.196, F.S.; specifying that portions of property not used for certain purposes are not exempt from ad valorem taxation; specifying that exemptions for certain portions of property from ad valorem taxation are not affected so long as such portions of property are used for specified purposes; providing applicability and construction; amending s. 196.1978, F.S.; exempting certain multifamily projects from ad valorem taxation; making technical changes; amending s. 196.198, F.S.; providing that improvements to real property are deemed owned by certain educational institutions for purposes of the educational exemption from ad valorem taxation if certain criteria are met; providing that such educational institutions shall receive the full benefit of the exemption; requiring the property owner to make certain disclosures to the educational institution; exemptting certain property owned by a house of public worship from ad valorem taxation; providing construction; amending s. 196.199, F.S.; exempting municipal property used for a motorsports entertainment complex from ad valorem taxation if certain criteria are met; providing applicability; providing for expiration; amending s. 197.222, F.S.; requiring, rather than authorizing, tax collectors to accept late payments of prepaid property taxes within

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a certain timeframe; deleting a late payment penalty; amending s. 201.08, F.S.; providing that modifications of certain original documents for certain purposes on which documentary stamp taxes were previously paid are not renewals and are not subject to the documentary stamp tax; creating s. 211.0252, F.S.; providing credits against oil and gas production taxes under the Strong Families Tax Credit; amending s. 211.3106, F.S.; specifying the severance tax rate for a certain heavy mineral under certain circumstances; amending s. 212.06, F.S.; revising the definition of the term "dealer"; revising a condition for a sales tax exception for tangible personal property imported, produced, or manufactured in this state for export; defining terms; specifying application requirements and procedures for a forwarding agent to apply for a Florida Certificate of Forwarding Agent Address from the Department of Revenue; requiring forwarding agents receiving such certificate to register as dealers for purposes of the sales and use tax; specifying requirements for sales tax remittance and for recordkeeping; specifying the timeframe for expiration of certificates and procedures for renewal; requiring forwarding agents to update information; requiring the department to verify certain information; authorizing the department to suspend or revoke certificates under certain circumstances; requiring the department to provide a list on its website of forwarding agents who have received certificates; providing circumstances

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and requirements for and construction related to dealers accepting certificates or relying on the department's website list in lieu of collecting certain taxes; providing criminal penalties for certain violations; authorizing the department to adopt rules; amending s. 212.08, F.S.; extending the expiration date of the sales tax exemption for data center property; exempting specified items that assist in independent living from the sales tax; amending s. 212.13, F.S.; revising recordkeeping requirements for dealers collecting the sales and use tax; amending s. 212.15, F.S.; providing that stolen sales tax revenue may be aggregated for the purposes of determining the grade of certain criminal offenses; creating s. 212.1833, F.S.; providing a credit against sales taxes payable by direct pay permitholders under the Strong Families Tax Credit; amending s. 213.053, F.S.; authorizing the department to publish a list of forwarding agents who have received Florida Certificates of Forwarding Agent Address on its website; amending s. 220.02, F.S.; specifying the order in which corporate income tax credits under the Strong Families Tax Credit and the internship tax credit are applied; amending s. 220.13, F.S.; requiring corporate income taxpayers to add back to their taxable income claimed credit amounts under the Strong Families Tax Credit and the internship tax credit; providing an exception; amending s. 220.186, F.S.; providing that a corporate income tax credit

claimed under the Strong Families Tax Credit is not applied in the calculation of the Florida alternative minimum tax credit; creating s. 220.1876, F.S.; providing a credit against the corporate income tax under the Strong Families Tax Credit; specifying requirements and procedures for the credit; creating s. 220.198, F.S.; providing a short title; defining terms; providing a corporate income tax credit for qualified businesses employing student interns if certain criteria are met; specifying the amount of the credit a qualified business may claim per student intern; specifying a limit on the credit claimed per taxable year; specifying the combined total amount of tax credits which may be granted per state fiscal year in specified years; requiring that credits be allocated on a prorated basis if total approved credits exceed the limit; authorizing the department to adopt certain rules; authorizing a qualified business to carry forward unused credit for a certain time; s. 288.106, F.S.; reauthorizing the tax refund program for qualified target industry businesses; creating s. 402.62, F.S.; creating the Strong Families Tax Credit; defining terms; specifying requirements for the Department of Children and Families in designating eligible charitable organizations; specifying requirements for eligible charitable organizations receiving contributions; specifying duties of the Department of Children and Families; specifying a limitation on, and application procedures

for, the tax credit; specifying requirements and procedures for, and restrictions on, the carryforward, conveyance, transfer, assignment, and rescindment of credits; specifying requirements and procedures for the department; providing construction; authorizing the department, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, and the Department of Children and Families to develop a cooperative agreement and adopt rules; authorizing certain interagency information sharing; creating ss. 561.1212 and 624.51056, F.S.; providing credits against excise taxes on certain alcoholic beverages and the insurance premium tax, respectively, under the Strong Families Tax Credit; specifying requirements and procedures for, and limitations on, the credits; amending s. 624.509, F.S.; revising the order in which credits are taken under that section; providing sales tax exemptions for certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during a certain timeframe; defining terms; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the exemptions, subject to certain conditions; authorizing the department to adopt emergency rules; providing sales tax exemptions for certain disaster preparedness supplies during a certain timeframe; specifying locations where the exemptions do not apply; authorizing the department to

adopt emergency rules; reenacting s. 192.0105(3)(a), F.S., relating to taxpayer rights, to incorporate the amendment made to s. 197.222, F.S., in a reference thereto; reenacting s. 193.1557, F.S., relating to assessment of property damaged or destroyed by Hurricane Michael, to incorporate the amendments made to ss. 193.155, 193.1554, and 193.1555, F.S., in references thereto; reenacting s. 212.07(1)(c), F.S., relating to the sales, storage, and use tax, to incorporate the amendment made to s. 212.06, F.S., in a reference thereto; reenacting s. 212.08(18)(f), F.S., relating to the sales, rental, use, consumption, distribution, and storage tax, to incorporate the amendment made to s. 212.13, F.S., in a reference thereto; authorizing the department to adopt emergency rules; providing for expiration of that authority; providing an appropriation; requiring the Florida Institute for Child Welfare to provide a certain report to the Governor and the Legislature by a specified date; providing for severability; providing effective dates.

By the Committee on Finance and Tax

593-03378-21 20217068__

A bill to be entitled

An act relating to tax administration; amending s. 197.222, F.S.; requiring, rather than authorizing, tax collectors to accept late payments of prepaid property taxes within a certain timeframe; deleting a late payment penalty; amending s. 211.3106, F.S.; specifying the severance tax rate for a certain heavy mineral under certain circumstances; amending s. 212.06, F.S.; revising the definition of the term "dealer"; revising a condition for a sales tax exception for tangible personal property imported, produced, or manufactured in this state for export; defining terms; specifying application requirements and procedures for a forwarding agent to apply for a Florida Certificate of Forwarding Agent Address from the Department of Revenue; requiring forwarding agents receiving such certificate to register as dealers for purposes of the sales and use tax; specifying requirements for sales tax remittance and for recordkeeping; specifying the timeframe for expiration of certificates and procedures for renewal; requiring forwarding agents to update information; requiring the department to verify certain information; authorizing the department to suspend or revoke certificates under certain circumstances; requiring the department to provide a list on its website of forwarding agents who have received certificates; providing circumstances and requirements for and construction related to dealers accepting certificates or relying on the

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department's website list in lieu of collecting certain taxes; providing criminal penalties for certain violations; authorizing the department to adopt rules; amending s. 212.13, F.S.; revising recordkeeping requirements for dealers collecting the sales and use tax; amending s. 212.15, F.S.; providing that stolen sales tax revenue may be aggregated for the purposes of determining the grade of certain criminal offenses; amending s. 213.053, F.S.; authorizing the department to publish a list of forwarding agents who have received Florida Certificates of Forwarding Agent Address on its website; reenacting s. 192.0105(3)(a), F.S., relating to taxpayer rights, to incorporate the amendment made to s. 197.222, F.S., in a reference thereto; reenacting s. 212.07(1)(c), F.S., relating to the sales, storage, and use tax, to incorporate the amendment made to s. 212.06, F.S., in a reference thereto; reenacting s. 212.08(18)(f), F.S., relating to the sales, rental, use, consumption, distribution, and storage tax, to incorporate the amendment made to s. 212.13, F.S., in a reference thereto; authorizing the department to adopt emergency rules; providing for expiration of that authority; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective July 1, 2021, paragraph (a) of

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subsection (1) of section 197.222, Florida Statutes, is amended to read:

197.222 Prepayment of estimated tax by installment method.—

(1) Taxes collected pursuant to this chapter may be prepaid in installments as provided in this section. A taxpayer may elect to prepay by installments for each tax notice for taxes estimated to be more than $100. A taxpayer who elects to prepay shall make payments based upon an estimated tax equal to the actual taxes levied upon the subject property in the prior year. In order to prepay by installments, the taxpayer must complete and file an application for each tax notice with the tax collector on or before April 30 of the year in which the taxpayer elects to prepay the taxes. After submission of an initial application, a taxpayer is not required to submit additional annual applications as long as he or she continues to elect to prepay taxes in installments. However, if in any year the taxpayer does not so elect, reapplication is required for a subsequent election. Installment payments shall be made according to the following schedule:

(a) The first payment of one-quarter of the total amount of estimated taxes due must be made by June 30 of the year in which the taxes are assessed. A 6 percent discount applied against the amount of the installment shall be granted for such payment. The tax collector shall ~~may~~ accept a late payment of the first installment through July 31~~, and the late payment must be accompanied by a penalty of 5 percent of the amount of the installment due~~.

Section 2. Paragraph (e) of subsection (3) of section 211.3106, Florida Statutes, is amended to read:

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211.3106 Levy of tax on severance of heavy minerals; rate, basis, and distribution of tax.—

(3)

(e) If ~~In the event~~ the producer price index for titanium dioxide is discontinued or can no longer be calculated, ~~then~~ a comparable index must ~~shall~~ be selected by the department and adopted by rule. If there is no comparable index, the tax rate for the immediately preceding year must be used.

Section 3. Subsection (5) of section 212.06, Florida Statutes, is amended, and paragraph (m) is added to subsection (2) of that section, to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(2)

(m) The term "dealer" also means a forwarding agent as defined in sub-subparagraph (5)(b)1.c. who has applied for and received a Florida Certificate of Forwarding Agent Address from the department.

(5)(a)1. Except as provided in subparagraph 2., it is not the intention of this chapter to levy a tax upon tangible personal property imported, produced, or manufactured in this state for export, provided that tangible personal property may not be considered as being imported, produced, or manufactured for export unless the importer, producer, or manufacturer delivers the same to a forwarding agent ~~licensed exporter~~ for exporting or to a common carrier for shipment outside this ~~the~~ state or mails the same by United States mail to a destination outside this ~~the~~ state; or, in the case of aircraft being

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exported under their own power to a destination outside the continental limits of the United States, by submission to the department of a duly signed and validated United States customs declaration, showing the departure of the aircraft from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; or in the case of parts and equipment installed on aircraft of foreign registry, by submission to the department of documentation as ~~,~~ ~~the extent of which shall be~~ provided by rule, showing the departure of the aircraft from the continental United States; nor is it the intention of this chapter to levy a tax on any sale that ~~which~~ the state is prohibited from taxing under the Constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale is ~~shall be~~ presumed to have been delivered in this state.

2.a. Notwithstanding subparagraph 1., a tax is levied on each sale of tangible personal property to be transported to a cooperating state as defined in sub-subparagraph c., at the rate specified in sub-subparagraph d. However, a Florida dealer is ~~will be~~ relieved from the requirements of collecting taxes pursuant to this subparagraph if the Florida dealer obtains from the purchaser an affidavit providing ~~setting forth~~ the purchaser's name, address, state taxpayer identification number, and a statement that the purchaser is aware of his or her state's use tax laws, is a registered dealer in Florida or another state, or is purchasing the tangible personal property for resale or is otherwise not required to pay the tax on the transaction. The department may, by rule, provide a form to be used for the purposes of this sub-subparagraph ~~set forth herein~~.

b. For purposes of this subparagraph, the term "~~a~~ cooperating state" means a state ~~is one~~ determined by the executive director of the department to cooperate satisfactorily with this state in collecting taxes on mail order sales. To be determined a cooperating state, a ~~No~~ state must meet ~~shall be so determined unless it meets~~ all the following minimum requirements:

(I) It levies and collects taxes on mail order sales of property transported from that state to persons in this state, as described in s. 212.0596, upon request of the department.

(II) The tax so collected must ~~shall~~ be at the rate specified in s. 212.05, not including any local option or tourist or convention development taxes collected pursuant to s. 125.0104 or this chapter.

(III) Such state agrees to remit to the department all taxes so collected no later than 30 days from the last day of the calendar quarter following their collection.

(IV) Such state authorizes the department to audit dealers within its jurisdiction who make mail order sales that are the subject of s. 212.0596, or makes arrangements deemed adequate by the department for auditing them with its own personnel.

(V) Such state agrees to provide to the department records obtained by it from retailers or dealers in such state showing delivery of tangible personal property into this state upon which no sales or use tax has been paid in a manner similar to that provided in sub-subparagraph g.

c. For purposes of this subparagraph, the term "sales of tangible personal property to be transported to a cooperating state" means mail order sales to a person who is in the

cooperating state at the time the order is executed, from a dealer who receives that order in this state.

d. The tax levied by sub-subparagraph a. shall be at the rate at which such a sale would have been taxed pursuant to the cooperating state's tax laws if consummated in the cooperating state by a dealer and a purchaser, both of whom were physically present in that state at the time of the sale.

e. The tax levied by sub-subparagraph a., when collected, shall be held in the State Treasury in trust for the benefit of the cooperating state and shall be paid to it at a time agreed upon between the department, acting for this state, and the cooperating state or the department or agency designated by it to act for it; however, such payment shall in no event be made later than 30 days from the last day of the calendar quarter after the tax was collected. Funds held in trust for the benefit of a cooperating state are ~~shall~~ not ~~be~~ subject to the service charges imposed by s. 215.20.

f. The department is authorized to perform such acts and to provide such cooperation to a cooperating state with reference to the tax levied by sub-subparagraph a. as is required of the cooperating state by sub-subparagraph b.

g. In furtherance of this act, dealers selling tangible personal property for delivery in another state shall make available to the department, upon request of the department, records of all tangible personal property so sold. Such records must ~~shall~~ include a description of the property, the name and address of the purchaser, the name and address of the person to whom the property was sent, the purchase price of the property, information regarding whether sales tax was paid in this state

on the purchase price, and such other information as the department may by rule prescribe.

(b)1. As used in this subsection, the term:

a. "Certificate" means a Florida Certificate of Forwarding Agent Address.

b. "Facilitating" means preparation for or arranging for export.

c. "Forwarding agent" means a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons.

d. "NAICS" means those classifications contained in the North American Industry Classification System as published in 2007 by the Office of Management and Budget, Executive Office of the President.

e. "Principal business activity" means the activity from which the person or business derives the highest percentage of its total receipts.

2. A forwarding agent engaged in international export may apply to the department for a certificate.

3. Each application must include:

a. The designation of an address for the forwarding agent.

b. A certification that:

(I) The tangible personal property delivered to the designated address for export originates with a United States vendor;

(II) The tangible personal property delivered to the designated address for export is irrevocably committed to export out of the United States through a continuous and unbroken exportation process; and

(III) The designated address is used exclusively by the forwarding agent for such export.

c. A copy of the forwarding agent's last filed federal income tax return showing the entity's principal business activity classified under NAICS code 488510, except as provided under subparagraph 4. or subparagraph 5.

d. A statement of the total revenues of the forwarding agent.

e. A statement of the amount of revenues associated with international export of the forwarding agent.

f. A description of all business activity that occurs at the designated address.

g. The name and contact information of a designated contact person of the forwarding agent.

h. The forwarding agent's website address.

i. Any additional information the department requires by rule to demonstrate eligibility for the certificate and a signature attesting to the validity of the information provided.

4. An applicant that has not filed a federal return for the preceding tax year under NAICS code 488510 shall provide all of the following:

a. A statement of estimated total revenues.

b. A statement of estimated revenues associated with international export.

c. The NAICS code under which the forwarding agent intends to file a federal return.

5. If an applicant does not file a federal return identifying a NAICS code, the applicant shall provide documentation to support that its principal business activity is

that of a forwarding agent as defined in sub-subparagraph (b)1.c. and that the applicant is otherwise eligible for the certificate.

6. A forwarding agent that applies for and receives a certificate shall register as a dealer with the department.

7. A forwarding agent shall remit the tax imposed under this chapter on any tangible personal property shipped to the designated forwarding agent address if no tax was collected and the tangible personal property remained in this state or when delivery to the purchaser or purchaser's representative occurs in this state. This subparagraph does not prohibit the forwarding agent from collecting such tax from the consumer of the tangible personal property.

8. A forwarding agent shall maintain the following records:

a. Copies of sales invoices or receipts between the vendor and the consumer when provided by the vendor to the forwarding agent. If sales invoices or receipts are not provided to the forwarding agent, the forwarding agent must maintain export documentation evidencing the value of the purchase consistent with the federal Export Administration Regulations, 15 C.F.R. parts 730-774.

b. Copies of federal returns evidencing the forwarding agent's NAICS principal business activity code.

c. Copies of invoices evidencing shipment to the forwarding agent.

d. Invoices between the forwarding agent and the consumer or other documentation evidencing the ship-to destination outside the United States.

e. Invoices for foreign postal or transportation services.

f. Bills of lading.

g. Any other export documentation.

Such records must be kept in an electronic format and made available for the department's review pursuant to subparagraph 9. and ss. 212.13 and 213.35.

9. Each certificate expires 5 years after the date of issuance, except as specified in this subparagraph.

a. At least 30 days before expiration, a new application must be submitted to renew the certificate, and the application must contain the information required in subparagraph 3. Upon application for renewal, the certificate is subject to the review and reissuance procedures prescribed by this chapter and department rule.

b. Each forwarding agent shall update its application information annually or within 30 days of any material change.

c. The department shall verify that the forwarding agent is actively engaged in facilitating the international export of tangible personal property.

d. The department may suspend or revoke the certificate of any forwarding agent that fails to respond within 30 days to a written request for information regarding its business transactions.

10. The department shall provide a list on its website of forwarding agents that have applied for and received a certificate from the department. The list must include a forwarding agent's entity name, address, and expiration date as provided on the certificate.

11. A dealer may accept a copy of the forwarding agent's

certificate or rely on the list of forwarding agents' names and addresses on the department's website in lieu of collecting the tax imposed under this chapter when the property is required by terms of the sale to be shipped to the designated address on the certificate. A dealer who accepts a valid copy of a certificate in good faith and ships purchased tangible personal property to the address on the certificate is not liable for any tax due on sales made during the effective dates indicated on the certificate.

12. The department may revoke a forwarding agent's certificate for noncompliance with this paragraph. Any person found to fraudulently use the address on the certificate for the purpose of evading tax is subject to the penalties provided in s. 212.085.

13. The department may adopt rules to administer this paragraph, including rules relating to procedures, application and eligibility requirements, and forms.

(c)1. Notwithstanding ~~the provisions of~~ paragraph (a), it is not the intention of this chapter to levy a tax on the sale of tangible personal property to a nonresident dealer who does not hold a Florida sales tax registration, provided such nonresident dealer furnishes the seller a statement declaring that the tangible personal property will be transported outside this state by the nonresident dealer for resale and for no other purpose. The statement must ~~shall~~ include, but not be limited to, the nonresident dealer's name, address, applicable passport or visa number, arrival-departure card number, and evidence of authority to do business in the nonresident dealer's home state or country, such as his or her business name and address,

occupational license number, if applicable, or any other suitable requirement. The statement must ~~shall~~ be signed by the nonresident dealer and must ~~shall~~ include the following sentence: "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief."

2. The burden of proof of subparagraph 1. rests with the seller, who must retain the proper documentation to support the exempt sale. The exempt transaction is subject to verification by the department.

(d)~~(c)~~ Notwithstanding ~~the provisions of~~ paragraph (a), it is not the intention of this chapter to levy a tax on the sale by a printer to a nonresident print purchaser of material printed by that printer for that nonresident print purchaser when the print purchaser does not furnish the printer a resale certificate containing a sales tax registration number but does furnish to the printer a statement declaring that such material will be resold by the nonresident print purchaser.

Section 4. Effective July 1, 2021, subsection (2) of section 212.13, Florida Statutes, is amended to read:

212.13 Records required to be kept; power to inspect; audit procedure.—

(2) Each dealer, as defined in this chapter, shall secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration

of this chapter.~~:~~ All such records must be made available to the department at reasonable times and places and by reasonable means, including in an electronic format when so kept by the dealer ~~which are located or maintained in this state shall be open for inspection by the department at all reasonable hours at such dealer's store, sales office, general office, warehouse, or place of business located in this state. Any dealer who maintains such books and records at a point outside this state must make such books and records available for inspection by the department where the general records are kept~~. Any dealer subject to ~~the provisions of~~ this chapter who violates this subsection commits ~~these provisions is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the state of any tax revenues, such subsequent offense is ~~shall be~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Effective July 1, 2021, subsection (2) of section 212.15, Florida Statutes, is amended to read:

212.15 Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.—

(2) Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected under this chapter commits theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than $1,000, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a

second conviction, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is $1,000 or more, but less than $20,000, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the total amount of stolen revenue is $20,000 or more, but less than $100,000, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is $100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The amount of stolen revenue may be aggregated in determining the grade of the offense.

Section 6. Subsection (5) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(5) This section does not prevent the department from doing any of the following:

(a) Publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns; ~~or~~

(b) Publishing a list of forwarding agents who have received a Florida Certificate of Forwarding Agent Address,

which list shall include the forwarding agent's entity name, address, and certificate expiration date on the department's website pursuant to s. 212.06(5)(b)10.; or

(c) ~~(b)~~ Using telephones, e-mail, facsimile machines, or other electronic means to do any of the following:

1. Distribute information relating to changes in law, tax rates, interest rates, or other information that is not specific to a particular taxpayer;

2. Remind taxpayers of due dates;

3. Respond to a taxpayer to an electronic mail address that does not support encryption if the use of that address is authorized by the taxpayer; or

4. Notify taxpayers to contact the department.

Section 7. For the purpose of incorporating the amendment made by this act to section 197.222, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 192.0105, Florida Statutes, is reenacted to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are

provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(3) THE RIGHT TO REDRESS.—

(a) The right to discounts for early payment on all taxes and non-ad valorem assessments collected by the tax collector, except for partial payments as defined in s. 197.374, the right to pay installment payments with discounts, and the right to pay delinquent personal property taxes under a payment program when implemented by the county tax collector (see ss. 197.162, 197.3632(8) and (10)(b)3., 197.222(1), and 197.4155).

Section 8. For the purpose of incorporating the amendment made by this act to section 212.06, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 212.07, Florida Statutes, is reenacted to read:

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1)

(c) Unless the purchaser of tangible personal property that is incorporated into tangible personal property manufactured, produced, compounded, processed, or fabricated for one's own use and subject to the tax imposed under s. 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1. extends a certificate in compliance with the rules of the department, the

dealer shall himself or herself be liable for and pay the tax.

Section 9. For the purpose of incorporating the amendment made by this act to section 212.13, Florida Statutes, in a reference thereto, paragraph (f) of subsection (18) of section 212.08, Florida Statutes, is reenacted to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT.—

(f) Purchasers shall maintain all documentation necessary to prove the exempt status of purchases and fabrication activity and make such documentation available for inspection pursuant to the requirements of s. 212.13(2).

Section 10. (1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendment made by this act to s. 212.06, Florida Statutes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon becoming a law and expires January 1, 2025.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect January 1, 2022.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2021
Meeting Date

7068
Bill Number (if applicable)

Topic AMENDMENT #143252 Tax Refund Program

143252
Amendment Barcode (if applicable)

Name ~~FL Economic Development~~ Council Beth Cicchetti

Job Title Exective Director

Address 3551 Blairstone Rd
Street

Phone 850 212 1056

Tallahassee FL 32301
City State Zip

Email bkirkland@fedconline.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Economic Development Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

S-001 (10/14/14)

This form is part of the public record for this meeting.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

SB 7068
Bill Number (if applicable)

143252
Amendment Barcode (if applicable)

Topic Tax Administration (Appropriations)

Name French Brown

Job Title Lobbyist

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Street

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Tallahassee FL 32301
City *State* *Zip*

Email fbrown@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

SB 7068
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tax Refund

Name Mary Swoope

Job Title Florida's Great Northwest - Dir. Strategic Initiatives

Address 100 E College Blvd
Street

Phone 601-278-4740

~~Expo~~ Niceville, FL 32578
City *State* *Zip*

Email mswoope@fgnw.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida's Great Northwest

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 7072
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	Social Media Platforms
DATE:	April 16, 2021
REVISED:	4/21/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney		**GO Submitted as Comm. Bill/Fav**
2.	Smith	Sadberry	AP	**Favorable**

I. Summary:

SB 7072 establishes a violation for social media deplatforming of a political candidate or journalistic enterprise and requires a social medial platform to meet certain requirements when they restrict speech by users.

The bill prohibits social media platforms from deplatforming candidates for political office and allows the Florida Elections Commission to fine a social media platform $100,000 per day for deplatforming statewide candidates and $10,000 per day for deplatforming all other candidates, in addition to the remedies provided in chapter 106, Florida Statutes, relating to campaign financing. Additionally, if a social media platform knowingly provides free advertisements for a candidate, such advertisement is deemed an in-kind contribution, and the candidate must be notified.

The bill establishes restrictions for receiving economic benefits or contracting with public entities for certain social media platforms who have violated antitrust laws and who have been placed on the Antitrust Violator Vendor List. The Department of Management Services (DMS) is required to maintain the Antitrust Violator Vendor List (list) of the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process. The bill outlines the process for placing such person or affiliates on the list, and the process for a person or affiliates to appeal the decision to place such person or affiliate on the list. The bill provides for exceptions from the applicability of the antitrust violator provisions.

The bill requires a social media platform to:

- Publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban;
- Apply censorship, deplatforming, and shadow banning standards in a consistent manner among users on the platform;
- Inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days;

- Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts, and provide that information upon request;
- Categorize algorithms used for post-prioritization and shadow banning and allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content (the opt-out opportunity must be reoffered annually);
- Provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning; and
- Allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

The bill establishes that a social media platform that fails to comply with these requirements may be found in violation of the Florida Deceptive and Unfair Trade Practices Act by the Department of Legal Affairs (DLA). Additionally, a user may bring a private cause of action against a social media platform for failing to apply consistently certain standards and for censoring or deplatforming without proper notice.

The DMS and DLA may experience increased workloads and associated costs in carrying out the duties and responsibilities placed on the agencies in this bill.

The bill expressly provides that if any provision of the act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

The bill takes effect July 1, 2021.

II. Present Situation:

Candidates for Office and In-Kind Contributions

Violations of Florida Election Law

The Division of Elections (division) is created within the Florida Department of State.[1] The division must ensure compliance with election laws, provides statewide coordination of election administration, and promotes public participation in the electoral process.

The Florida Elections Commission (Elections Commission) is created within the Department of Legal Affairs (DLA) of the Office of Attorney General. The Elections Commission is composed of nine members appointed by the Governor.[2] For purposes of the Elections Commission jurisdiction, a "violation" means the willful performance of a prohibited act or the willful failure to perform a required act.[3] Willfulness is a determination of fact; however, at the request of the

[1] Section 20.10(2)(a), F.S.
[2] Section 106.24(1)(b), F.S.
[3] Section 106.25(3), F.S.

respondent at any time after probable cause is found, willfulness may be considered and determined in an informal hearing before the Elections Commission.[4]

The Elections Commission determines probable cause based on the investigator's report, the recommendation of counsel for the Elections Commission, the complaint, and staff recommendations, as well as any written statements submitted by the respondent and any oral statements made at the hearing.[5] If probable cause has been found by the Elections Commission, a respondent may agree to a consent order, elect to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings, or elect to have a formal or informal hearing conducted before the Elections Commission.[6]

In order to carry out its responsibilities, the Elections Commission may subpoena any person in the state, doing business in the state, or who has filed or is required to have filed any application, document, papers, or other information with an office or agency of this state or a political subdivision thereof, and require the production of any papers, books, or other records relevant to any investigation, including the records and accounts of any bank or trust company doing business in this state.[7]

Civil penalties are generally limited to not more than $1,000 per count or violation.[8] Other penalties include permanent or temporary injunctions, and restraining orders.[9] Any civil penalty or fine assessed is deposited into the General Revenue Fund.[10]

Actions for a violation of ch. 104 or 106, F.S., (the elections code and campaign financing, respectively) must be commenced before two years have elapsed from the date of the violation.[11]

In-kind Contributions to Candidates

Section 106.011(3)(e), F.S., defines the term "candidate" to mean a person to whom any of the following applies:

- A person who seeks to qualify for nomination or election by means of the petitioning process;
- A person who seeks to qualify for election as a write-in candidate;
- A person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office;
- A person who appoints a treasurer and designates a primary depository; or
- A person who files qualification papers and subscribes to a candidate's oath as required by law.

[4] *Id.* This section further provides that the Elections Commission may not by rule determine what constitutes willfulness or further define the term "willful" for purposes of election law.
[5] Section 106.25(2), F.S.
[6] Section 106.25(5), F.S.
[7] Section 106.26(1), F.S.
[8] Section 106.265, F.S.
[9] Section 106.27, F.S.
[10] Section 106.265(4), (5), F.S.
[11] Section 106.28, F.S.

Generally, a "political committee" means a combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $500 during a single calendar year:

- Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
- Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

Candidates and political committees must report all contributions, loans, expenditures, distributions, and transfers, regardless of the amount.[12] They must report the full name and address of each person making the contribution or receiving the expenditure and, for contributions over $100, the occupation.[13]

An in-kind contribution[14] is anything of value except money made for the purpose of influencing the results of an election.[15] The valuation of an in-kind contribution is fair market value, and in-kind contributions are subject to the same contribution limitations as money.[16]

Freedom of Speech and Internet Platforms

Section 230

The federal Communications Decency Act (CDA) was passed in 1996 "to protect children from sexually explicit Internet content."[17] 47 U.S. Code § 230 (Section 230) was added as an amendment to the CDA to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum."[18]

Congress stated in Section 230 that "[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[19]

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[12] Sections 106.011(5) and 106.07(1), F.S.
[13] Section 106.07(4)(a), F.S.
[14]Florida Department of State, Division of Elections, *Advisory Opinion (2004) DE04-06*, available at: https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/ (last visited April 19, 2021)
[15] Florida Department of State, Division of Elections, *Campaign Finance*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/ (last visited April 2, 2021)
[16] Sections 106.011(5) and 106.055, F.S.
[17] *Force v. Facebook, Inc.*, 934 F.3d 53, 63 (2d Cir. 2019) (citing *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (citing 141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon))).
[18] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).
[19] 47 U.S.C. § 230(b)(1)–(2).

Specifically, Section 230 states that no provider or user of an interactive computer service may be held liable on account of:[20]

- Any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- Any action taken to enable or make available to information content providers or others the technical means to restrict access to material from any person or entity that is responsible for the creation or development of information provided through any interactive computer service.

Section 230 "assuaged Congressional concern regarding the outcome of two inconsistent judicial decisions,[21] both of which "appl[ied] traditional defamation law to internet providers."[22] The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement ... but the second imposed liability where a service provider filtered content in an effort to block obscene material."[23] To provide clarity, Section 230 provides that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.[24] In light of Congress's objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.[25]

Section 230 specifically addresses how the federal law affects other laws. Section 230 prohibits all inconsistent causes of action and prohibits liability imposed under any State or local law.[26] Section 230 does not affect federal criminal law, intellectual property law, the Electronic Communications Privacy Act of 1986, or sex trafficking law.

Recently, there have been criticisms of the broad immunity provisions or liability shields which force individuals unhappy with third-party content to sue the user who posted it. While this immunity has fostered the free flow of ideas on the Internet, critics have argued that Section 230 shields publishers from liability for allowing harmful content.[27] Congressional and executive proposals to limit immunity for claims relating to platforms purposefully hosting content from those engaging in child exploitation, terrorism, and cyber-stalking have been introduced.[28] Bills have been filed that would require internet platforms to have clear content moderation policies,

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[20] 47 U.S.C. § 230(c).
[21] *Cubby, Inc. v. CompuServe, Inc*., 776 F. Supp. 135 (S.D.N.Y. 1991) and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).
[22] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[23] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173 (citing 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox))).
[24] 47 U.S.C. § 230(c)(1).
[25] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[26] 47 U.S.C. § 230(e).
[27] Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals* Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Feb. 25, 2021).
[28] *Id*; United States Department of Justice, Department of Justice's Review of Section 230 of the Communications Decency Act of 1996, https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996 (last visited Feb. 25, 2021); EARN IT Act of 2020, S.3398, 116th Cong. (2020).

submit detailed transparency reports, and remove immunity for platforms that engage in certain behavioral advertising practices.[29] Proposals have also been offered to limit the liability shield for internet providers who restrict speech based on political viewpoints.[30]

Internet and Social Media Platforms

There are many ways in which individuals access computer systems and interact with systems and other individuals on the Internet. Examples include:

- Social media sites, which are websites and applications, that allow users to communicate informally with others, find people, and share similar interests;[31]
- Internet platforms, which are servers used by an Internet provider to support Internet access by their customers;[32]
- Internet search engines, which are computer software used to search data (such as text or a database) for specified information;[33] and
- Access software providers, which are providers of software (including client or server software) or enabling tools for content processing.[34]

Such platforms earn revenue through various modes and models. Examples include:

- Data monetization.[35] This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.[36]
- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.[37]
- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.[38]

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[29] Bedell, s*upra* note 27; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).
[30] Bedell, s*upra* note 27; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020)
[31] DelValle Institute Learning Center, *Social Media Platforms*, https://delvalle.bphc.org/mod/wiki/view.php?pageid=65 (last visited Feb. 24, 2021).
[32] IGI Global, *Internet Platform*, https://www.igi-global.com/dictionary/internet-platform/15441 (last visited Feb. 24, 2021).
[33] Merriam Webster, *Search Engine*, https://www.merriam-webster.com/dictionary/search%20engine (last visited Feb. 24, 2021).
[34] 47 U.S.C. § 230(f)(4) (defining "access software provider to mean a provider of software (including client or server software), or enabling tools that do any one or more of the following: (i) filter, screen, allow, or disallow content; (ii) pick, choose, analyze, or digest content; or (iii) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.
[35] The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, https://www.hiig.de/en/how-do-digital-platforms-make-their-money/ (last visited Feb. 27, 2021).
[36] Investopedia, *How Do Internet Companies Profit with Free Services?*, https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet. (last visited Feb. 27, 2021).
[37] HIIG, *supra* note 35.
[38] *Id.*

The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) exists "to protect the consuming public and legitimate business enterprises from those who engage in (1) unfair methods of competition; or (2) unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."[39] The FDUTPA is modeled after the federal statute that authorizes the Federal Trade Commission.[40]

Florida has determined that the following acts or practices are unfair or deceptive:
- Imposing unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency;[41]
- Failing to abide by storage requirements for personal information and notice requirements for data breaches of such information;[42] and
- Failing to abide by requirements for weight-loss programs.[43]

The state attorney or the Department of Legal Affairs (DLA) may bring FDUTPA actions when it is in the public interest on behalf of consumers or governmental entities.[44] The Office of the State Attorney (SAO) may enforce FDUTPA violations occurring in its jurisdiction. DLA has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[45] Consumers may also file suit through private actions.[46]

DLA and the SAO have powers to investigate FDUTPA claims, which include:[47]
- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

DLA and the State Attorney, as enforcing authorities, may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and

[39] Section 501.202(2), F.S.
[40] 15 U.S.C. § 45.; *See* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[41] Section 501.160, F.S.
[42] Section 501.171, F.S.
[43] Section 501.0579, F.S.
[44] Section 501.207(1)(c) and (2), F.S.; *see* s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period.); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Feb, 21, 2021).
[45] Section 501.203(2), F.S.
[46] Section 501.211, F.S.
[47] Section 501.206(1), F.S.

- Civil penalties of up to $10,000 per willful violation.[48]

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.[49] "[T]he First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."[50] "[O]nline speech is equally protected under the First Amendment as there is 'no basis for qualifying the level of First Amendment scrutiny that should be applied' to online speech."[51]

It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.[52] The government bears the burden of demonstrating the constitutionality of any such content-based regulation.[53]

The United States Supreme Court has recognized that First Amendment protection extends to corporations.[54] "This protection has been extended by explicit holdings to the context of political speech."[55] Under these precedents, it is well settled that political speech does not lose First Amendment protection "simply because its source is a corporation."[56] Generally, the government may not require a corporation to host another's speech absent a showing of a compelling state interest.[57]

Supremacy Clause

It is a basic tenet of "Our Federalism"[58] that where federal and state law conflict, state law must yield.[59] This principle is captured in Article VI of the Constitution, known as the Supremacy Clause, which reads: "This Constitution, and the Laws of the United States … shall be the

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[48] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.
[49] *See* *De Jonge v. Oregon*, 299 U.S. 353, 364–65(1937)(incorporating right of assembly); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (incorporating right of freedom of speech).
[50] *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).
[51] *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997))
[52] *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 665-66 (2004).
[53] *Id.* at 660.
[54] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010).
[55] *Id.* (citing *NAACP v. Button v.* 371 U.S.415, 428-429 (1963); *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936)).
[56] *Id.* (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. at 784 (1978); see *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (plurality opinion) ("The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster" (quoting *Bellotti*, 435 U.S., at 783)).
[57] *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980); *First National Bank of Boston v. Belliotti*, 438 U.S. (1978); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).
[58] *See* *Younger v. Harris*, 401 U.S. 37, 44–45 (1971).
[59] *Denson v. United States*, 574 F.3d 1318, 1345 (11th Cir. 2009).

supreme Law of the Land …, any Thing in the … Laws of any State to the Contrary notwithstanding."[60] The United States Supreme Court has explained that the Supremacy Clause was designed to ensure that states do not "retard, impede, burden, or in any manner control" the execution of federal law.[61] The framers of the Constitution rejected a proposal to allow a federal veto of state laws "in favor of allowing state laws to take effect, subject to a later challenge under the Supremacy Clause."[62] Outside the strictures of the Supremacy Clause, the States retain broad autonomy in structuring their governments and pursuing legislative objectives."[63]

Antitrust Laws, and State Contracts and Incentives

Antitrust Law

Healthy competition in economic markets keeps prices low and quality high for consumers. When one entity becomes too strong, it can stifle competition, leading to higher prices and harm to consumers.

Antitrust law exists to protect competition, but not necessarily individual competitors, in economic markets, based on the idea that an unregulated market will lead to the creation of coercive monopolies.[64] Federal antitrust law includes the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. These laws are enforced in federal district court[65] by the U.S. Department of Justice (DOJ), the Federal Trade Commission (FTC), state Attorneys General, and private plaintiffs. Antitrust case law is well-developed, and it is often difficult to distinguish aggressive, pro-competitive conduct—which is legal—from predatory, anti-competitive conduct.[66]

The Sherman Antitrust Act[67] prohibits any attempt to restrain trade or form a monopoly. A monopoly has two elements: (1) monopoly power and (2) willful acquisition or maintenance of that power, as opposed to power naturally resulting from a superior product, acumen, or historic accident. Stated differently, a plaintiff must prove the defendant acquired the monopoly power in a "predatory" manner. Penalties for violating the Sherman Act include up to ten years' imprisonment and a fine up to $100 million for a corporation or $1 million for any other person.[68]

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[60] U.S. Const. art. VI, cl 2.
[61] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, (1819); *see also Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211, (1824) (Marshall, C.J.) ("[A]cts of the State Legislatures ... [that] interfere with, or are contrary to the laws of Congress [are to be invalidated because] [i]n every such case, the act of Congress ... is supreme, and the law of State, though enacted in the exercise of powers not controverted, must yield to it.").
[62] *Shelby County v. Holder*, 133 S. Ct. 529, 543 (2013).
[63] *Id.*
[64] John J. Miles, Antitrust Primer, 20140513 AHLA Seminar Papers 1 (2014) (stating the purpose of antitrust law is to "protect and promote competition as the primary method by which this country allocates scarce resources to maximize the welfare of consumers.").
[65] Steven Fox, Litigation Under Florida's Deceptive and Unfair Trade Practices Act, the Florida Antitrust Act, or Federal Antitrust Statutes, The Florida Bar, Business Litigation in Florida (2017) (federal district courts have exclusive jurisdiction over federal antitrust actions).
[66] Animesh Ballabh, Antitrust Law: An Overview, 88 J. Pat. & Trademark Off. Soc'y 877 (2006); John J. Miles, Antitrust Primer, 20140513 AHLA Seminar Papers 1 (2014).
[67] 15 U.S.C. §§. 1 et seq.
[68] 15 U.S.C. §1.

The Clayton Act[69] prohibits specific business actions, including sales, or setting a price, discount or rebate on condition that the buyer not deal with competitors of the seller where the effect may be to substantially lessen competition in interstate commerce.[70] Those types of practices have been held to violate s. 1 of the Sherman Act.[71] The Clayton Act also prohibits prospective corporate mergers and other asset acquisitions whose effects may substantially lessen competition.[72] To determine whether a merger violates the Clayton Act, a court must decide whether the merger is likely to create an appreciable danger of anticompetitive effects. The plaintiff must establish a prima facie case that a transaction is anticompetitive, such as by showing that an acquisition will significantly increase market concentration and lessen competition.[73] The burden then shifts to the defendant to rebut the prima facie case, such as by introducing evidence casting doubt on the plaintiff's prediction of anticompetitive effects.[74] If the defendant rebuts the prima facie case, the plaintiff has the final burden to demonstrate an antitrust violation.[75] If the plaintiff prevails, the customary remedy is for the court to order divestiture and unwind the merger.[76]

In enacting the Florida Antitrust Act of 1980,[77] the Legislature expressly stated its "intent … that, in construing this chapter, due consideration and great weight given to the interpretations of the federal courts relating to comparable federal antitrust statutes."[78] The standing requirements for a private cause of action under the Florida Antitrust Act parallel the standing requirements of Section 4 of the Clayton Act.[79] Implemented by the Office of the Attorney General (OAG), the Florida Antitrust Act essentially mirrors the federal Sherman Act, and prohibits:[80]

- Every contract, combination, or conspiracy in restraint of trade or commerce;[81] and
- Monopolization or attempted monopolization of any part of trade or commerce.[82]

A Florida antitrust law violation is punishable by up to three years imprisonment and fines up to $1 million for a corporation and $100,000 for any other person.[83] There is also a private right of action for any person injured by certain antitrust violations.[84]

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[69] 15 U.S.C. § 18.
[70] 15 U.S.C. § 14.
[71] *See, e.g.*, *U.S. v. Microsoft Corp.*, 87 F. Supp. 2d 30, 47, 51 (D.D.C. 2000), *aff'd, in part, rev'd in part, remanded in part on other grounds*, 253 F.3d 34 (D.C. Cir. 2001).
[72] 15 U.S.C. § 18.
[73] *Olin Corp. v. FTC*, 986 F.2d 1295, 1305 (9th Cir. 1993) (discussing how plaintiff's establishment of a prima facie case on statistical evidence is first step in analysis); *Chicago Bridge & Iron Co. v. FTC*, 534 F.3d 410, 423 (5th Cir. 2008).
[74] Id.
[75] *Chicago Bridge & Iron*, 534 F.3d at 423.
[76] *St. Alphonsus Med. Ctr. v. St. Luke's Health Sys.*, 778 F.3d 775, 792 (9th Cir. 2015).
[77] Sections 542.15 – 542.36, F.S.
[78] Section 542.32, F.S.
[79] *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100, 102 (Fla. 1st DCA 1996).
[80] Section 542.16, F.S.
[81] Section 542.18, F.S.
[82] Section 542.19, F.S.
[83] Section 542.21, F.S.
[84] Sections 542.21 and 542.22, F.S.

Antitrust Actions against Internet Platforms

Critics have argued for years that internet platforms like Google, Apple, Facebook and Amazon improperly built empires over commerce, communications and culture, and then abused their power. Recently, federal and state regulators investigated and brought antitrust cases against these platforms.[85] For example, the FTC and over 40 states, including Florida, have brought an action against Facebook for allegedly buying smaller rivals to maintain market dominance.[86] Also, DOJ and 11 states, including Florida, have brought an action against Google for allegedly manipulating search engine results.[87]

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[88] procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods that include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services. [89]

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[90] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[91]

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,[92] creating uniform agency procurement rules,[93]

[85] David McCabe, Cecilia Kang, and Daisuke Wakabayashi, *Google's Legal Peril Grows in Face of Third Antitrust Suit*, New York Times (Dec. 17, 2020), https://www.nytimes.com/2020/12/17/technology/google-antitrust-monopoly.html (last visited Feb. 25, 2021).
[86] *Id*; *Federal Trade Commission v. Facebook, Inc*., No. 1:20-cv-03590 (D.C. Cir. 2020).
[87] McCabe, supra note 59; *United States Department of Justice v. Google LLC*, No. 1:20-cv-03010 (D.C. Cir. 2020).
[88] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[89] *See* Sections 287.012(6) and 287.057(1), F.S.
[90] Section 287.057(1), F.S., requires all projects that exceed the Category Two threshold amount ($35,000) contained in s. 287.017, F.S., to be competitively procured.
[91] *See* Sections 287.057(3)(e), F.S.
[92] *See* Sections 287.032 and 287.042, F.S.
[93] *See* Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

implementing the online procurement program,[94] and establishing state term contracts.[95] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Certain persons and their affiliates are prohibited from contracting with public entities for services and goods, with certain exceptions, if they have been identified by DMS as violating certain restrictions and have been placed on one of the following lists:[96]

- Convicted Vendor List;
- Discriminatory Vendor List;
- Scrutinized Companies with Activities in Sudan List;
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- Scrutinized Companies that Boycott Israel List.

Economic Incentives

The Department of Economic Opportunity (DEO) advances Florida's economy by championing the state's economic development vision and by administering state and federal programs and initiatives to help visitors, citizens, businesses, and communities.[97] Enterprise Florida, Inc. (EFI) is a nonprofit corporation established by the Legislature to serve as the state's main economic development organization.[98] EFI is required to enter into a performance-based contract with DEO.[99]

EFI works with businesses and economic development partners to determine whether projects are eligible for state economic development incentives. A project must be vetted by EFI and EFI must determine that incentives are necessary to secure a deal in order for an incentive package to be developed and sent to DEO for further review. Once the incentive package is finalized, DEO and other appropriate state bodies issue formal approvals.

Florida has a number of incentive programs intended to promote economic development in the state. These programs come in a variety of forms including tax refunds, tax credits, tax exemptions, and cash grants under chapter 288, Florida Statutes. Businesses interested in expanding or relocating in Florida learn about the state's economic incentive programs through several channels, including EFI, state and local economic development organizations, and private site selection consultants. Businesses can apply for more than one incentive to support their expansion or relocation projects.[100]

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[94] *See* Section 287.057(23), F.S.
[95] *See* Sections 287.042(2), 287.056, and 287.1345, F.S.
[96] Sections 287.133-135, F.S.
[97] Section 20.60(4)(b)(f), F.S.; Florida Department of Economic Opportunity, About Us, https://floridajobs.org/about-us (last visited Feb. 22, 2021).
[98] Section 288.901, F.S. Chapter 92-277, Laws of Fla., created EFI, while ch. 96-320, Laws of Fla, established EFI as a public-private partnership.
[99] Section 20.60(1), F.S., requires DEO to "establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, and Space Florida and report annually on how these performance measures are being met."
[100] OPPAGA, Report No. 16-09, p. 50-51.

Once a company begins the application process, EFI notifies the division so that it may begin the formal due diligence process to determine the business's statutory eligibility and financial standing. When due diligence and the application are complete, EFI determines what incentives and associated amounts may be available to the applicant and makes an approval or disapproval recommendation to DEO's executive director. If the business is approved, DEO will develop a contract or agreement with the applicant that specifies the total incentive amount, performance conditions that must be met to receive payment, payment schedule, and sanctions for failure to meet performance conditions.[101]

III. Effect of Proposed Changes:

The bill provides the following definitions:

- "Affiliate" means:
  - A predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or
  - An entity under the control of any natural person who is active in the management of the entity and who has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The term also includes a person who knowingly enters into a joint venture with a person who has violated an antitrust law during the preceding 36 months.
- "Algorithm" means a mathematical set of rules that specify how a group of data behaves and that will assist in ranking search results and maintaining order or that is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material
- "Antitrust violation" means any state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, the Federal Trade Commission, or the United States Department of Justice.
- "Antitrust violator vendor list" means the list required to be kept by the department (DMS) as a new provision of the bill. The list identifies any person or affiliate convicted or being held civilly liable for an antitrust violation.
- "Candidate" has the same meaning as in s. 106.011(3)(e), F.S. (a person who files qualification papers and subscribes to a candidate's oath as required by law).
- "Censor" includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. This term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.
- "Convicted or being held civilly liable" or "convicted or held civilly liable" means a criminal finding of guilt or conviction, with or without an adjudication of guilt, being held civilly liable, or having a judgment levied for an antitrust violation, in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other order finding liability.

[101] *Id.*

- "Deplatform" has the same meaning as in the new provision of the bill addressing censorship, s. 501.2041, F.S. That is, the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 60 days.
- "Economic incentives" means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under ch. 288, F.S., or administered by Enterprise Florida, Inc.
- "Journalistic enterprise" means an entity that:
  - Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;
  - Publishes 100 hours of audio or video available online with at least 100 million viewers annually;
  - Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or
  - Operates under a broadcast license issued by the Federal Communications Commission.
- "Person" means a natural person or an entity organized under the laws of any state or of the United States *who operates as a social media platform*, with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
- "Post-prioritization" means action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, feed, view, or search results. The term does not include post-prioritization of content and material based on payments by a third party, including other users, to the social media platform.
- "Public entity" means the state and any of its departments or agencies.
- "Shadow ban" means action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform that are not readily apparent to a user.
- "Social media platform" means any technology platform or access software provider that does business in the state and provides or enables computer access by multiple users in a public digital forum for the primary purpose of connecting with other users and creating and sharing user generated content over the Internet. The internet platform or social media site may be a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity, that does business in this state and that satisfies at least one of the following thresholds:
  - Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.
  - Has at least 100 million monthly individual platform participants globally.
- "User" means a person who resides or is domiciled in this state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform.

Section 1 creates s. 106.072, F.S., to provide requirements for candidates and social media platforms related to social media deplatforming of political candidates. This section provides that a social media platform may not knowingly deplatform a candidate. Upon a finding of a violation of this section by the Elections Commission, in addition to the remedies provided in ss. 106.265 and 106.27, F.S., the social media platform may be fined $100,000 per day for deplatforming a statewide candidate, and $10,000 per day for deplatforming all other candidates.

This section provides that if a social media platform knowingly provides free advertising for a candidate must inform the candidate of such in-kind contribution. Posts, content, material, and comments by candidates which are shown on the platform in the same or similar way as other users' poses, content, material, and comments are not considered free advertising.

This section provides that this provision may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 2 creates 287.137, F.S., to establish restrictions for contracting with public entities for certain social media platforms who have violated antitrust laws. This section provides that a person or affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not:

- Submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity;
- Submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work;
- Submit a bid, proposal, or reply on new leases of real property to a public entity;
- Be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; or
- Transact new business with a public entity.

This section prohibits a public entity from accepting a bid, proposal, or reply from, awarding a new contract to, or transacting new business with any person or affiliate on the list unless that person or affiliate has been removed from the list. This prohibition does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the list or before July 1, 2021.

This section provides that beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as those terms are defined in s. 287.012, F.S., and any contract document described in s. 287.058, F.S., must contain a statement informing persons of the public contracting and purchasing disqualifications imposed upon being placed on the antitrust vendor list.

The department must maintain an antitrust violator vendor list of the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process. DMS must publish the initial antitrust violator vendor list on January 1, 2022, and must update and electronically publish the list quarterly thereafter. A person or an affiliate disqualified from the public contracting and purchasing process is disqualified as of the date the final order is entered.

This section requires DMS to investigate, upon receiving reasonable information from any source, that a person was convicted or held civilly liable for antitrust violations, and determine whether good cause exists to place that person or an affiliate of that person on the list. If good cause exists, DMS must notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, DMS must enter a final order placing the name of the person or affiliate on the list. A person or affiliate may not be placed on the list without receiving an individual notice of intent from DMS.

This section allows a person or affiliate to dispute placement on the list. Within 21 days after receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under the Administrative Procedures Act (ss. 120.569 and 120.57(1), F.S.) to determine whether it is in the public interest for the person or affiliate to be placed on the list. A person or affiliate is prohibited from filing a petition for an informal hearing under s. 120.57(2), F.S.

This section specifies that the procedures of the Administrative Procedures Act apply to any formal hearing, except, within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge (ALJ) must enter a final order that consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. The final order must direct the DMS to place or not place the person or affiliate on the antitrust violator vendor list. The final order of the administrative law judge is final agency action for purposes of s. 120.68, F.S.

This section provides that any person or affiliate who has been notified by the DMS of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person convicted or held civilly liable.

This section provides that, in a formal hearing, DMS must prove that it is in the public interest for the person or affiliate to be placed on the list. Proof that a person was convicted or was held civilly liable for antitrust violations, or that an entity is an affiliate of such a person constitutes a prima facie case that it is in the public interest for the person or affiliate to be put on the list. Status as an affiliate must be proven by clear and convincing evidence. If the ALJ determines that the person was not convicted or that the person was not civilly liable or is not an affiliate of such person, that person or affiliate may not be placed on the antitrust violator list.

This section provides that in determining whether it is in the public interest to place a person or affiliate on the list, the bill indicates that the ALJ must consider the following factors:

- Whether the person or affiliate committed an antitrust violation.
- The nature and details of the antitrust violation.
- The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.
- Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.
- The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the DMS has given notice to be put on the list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor list, based upon evidence addressing the factors listed above.

This section permits the Attorney General to temporarily place any person charged or accused of any state or federal antitrust law in a civil or criminal proceeding brought by the Attorney General, a state attorney, the Federal Trade Commission, or the United States Department of Justice on or after July 1, 2021, on the list. The Attorney General may make a finding of probable cause that a person has likely violated the underlying antitrust laws, and temporarily place such person on the antitrust violator vendor list until such proceeding has concluded. Affiliates may not be placed on the list under this temporary procedure.

If probable cause exists, the Attorney General must notify the person in writing of its intent to temporarily place the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the Attorney General must enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the Attorney General.

Within 21 days after receipt of the notice of intent, the person may file a petition for a formal hearing under the Administrative Procedures Act to determine whether it is in the public interest for the person to be temporarily placed on the antitrust violator vendor list. A person may not file a petition for informal hearing.

In determining whether it is in the public interest to temporarily place a person on the antitrust violator vendor, the ALJ must consider the following factors:

- The likelihood the person committed the antitrust violation.
- The nature and details of the antitrust violation.
- The degree of culpability of the person proposed to be placed on the list.
- The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

This section specifies that the temporary removal procedure does not apply to affiliates.

Section 2 also allows a person or affiliate to petition for removal from the antitrust violator vendor list no sooner than six months after the date a final order is entered. If the petition is based upon a reversal of the conviction or liability on appellate review or pardon, then they may petition at any time. The petition must be filed with the DMS. A person or affiliate may be removed from the list subject to such terms and conditions as prescribed by the ALJ upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the ALJ must consider any relevant factors.

This section provides that upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the

person's conviction or determination of liability has been reversed on appeal, or that the person has been pardoned, the ALJ must determine that removal of the person or an affiliate from the list is in the public interest.

If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of nine months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The DMS may petition for removal before the expiration of such period if it determines that removal would be in the public interest.

This section provides that the conviction of a person or a person held civilly liable for an antitrust violation, or placement on the antitrust violator vendor list, does not affect any rights or obligations under any contract, franchise, or other binding agreement that predates such conviction or placement on the antitrust violator vendor list.

This section provides that a person who has been placed on the antitrust violator vendor list is not a qualified applicant for economic incentives under ch. 288, F.S., and such entity shall not be qualified to receive such economic incentives.

This section specifies that the provision regarding the antitrust violator vendor list does not apply to any activities regulated by the Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under ch. 946, F.S., or from any qualified nonprofit agency for the blind or any qualified nonprofit agency for other severely handicapped persons under ss. 413.032-413.037, F.S..

The bill expressly provides that the antitrust violator vendor list may only be enforced to the extent not inconsistent with federal law and notwithstanding any other provision of state law.

Section 3 creates s. 501.2041, F.S., to establish unlawful acts and practices by social media platforms. This section requires a social media platform to:

- Publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban;
- Apply censorship, deplatforming, and shadow banning standards in a consistent manner among users on the platform;
- Inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days;
- Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts, and provide that information upon request;
- Categorize algorithms used for post-prioritization and shadow banning and allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content (the opt-out opportunity must be reoffered annually);
- Provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning; and
- Allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

This section prohibits a social media platform from censoring a user's content or material or deplatforming a user from the social media platform in a way that would otherwise violate FDUTPA, or without notifying the user who posted or attempted to post the content or material. The notification must:

- Be in writing;
- Be delivered via electronic mail or direct electronic notification to the user within 30 days of the censoring action;
- Include a thorough rationale explaining the reason that the social media platform censored the user; and
- Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.

This section also prohibits a social media platform from:

- Applying or using post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate for office in Florida, beginning from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation. Social media platforms must provide users with a method to identify themselves as qualified candidates, and may confirm such qualification by reviewing the website of the Division of Elections of the Department of State.
- Taking any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic enterprise is not a violation.

This section provides that a social media platform is not required to notify a user of a censoring action if the censored content or material is obscene (as defined in s. 847.001, F.S.), which means content or material that:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

If a social media platform fails to comply with any of the foregoing requirements, the bill provides that the social media platform commits an unfair or deceptive trade act or practice. If the DLA, by its own inquiry or as a result of a complaint, suspects that a violation is imminent, occurring, or has occurred, DLA may investigate the suspected violation in accordance with FDUTPA. In an investigation by DLA into alleged violations of this section, DLA's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

A user may bring a private cause of action against a social media platform for failing to:
- Notify such user of an act of censoring or deplatforming; or
- Apply censorship, deplatforming, and shadow banning standards in a consistent manner.

The court may award the following damages to the user:
- Up to $100,000 in statutory damages per proven claim;
- Actual damages;
- If aggravating factors are present, punitive damages;
- Other forms of equitable relief; and
- If the user was deplatformed, costs and reasonable attorney fees.

Each failure to comply with each of the individual requirements in the bill are treated as a separate violation, act, or practice by the social media platform.

The bill provides that its provisions may only be enforced to the extent they are not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 4 amends s. 501.212, F.S., to update a cross reference.

Section 5 expressly provides that if any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity must not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6 provides the bill take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Jurisdiction

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. The circuit courts of Florida are courts of general jurisdiction.[102] Subject matter jurisdiction is conferred upon a court by the Constitution or statute, or both.[103]

The Florida Supreme Court set forth the two-prong test for personal jurisdiction: first, the complaint must allege sufficient jurisdictional facts to come within Florida's long-arm statute[104] (s. 48.193, F.S.); and second, the nonresident defendant must have minimum contacts with Florida to satisfy federal due process requirements.[105] The constitutional "minimum contacts" prong "is controlled by United States Supreme Court precedent interpreting the Due Process Clause and imposes a more restrictive requirement" than the long-arm statute.[106] Both prongs must be satisfied in order to exercise personal jurisdiction over a non-resident defendant.[107]

The long arm statute confers jurisdiction over parties who are "[o]perating, conducting, engaging in, or carrying on a business or business venture in [Florida] or having an office or agency in [Florida]."[108] "In order to establish that a defendant is 'carrying on business' for the purposes of [Florida's] long-arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the state for pecuniary benefit."[109] Courts consider the following factors in analyzing whether a non-resident defendant is engaged in "a general course of business activity": (1) "the presence and operation of an office in Florida"; (2) "the possession and maintenance of a license to do business in Florida"; (3) "the number of Florida clients served"; and (4) "the percentage of overall revenue gleaned from Florida clients."[110]

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[102] *N.B. v. Dep't of Children of Families*, 274 So. 3d 1163, 1167 (Fla. 3d DCA 2019)(quoting *Curtis v. Albritton*, 101 Fla. 853, 861 (1931); *see also* Art. V, § 5(b), Fla. Const.; s. 26.012, F.S.

[103] *Lovett v. Lovett*, 112 So. 768, 775 (Fla. 1927)(explaining that subject-matter jurisdiction includes both the "jurisdictional power to adjudicate the class of cases to which such case belongs" and the requirement "that its jurisdiction has been invoked in the particular case by lawfully bringing before it the necessary parties to the controversy").

[104] A long-arm statute is a statutory device by which a state obtains jurisdiction over certain causes of action involving parties or events (or both) outside that state. It is called a long-arm statute because it allows a state court to reach parties located outside the state and even possibly for events which occurred outside the state. In essence, it allows the state to reach its "long arm" outside the state.

[105] *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989).

[106] *Execu-Tech Bus. Sys. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000); *see also Internet Sols. Corp. v. Marshall*, 39 So.3d 1201, 1207 (Fla. 2010) (explaining that Florida's long-arm statute "bestows broad jurisdiction" whereas "United States Supreme Court precedent interpreting the Due Process Clause ... imposes a more restrictive requirement.").

[107] *Rollet v. de Bizemont*, 159 So. 3d 351, 356 (Fla. 3d DCA 2015).

[108] Section 48.193(1)(a)1., F.S.

[109] *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1167 (11th Cir. 2005)(citation omitted).

[110] *Id.*

Whether a nonresident defendant has those requisite minimum contacts to satisfy constitutional due process requirements is a fact specific inquiry.[111] "Factors that go into determining whether sufficient minimum contacts exist include the foreseeability that the defendant's conduct will result in suit in the forum state and the defendant's purposeful availment of the forum's privileges and protections."[112] A nonresident's occasional physical presence in Florida to attend trade shows, or "to make a one-off corporate solicitation" of a company whose office is in Florida has been found insufficient to comport with the constitutional due process requirements.[113] Minimum contacts may be satisfied, however, when a non-resident defendant enters into a contract with a Florida party for substantial services performed in Florida and agrees to make payment in Florida.[114]

Whether a Florida court would have personal jurisdiction over a nonresident internet or social media platform defendant involves a fact specific inquiry to be decided by a court on a case-by-case basis.

Freedom of Speech

First Amendment protection extends to corporations.[115] Corporations and other associations, like individuals contribute to the "discussion, debate, and the dissemination of information and ideas" that the First Amendment seeks to foster.[116] Corporations also have a right to unrestricted independent expenditures for political communications and elections as a form of corporate speech.[117]

The bill permits the state attorney and citizens to sue a social media platform if the company does not consistently apply its user standards or do not give required notice. Additionally, the bill protects political candidates by exempting a candidate's posts from being promoted or shadow banned during an election. Because these provisions may be read to regulate speech or interfere with the editorial discretion of a private company[118] (Twitter, Facebook, etc.), the First Amendment may be implicated.

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[111] *See Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989) (relying on *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174 (1985), for the proposition that whether the minimum-contacts requirement has been satisfied depends upon the facts of each case).

[112] *Georgia Insurers Insolvency Pool v. Brewer*, 602 So.2d 1264, 1268 (Fla.1992)(citation omitted).

[113] *See Piazenko v. Pier Marine Interiors GMBH*, 2020 WL 6751314 (Fla. 3d DCA Nov. 18, 2020); *see also Price v. Point Marine, Inc.*, 610 So. 2d 1339, 1342 (Fla. 1st DCA 1992) (affirming dismissal for lack of jurisdiction over non-resident defendant where, "absent a continued and sustained effort to procure business, or actual procurement of business, these activities are insufficient to constitute substantial activities within the state of Florida").

[114] *Smith Architectural Grp., Inc. v. Dehaan*, 867 So. 2d 434, 436 (Fla. 4th DCA 2004); *see also Stomar, Inc. v. Lucky Seven Riverboat Co.*, 821 So.2d 1183 (Fla. 4th DCA 2002) (allegation that owner of vessel breached agreement with Florida ship broker by failing to pay commission owed to broker in Florida sufficient to satisfy first prong of jurisdictional inquiry).

[115] *Citizens United*, 558 U.S. at 342.

[116] *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1, 8 (1986), quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978).

[117] *Id.* at 340.

[118] *Miami Herald Publishing Co. v. Tornmillo*, 418 U.S. 241 (1974)(striking down a Florida statute requiring newspapers that print editorials critical of a political candidate to print a reply by the candidate).

Supremacy Clause

As discussed above, the Supremacy Clause was designed to ensure that states do not "retard, impede, burden, or in any manner control" the execution of federal law.[119]

The bill may implicate the Supremacy Clause by attempting to regulate in an area that may be preempted by federal law.[120]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person or affiliate may experience an indeterminate fiscal impact if such party is disqualified from state term contract eligibility upon removal from the vendor list as specified within the bill.

C. Government Sector Impact:

The Department of Management Services has indicated no additional resources are needed to implement the bill.[121]

The Department of Legal Affairs has indicated additional resources would be need for investigating violations as directed in the bill, specifically one senior level attorney and on paralegal specialist, for a total of $177,608.[122]

VI. Technical Deficiencies:

Lines 71 to 76 provide:

> A social media platform may not *knowingly* deplatform a candidate. Upon a finding of a *violation* of this section by the Elections Commission, in addition to the remedies provided in ss. 106.265 and 106.27, F.S., the social media platform … (emphasis added).

Section 106.25(3), F.S., provides that:

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[119] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, (1819); *see also Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211, (1824) (Marshall, C.J.) ("[A]cts of the State Legislatures ... [that] interfere with, or are contrary to the laws of Congress [are to be invalidated because] [i]n every such case, the act of Congress ... is supreme, and the law of State, though enacted in the exercise of powers not controverted, must yield to it.").

[120] 47 U.S.C. § 203(e).

[121] Email from Tyler Jefferson, Legislative Affairs Coordinator, DMS, to Christina Smith, Chief Analyst, Florida Senate (April 13, 2021) (on file with the Senate Committee on Appropriations)

[122] Email from Sarah Nortelus, Deputy Director of Administration, DLA, to Christina Smith, Chief Analyst, Florida Senate (April 13, 2021) (on file with the Senate Committee on Appropriations)

> For the purposes of commission jurisdiction, a *violation* shall mean the *willful performance* of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104. The commission may not by rule determine what constitutes willfulness or further define the term "willful" for purposes of this chapter or chapter 104. *Willfulness* is a determination of fact; however, at the request of the respondent at any time after probable cause is found, willfulness may be considered and determined in an informal hearing before the commission.

The bill creates a violation that is based on acting "knowingly" while the same chapter defines a violation to be a "willful act." The term "willful" is generally taken to cover not only knowing violations of a standard, but reckless ones as well.[123] The use of the term "knowingly" suggests that a defendant acts with actual knowledge or awareness that the act he or she performs is unlawful. The Legislature may want to consider an amendment to align these provisions to the same standard.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.212 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 106.072, 287.137, and 501.2041.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[123] *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2007).

By the Committee on Governmental Oversight and Accountability

585-03840-21 20217072__

A bill to be entitled

An act relating to social media platforms; creating s. 106.072, F.S.; defining terms; prohibiting a social media platform from knowingly deplatforming a candidate; providing fines for violations; authorizing social media platforms to provide free advertising for candidates under specified conditions; providing enforcement authority consistent with federal and state law; creating s. 287.137, F.S.; defining terms; providing requirements for public contracts and economic incentives related to entities that have been convicted or held civilly liable for antitrust violations; prohibiting a public entity from entering into any type of contract with a person or an affiliate on the antitrust violator vendor list; providing applicability; requiring certain contract documents to contain a specified statement; requiring the Department of Management Services to maintain a list of people or affiliates disqualified from the public contracting and purchasing process; specifying requirements for publishing such list; providing procedures for placing a person or an affiliate on the list; providing procedural and legal rights for a person or affiliate to challenge placement on the list; providing a procedure for temporarily placing a person on an antitrust violator vendor list; providing procedural and legal rights for a person to challenge temporary placement on the list; specifying conditions for removing certain entities and affiliates from the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03840-21 20217072__

list; authorizing a person, under specified conditions, to retain rights or obligations under existing contracts or binding agreements; prohibiting a person who has been placed on the antitrust violator vendor list from receiving certain economic incentives; providing exceptions; providing enforcement authority consistent with federal and state law; creating s. 501.2041, F.S.; defining terms; providing that social media platforms that fail to comply with specified requirements and prohibitions commit an unfair or deceptive act or practice; requiring a notification given by a social media platform for censoring content or deplatforming a user to contain certain information; providing an exception to the notification requirements; authorizing the Department of Legal Affairs to investigate suspected violations under the Deceptive and Unfair Trade Practices Act and bring specified actions for such violations; specifying circumstances under which a private cause of action may be brought; specifying how damages are to be calculated; providing construction for violations of certain provisions of this act; granting the department specified subpoena powers; providing enforcement authority consistent with federal and state law; amending s. 501.212, F.S.; conforming a provision to changes made by the act; providing for severability; providing an effective date.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 106.072, Florida Statutes, is created to read:

106.072 Social media deplatforming of political candidates.—

(1) As used in this section, the term:

(a) "Candidate" has the same meaning as in s. 106.011(3)(e).

(b) "Deplatform" has the same meaning as in s. 501.2041.

(c) "Social media platform" has the same meaning as in s. 501.2041.

(2) A social media platform may not knowingly deplatform a candidate. Upon a finding of a violation of this section by the Elections Commission, in addition to the remedies provided in ss. 106.265 and 106.27, the social media platform may be fined $100,000 per day for statewide candidates and $10,000 per day for other candidates.

(3) A social media platform that knowingly provides free advertising for a candidate must inform the candidate of such in-kind contribution. Posts, content, material, and comments by candidates which are shown on the platform in the same or similar way as other users' posts, content, material, and comments are not considered free advertising.

(4) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 2. Section 287.137, Florida Statutes, is created to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(1) As used in this section, the term:

(a) "Affiliate" means:

1. A predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, is a prima facie case that one person controls another person. The term also includes a person who knowingly enters into a joint venture with a person who has violated an antitrust law during the preceding 36 months.

(b) "Antitrust violation" means any state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, the Federal Trade Commission, or the United States Department of Justice.

(c) "Antitrust violator vendor list" means the list required to be kept by the department pursuant to paragraph (3)(b).

(d) "Conviction or being held civilly liable" or "convicted

or held civilly liable" means a criminal finding of guilt or conviction, with or without an adjudication of guilt, being held civilly liable, or having a judgment levied for an antitrust violation in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other order finding of liability.

(e) "Economic incentives" means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under chapter 288 or administered by Enterprise Florida, Inc.

(f) "Person" means a natural person or an entity organized under the laws of any state or of the United States which operates as a social media platform, as defined in s. 501.2041, with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

(g) "Public entity" means the state and any of its departments or agencies.

(2)(a) A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for

the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

(b) A public entity may not accept a bid, proposal, or reply from, award a new contract to, or transact new business with any person or affiliate on the antitrust violator vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(e).

(c) This subsection does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the antitrust violator vendor list or before July 1, 2021.

(3)(a) Beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as those terms are defined in s. 287.012, and any contract document described in s. 287.058 must contain a statement informing persons of the provisions of paragraph (2)(a).

(b) The department shall maintain an antitrust violator vendor list of the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process under this section. The department shall electronically publish the initial antitrust violator vendor list on January 1, 2022, and shall update and electronically publish the list quarterly thereafter. Notwithstanding this paragraph, a person or an affiliate disqualified from the public contracting and purchasing process

pursuant to this section is disqualified as of the date the final order is entered.

(c)1. Upon receiving reasonable information from any source that a person was convicted or held civilly liable, the department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the antitrust violator vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the antitrust violator vendor list and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the antitrust violator vendor list. A person or an affiliate may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person or affiliate to be placed on the antitrust violator vendor list. A person or an affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph except, within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order that shall consist of findings of fact, conclusions of law,

interpretation of agency rules, and any other information required by law or rule to be contained in the final order. The final order shall direct the department to place or not place the person or affiliate on the antitrust violator vendor list. The final order of the administrative law judge is final agency action for purposes of s. 120.68.

3. In determining whether it is in the public interest to place a person or an affiliate on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:

a. Whether the person or affiliate committed an antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.

d. Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.

e. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

4. In any proceeding under this paragraph, the department must prove that it is in the public interest for the person or affiliate to whom it has given notice under this paragraph to be placed on the antitrust violator vendor list. Proof that a person was convicted or was held civilly liable or that an entity is an affiliate of such person constitutes a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list. Status as an affiliate must

be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or that the person was not civilly liable or is not an affiliate of such person, that person or affiliate may not be placed on the antitrust violator vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person convicted or held civilly liable. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor list, based upon evidence addressing the factors in subparagraph 3.

(d)1. If a person has been charged or accused of any state or federal antitrust law in a civil or criminal proceeding brought by the Attorney General, a state attorney, the Federal Trade Commission, or the United States Department of Justice on or after July 1, 2021, the Attorney General may, by a finding of probable cause that a person has likely violated the underlying antitrust laws, temporarily place such person on the antitrust violator vendor list until such proceeding has concluded.

2. If probable cause exists, the Attorney General shall notify the person in writing of its intent to temporarily place

the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the Attorney General shall enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the Attorney General.

3. Within 21 days after receipt of the notice of intent, the person may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person to be temporarily placed on the antitrust violator vendor list. A person may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph.

4. In determining whether it is in the public interest to place a person on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:

a. The likelihood the person committed the antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person proposed to be placed on the antitrust violator vendor list.

d. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

5. This paragraph does not apply to affiliates.

(e)1. A person or an affiliate may be removed from the antitrust violator vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge must consider any relevant factors, including, but not limited to, the factors identified in subparagraph (c)3. Upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the person's conviction or determination of liability has been reversed on appeal, or the person has been pardoned, the administrative law judge shall determine that removal of the person or an affiliate of that person from the antitrust violator vendor list is in the public interest. A person or an affiliate on the antitrust violator vendor list may petition for removal from the list no sooner than 6 months after the date a final order is entered pursuant to this section but may petition for removal at any time if the petition is based upon a reversal of the conviction or liability on appellate review or pardon. The petition must be filed with the department, and the proceeding must be conducted pursuant to the procedures and requirements of this subsection.

2. If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal before the expiration of such period if, in its discretion, it determines

that removal would be in the public interest.

(4) The conviction of a person or a person held civilly liable for an antitrust violation, or placement on the antitrust violator vendor list, does not affect any rights or obligations under any contract, franchise, or other binding agreement that predates such conviction or placement on the antitrust violator vendor list.

(5) A person who has been placed on the antitrust violator vendor list is not a qualified applicant for economic incentives under chapter 288, and such entity shall not be qualified to receive such economic incentives.

(6) This section does not apply to any activities regulated by the Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any qualified nonprofit agency for the blind or any qualified nonprofit agency for other severely handicapped persons under ss. 413.032-413.037.

(7) This section may only be enforced to the extent not inconsistent with federal law and notwithstanding any other provision of state law.

Section 3. Section 501.2041, Florida Statutes, is created to read:

501.2041 Unlawful acts and practices by social media platforms.—

(1) As used in this section, the term:

(a) "Algorithm" means a mathematical set of rules that specifies how a group of data behaves and that will assist in ranking search results and maintaining order or that is used in

sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material.

(b) "Censor" includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. The term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.

(c) "Deplatform" means the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 60 days.

(d) "Journalistic enterprise" means an entity that:

1. Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;

2. Publishes 100 hours of audio or video available online with at least 100 million viewers annually;

3. Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or

4. Operates under a broadcast license issued by the Federal Communications Commission.

(e) "Post-prioritization" means action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, a feed, a view, or in search

results. The term does not include post-prioritization of content and material based on payments by a third party, including other users, to the social media platform.

(f) "Shadow ban" means action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform which are not readily apparent to a user.

(g) "Social media platform" means any technology platform or access software provider that does business in the state and provides or enables computer access by multiple users in a public digital forum for the primary purpose of connecting with other users and creating and sharing user generated content over the Internet. The Internet platform or social media site may be a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that does business in this state and that satisfies at least one of the following thresholds:

1. Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.

2. Has at least 100 million monthly individual platform participants globally.

(h) "User" means a person who resides or is domiciled in this state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform.

(2) A social media platform that fails to comply with any of the provisions of this subsection commits an unfair or deceptive act or practice as specified in s. 501.204.

(a) A social media platform must publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban.

(b) A social media platform must apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform.

(c) A social media platform must inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.

(d) A social media platform may not censor a user's content or material or deplatform a user from the social media platform:

1. Without notifying the user who posted or attempted to post the content or material; or

2. In a way that violates this part.

(e) A social media platform must:

1. Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts.

2. Provide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts.

(f) A social media platform must:

1. Categorize algorithms used for post-prioritization and shadow banning.

2. Allow a user to opt out of post-prioritization and

shadow banning algorithm categories to allow sequential or chronological posts and content.

(g) A social media platform must provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually the opt-out opportunity in subparagraph (f)2.

(h) A social media platform may not apply or use post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate as defined in s. 106.011(3)(e), beginning from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation of this paragraph. Social media platforms must provide users with a method to identify themselves as qualified candidates and may confirm such qualification by reviewing the website of the Division of Elections of the Department of State.

(i) A social media platform must allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

(j) A social media platform may not take any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic

enterprise is not a violation of this paragraph.

(3) For purposes of subparagraph (2)(d)1., a notification must:

(a) Be in writing.

(b) Be delivered via electronic mail or direct electronic notification to the user within 30 days after the censoring action.

(c) Include a thorough rationale explaining the reason that the social media platform censored the user.

(d) Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.

(4) Notwithstanding any other provisions of this section, a social media platform is not required to notify a user if the censored content or material is obscene as defined in s. 847.001.

(5) If the department, by its own inquiry or as a result of a complaint, suspects that a violation of this section is imminent, occurring, or has occurred, the department may investigate the suspected violation in accordance with this part. Based on its investigation, the department may bring a civil or administrative action under this part.

(6) A user may only bring a private cause of action for violations of paragraph (2)(b) or subparagraph (2)(d)1. In a private cause of action brought under paragraph (2)(b) or subparagraph (2)(d)1., the court may award the following damages to the user:

(a) Up to $100,000 in statutory damages per proven claim.

(b) Actual damages.

(c) If aggravating factors are present, punitive damages.

(d) Other forms of equitable relief.

(e) If the user was deplatformed in violation of paragraph (2)(b), costs and reasonable attorney fees.

(7) For purposes of bringing an action under subsection (2) or subsection (6), each failure to comply with the individual provisions of subsection (2) shall be treated as a separate violation, act, or practice.

(8) In an investigation by the department into alleged violations of this section, the department's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

(9) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 4. Subsection (2) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(2) Except as provided in s. 501.2041, a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the

invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

SB 7072
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SOCIAL MEDIA

Name CARL SZABO

Job Title Vice President

Address 1401 K St NW Suite 502
Street
WASHINGTON DC 20005
City *State* *Zip*

Phone 202-420-7485

Email CSZABO@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NETCHOICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/19/21
Meeting Date

SB 7072
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Big Tech Censorship

Name Samantha Fillmore

Job Title State Government Relations Manager

Address 3636 N Wilke Rd
Street

Phone (210) 548-0337

Arlington Heights IL 60004
City *State* *Zip*

Email Sfillmore@heartland.org

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Heartland Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Committee Code Not Found

BILL:	SB 7074
INTRODUCER:	Governmental Oversight and Accountability Committee
SUBJECT:	Public Records/Social Media Platform Activities
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ponder	McVaney		**GO Submitted as Comm. Bill/Fav**
1.	Dale	Sadberry	AP	**Favorable**

I. Summary:

SB 7074, which is linked to the passage of SB 7072 (2021), makes confidential and exempt from public copying and inspection requirements information collected for the Department of Legal Affairs (DLA) investigations into whether:

- A social media platform has committed an antitrust violation based on a case brought by a governmental entity; and
- A social media platform has failed to meet certain requirements before restricting speech by users.

Once an investigation is completed, only the following information received by DLA will remain confidential and exempt:

- All information to which another public records exemption applies;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business's data security; and
- Proprietary business information.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

The bill will become effective on the same date that SB 7072 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.

II. Present Situation:

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no broader than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; and
- Protect trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Technology Transparency

Section 230 of the federal Communications Decency Act provides that internet platforms cannot be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the internet platform considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.[7] The Act also provides internet platforms with immunity from claims based on third-party content that appears on their platforms.[8]

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[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I. s. 24(c), FLA. CONST.
[4] Section 119.15, F.S.
[5] Section 119.15(6)(b), F.S.
[6] Section 119.15(3), F.S.
[7] 47 U.S.C. § 230(c).
[8] *Id.*

Recently, there have been criticisms of the broad federal immunity provisions granted to internet platforms. While this immunity has fostered the free flow of ideas on the internet, critics have argued that the immunity provisions shield publishers from liability for harmful content or political censorship.[9]

Antitrust and Internet Platforms

A handful of digital or internet platforms - Google, Apple, Facebook, Amazon and Microsoft (collectively known as "GAFAM"[10]) - have built sprawling empires and obtained an unparalleled financial position in the marketplace,[11] and collectively maintain at least thirty-three percent market share in fifteen separate markets. Recently, federal and state regulators have been investigating and bringing antitrust actions against the GAFAM companies.[12] In February 2019, the Federal Trade Commission (FTC) created a task force dedicated to monitoring antitrust in technology markets.[13] Additionally, the FTC and over 40 states, including Florida, sued Facebook alleging the company is illegally maintaining its personal social networking monopoly through a years-long course of anticompetitive conduct.[14] Also, the Department of Justice and 11 states, including Florida, have brought an action against Google for allegedly manipulating search engine results.[15]

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[16] procurement of personal property and services. The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,[17] creating uniform agency procurement rules,[18] implementing the online procurement program,[19] and establishing state term contracts.[20]

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[9] Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals*, Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Feb. 25, 2021).
[10] This is phrasing economist Thomas Philippon uses. Thomas Philippon, The Great Reversal 159 (2019).
[11] *See* Pippa Stevens, *Here Are the 10 Companies with the Most Cash on Hand*, CNBC (Nov. 7, 2019), https://www.cnbc.com/2019/11/07/microsoft-apple-and-alphabet-are-sitting-on-more-than-100-billion-in-cash.html (last visited April 5, 2021).
[12] David McCabe, Cecilia Kang, and Daisuke Wakabayashi, *Google's Legal Peril Grows in Face of Third Antitrust Suit*, New York Times (Dec. 17, 2020), https://www.nytimes.com/2020/12/17/technology/google-antitrust-monopoly.html (last visited Feb. 25, 2021).
[13] *TC's Bureau of Competition Launches Task Force to Monitor Technology Markets*, Fed. Trade Comm'n. (Feb. 26, 2019), https://www.ftc.gov/news-events/press-releases/2019/02/ftcs-bureau-competition-launches-task-force-monitor-technology.
[14] Federal Trade Commission, *FTC Sues Facebook for Illegal Monopolization*, https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization (last visited April 5, 2021) (*Federal Trade Commission v. Facebook, Inc*., No. 1:20-cv-03590 (D.C. Cir. 2020)).
[15] McCabe, supra note 10; *United States Department of Justice v. Google LLC*, No. 1:20-cv-03010 (D.C. Cir. 2020).
[16] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[17] *See* ss. 287.032 and 287.042, F.S.
[18] *See* ss. 287.032(2) and 287.042(3), (4), and (12), F.S.
[19] *See* s. 287.057(22), F.S.
[20] *See* ss. 287.042(2), 287.056, and 287.1345, F.S.

Certain persons and their affiliates are prohibited from contracting with public entities for services and goods, with certain exceptions, if they have been identified by DMS as violating certain restrictions and have been placed on one of the following lists:[21]

- Convicted Vendor List;
- Discriminatory Vendor List;
- Scrutinized Companies with Activities in Sudan List;
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
- Scrutinized Companies that Boycott Israel List.

SB 7072 (2021)

SB 7072 (2021), to which this bill is linked, allows DLA to determine if a social media platform has likely committed an antitrust violation based on a case brought by a governmental entity. If such a determination is made, the social media platform is prohibited from contracting for services with public entities and placed on the Antitrust Violator Vendor List.

SB 7072 (2021) also requires social media platforms to meet certain requirements when they restrict speech by users. If a social media platform fails to meet such requirements, DLA may bring an action against the social media platform under the Florida Deceptive and Unfair Trade Practices Act.

III. Effect of Proposed Changes:

Section 1 and 2 create ss. 287.137(8) and 501.2041(10), F.S., respectively, to make all information received by DLA pursuant to an investigation by DLA or a law enforcement agency confidential and exempt from public copying and inspection requirements,[22] until such time as the investigation is completed or ceases to be active.

The bill applies to records received by DLA pursuant to an investigation into:

- Whether a social media platform has committed an antitrust violation based on a case brought by a governmental entity; and
- Whether a social media platform has failed to meet certain requirements or improperly restricted speech by users.

During an active investigation, information made confidential and exempt may be disclosed by the DLA:

- In the performance of its official duties and responsibilities; or
- To another governmental entity in performance of its official duties and responsibilities.

[21] Sections 287.133-135, F.S.

[22] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

Once an investigation is completed or once an investigation ceases to be active, the following information received by DLA will remain confidential and exempt:

- All information to which another public records exemption applies;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business's data security; and
- Proprietary business information.

The term "proprietary business information" means information that:

- Is owned or controlled by the business;
- Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by DLA; and
- Includes trade secrets and competitive interests.

Section 3 provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that, if released, information received by DLA pursuant to an investigation by DLA or a law enforcement agency could:

- Frustrate or thwart the investigation and impair the ability of DLA to perform assigned functions;
- Undo a specific statutory exemption protecting the information;
- Be used for the purpose of identity theft;
- Result in the identification of vulnerabilities; and
- Result in economic harm.

This section provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

The bill takes effect on the same date that SB 7072 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions. Thus, the bill requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions. Thus, the bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for sensitive investigative materials, which does not appear to be broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record may experience increased

workload and incur associated costs. These costs most likely will be absorbed within existing resources as part of the day-to-day responsibilities of agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.137 and 501.2041.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Governmental Oversight and Accountability

585-03841-21 20217074__

A bill to be entitled

An act relating to public records; amending s. 287.137, F.S.; providing a public records exemption for information received by the Attorney General pursuant to an investigation by the Attorney General or a law enforcement agency into certain social media platform activities; authorizing release of confidential and exempt information in certain instances; requiring certain information to remain confidential and exempt after an investigation is completed or ceases to be active; defining the term "proprietary business information"; providing for future legislative review and repeal of the exemption; amending s. 501.2041, F.S.; providing a public records exemption for information received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency into violations by certain social media platforms; authorizing release of confidential and exempt information in certain instances; requiring certain information to remain confidential and exempt after an investigation is completed or ceases to be active; defining the term "proprietary business information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03841-21 20217074__

Section 1. Subsection (8) is added to section 287.137, Florida Statutes, as created by SB 7072, 2021 Regular Session, to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(8)(a) All information received by the Attorney General under paragraph (3)(d) pursuant to an investigation by the Attorney General or a law enforcement agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the Attorney General:

1. In the performance of his or her official duties and responsibilities; or

2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or ceases to be active, the following information received by the Attorney General shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a

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business' data security.

5. Proprietary business information.

(d) For purposes of this subsection, the term "proprietary business information" means information that:

1. Is owned or controlled by the business;

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations;

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the Attorney General; and

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (10) is added to section 501.2041, Florida Statutes, as created by SB 7072, 2021 Regular Session, to read:

501.2041 Unlawful acts and practices by social media platforms.—

(10)(a) All information received by the department pursuant

to an investigation by the department or a law enforcement agency of a violation of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the performance of its official duties and responsibilities; or

2. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal identifying information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business' data security.

5. Proprietary business information.

(d) For purposes of this subsection, the term "proprietary business information" means information that:

1. Is owned or controlled by the business;

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its

business operations;

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department; and

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that all information received by the Attorney General and the Department of Legal Affairs pursuant to an investigation by the Attorney General, the Department of Legal Affairs, or a law enforcement agency under ss. 287.137 and 501.2041, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.172, Florida Statutes, or antitrust laws may result in an investigation of such violations. The premature release of such investigatory information could frustrate or thwart the investigation and impair the ability of the Attorney General and the Department of

Legal Affairs to effectively and efficiently administer ss. 287.137 and 501.2041, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) To continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs and the Attorney General would undo the specific statutory exemption protecting that information.

(3) An investigation of social media platform activities is likely to result in the gathering of personal identifying information that could be used for the purpose of identity theft. For this reason, personal identifying information should remain confidential and exempt once an investigation is completed or ceases to be active.

(4) Information received by the Attorney General and the Department of Legal Affairs may contain proprietary business information, including trade secrets. Through such information, including trade secrets, a business derives independent, economic value, actual or potential, from the information being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary business information, including trade secrets, through a public records request could destroy the value of the proprietary business information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the

entity supplying the proprietary business information in the marketplace.

(5) Information received by the Attorney General and the Department of Legal Affairs may contain a computer forensic report or information that could reveal weaknesses in a business' data security. The release of this information could result in the identification of vulnerabilities in the business' cybersecurity system and be used to harm the business and the business' clients. For this reason, a computer forensic report and information that could reveal weaknesses in a business' data security should remain confidential and exempt once an investigation is completed or ceases to be active.

(6) The Legislature finds that the harm that may result from the release of information received by the Attorney General and the Department of Legal Affairs pursuant to an investigation by the Attorney General, the Department of Legal Affairs, or a law enforcement agency under ss. 287.137 and 501.2041, Florida Statutes, could impair the effective and efficient administration of these investigations and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 4. This act shall take effect July 1, 2021, if SB 7072 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7082
INTRODUCER:	Appropriations Committee and Finance and Tax Committee
SUBJECT:	Corporate Income Tax
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kim	Babin		**FT Submitted as Comm. Bill/Fav**
1.	Kim	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7082 updates Florida's corporate income tax code by conforming it to the federal Internal Revenue Code and other United States statutes relating to federal income tax in effect on January 1, 2021. The bill adopts all amendments made to such federal statutes in the 2020 calendar year to the extent such changes affect the Florida corporate income tax, except that it does not adopt (decouples from) the following changes made by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Consolidated Appropriations Act, 2021:

- The increase of the business interest expense deduction for taxable years beginning in 2019 and 2020.
- The increase of the business meals deduction for 2021 and 2022.
- The increase of the charitable contribution deduction for 2020 and 2021.
- The increase of the net operating loss deduction for taxable years beginning in 2018 through 2020.
- Changes to the depreciation of qualified improvement property beginning in 2018.
- The extension of an expensing deduction available for qualified film, television, and live theatrical productions through 2025.

The adoption of federal income tax statutes operates retroactively to January 1, 2021. Based on the Revenue Estimating Conference's (REC) adopted estimates, staff estimates that the bill has no fiscal impact. See Section V, Fiscal Impact Statement, below for the REC's adopted estimates by specific area and for out years.

The bill is effective upon becoming a law.

II. Present Situation:

Florida Corporate Income Tax

Florida imposes a tax on the taxable income of corporations and financial institutions doing business in Florida.[1] The current tax rate is 4.458 percent[2] of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).[3]

The calculation of Florida corporate income tax starts with a taxpayer's federal taxable income.[4] Taxable income earned by a taxpayer operating in more than one state is taxed in Florida on an apportioned basis using a formula based on 25 percent on property, 25 percent on payroll, and 50 percent on sales.[5] Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first $50,000 of net income is exempt, effective with taxable years beginning on or after January 1, 2013.[6]

Florida corporate income tax is collected by the Florida Department of Revenue (department) and all collections are paid into the General Revenue Fund.[7] Net collections (receipts minus refunds) of the Florida corporate income tax were $1.67 billion in Fiscal Year 2019-2020.[8]

Conformity with Federal Income Tax Statutes

Florida conforms to the Internal Revenue Code and other United States statutes relating to federal income taxes by adopting the same meanings of terms used in the Florida corporate income tax code as when used in a comparable context in federal income tax statutes.[9] This includes, as mentioned above, using federal taxable income as the starting point for calculating Florida net income. State corporate income tax systems conform to the Internal Revenue Code to varying degrees and share a large body of common concepts and doctrines.[10] The reasons for "piggybacking" or conforming to federal income tax statutes, rather than developing an entirely separate tax system, include substantial administrative savings, uniformity, and reduction in compliance costs.[11]

Florida conforms to federal income tax statutes as they exist on a certain fixed date (referred to as "static" or "fixed date" conformity), meaning that legislative action is required to incorporate

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[1] Section 220.02, F.S.
[2] The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.
[3] Sections 220.11(2) and 220.63(2), F.S.
[4] Section 220.12, F.S.
[5] Section 220.15, F.S.
[6] Section 220.14, F.S.
[7] Section 220.701, F.S.
[8] Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report*, Dec. 21, 2020, 27, *available at* http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf (last visited April 19, 2021).
[9] Section 220.03(2)(c), F.S.
[10] Richard D. Pomp, *State & Local Taxation*, 9th Ed. (2019), Vol. 2, at 10-8 to 10-9.
[11] *Id.*

any changes made to such federal statutes since the last date of conformity.[12] The Florida corporate income tax code currently adopts the Internal Revenue Code and other federal income tax statutes as they existed on January 1, 2020.[13]

In conforming to federal income tax statutes, a state may choose not to adopt ("decouple" from) a federal amendment because of its impact to state revenues or its inapplicability to the state tax system, and instead specify its own treatment of the issue.[14]

Section III, Effect of Proposed Changes, below describes the present situation and the effect of certain changes to federal income tax statutes since January 1, 2020, as adopted or decoupled from in the bill.[15]

III. Effect of Proposed Changes:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

The federal CARES Act was signed into law on March 27, 2020, "to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic."[16] It made a number of changes to federal income tax statutes, including temporarily relaxing some restrictions on tax deductions which were imposed by the federal Tax Cuts and Jobs Act of 2017 (TCJA).[17]

Net Operating Loss Deduction

Present Situation: The net operating loss (NOL) provisions of the Internal Revenue Code provide a tax deduction for most taxpayers whose deductible expenses for a taxable year exceed their gross income, subject to certain adjustments.[18] When a firm has a loss (i.e., an NOL), its federal income taxes are not reduced immediately beyond zero; rather, the business owes no income tax in that taxable year and its loss is carried to other years.[19] An NOL is "carried back" when applied to taxable years before the loss year and "carried over" or "carried forward" when applied to taxable years after the loss year. A carryback of losses yields immediate tax reductions

[12] For a discussion on Florida's adoption of static conformity and the alternative proposal of automatic adoption of future federal amendments to the Internal Revenue Code (referred to as "rolling" conformity) which appears in s. 220.03(3), F.S., *see* Arthur J. England, Jr., "Corporate Income Taxation in Florida: Background, Scope, and Analysis," *An Introduction to Florida Corporate Income Taxation*, (Tallahassee: Department of Office Services, The Florida State University, 1972), 10-12.
[13] Section 220.03(1)(n) and (2)(c), F.S.
[14] Pomp at 10-9. Some examples of decoupling from the Internal Revenue Code in the Florida corporate income tax code include the treatment of bonus depreciation and the Section 179 depreciation deduction, and the prohibition against the carryback of net operating losses, as discussed *infra*. *See* s. 220.13(1)(e)1. and 2. and (b)1., F.S.
[15] Changes to federal credits, such as the accelerated refundability of federal alternative minimum tax credits in the Coronavirus Aid, Relief, and Economic Security Act, are not described here because adjustments to federal credits do not significantly affect a taxpayer's Florida taxable income. See *infra* note 74.
[16] Pub. L. No. 116-136 (2020).
[17] Pub. L. No. 115-97 (2017).
[18] 26 U.S.C. s. 172.
[19] *See* Congressional Research Service, *Tax Treatment of Net Operating Losses (NOLs) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Updated Oct. 6, 2020), *available at* https://crsreports.congress.gov/product/pdf/IN/IN11296 (last visited April 19, 2021).

in the form of a refund or credit, while a carryforward reduces future tax liabilities.[20] The Internal Revenue Code requires that NOLs be applied starting with the earliest taxable year to which the loss may be carried.[21] Generally, Florida currently follows the Internal Revenue Code with respect to the computation and handling of an NOL for Florida corporate income tax purposes, except that for Florida purposes, an NOL may be carried forward only and may not be carried back to taxable years before the loss year.[22]

Before the enactment of the TCJA, a taxpayer could, for federal income tax purposes, use the aggregate amount of NOLs carried back or carried forward from other loss years to fully offset its taxable income for a taxable year and owe no income tax for that year.[23] The TCJA limited the percentage of taxable income that NOLs generated in taxable years after 2017 could offset to 80 percent of the taxable income for a taxable year.[24] The CARES Act temporarily suspends this limitation for taxable years beginning in 2018, 2019, and 2020, allowing a taxpayer to use NOLs to fully offset taxable income in those years.[25]

The TCJA generally prohibited the carryback of NOLs generated in taxable years after 2017 while allowing such NOLs to be carried forward indefinitely, a change from a general 2-year carryback period and a 20-year carryover period.[26] The CARES Act temporarily lifted the carryback restriction, providing a 5-year carryback period for NOLs generated in taxable years 2018, 2019, and 2020. However, the carryback change does not affect Florida because, as described above, Florida has decoupled from NOL carryback provisions and does not allow NOLs to be carried back.

Effect of Proposed Change: The bill decouples from the CARES Act's suspension of the 80 percent NOL limitation for taxable years beginning in 2018, 2019, and 2020. For Florida tax purposes, the bill limits net operating losses subtracted from taxable income to the 80 percent limitation imposed by the TCJA for those taxable years.

Business Interest Expense Deduction

Present Situation: The business interest expense (BIE) provisions of the Internal Revenue Code provide a tax deduction for interest expenses or other borrowing costs incurred in a trade or business or in the production of rental or royalty income.[27] The deduction is generally applied in the year the expenses are paid or accrued, depending on the taxpayer's method of accounting. Florida currently conforms to the Internal Revenue Code on the BIE deduction and does not decouple from any provision.

[20] *Id.*
[21] 26 U.S.C. s. 172(b)(2).
[22] Section 220.13(1)(b)1., F.S., and Fla. Admin. Code R. 12C-1.013(15)(a).
[23] 26 U.S.C. s. 172(a) (2016).
[24] 26 U.S.C. s. 172(a) (2018).
[25] 26 U.S.C. s. 172(a) (2021).
[26] 26 U.S.C. s. 172(b)(1) (2018).
[27] 26 U.S.C. s. 163.

Before the enactment of the TCJA, taxpayers could generally fully deduct their BIE subject to some restrictions and exceptions. The TCJA limited, except for certain taxpayers[28], the BIE deduction for taxable years beginning after 2017 to the sum of the taxpayer's business interest income for the taxable year, 30 percent of the taxpayer's adjusted taxable income for the taxable year, and the taxpayer's floor plan financing interest for the taxable year.[29] The amount of business interest not allowed as a deduction because of this limitation generally may be carried forward indefinitely.[30] The CARES Act has temporarily increased this limit for taxable years beginning in 2019 and 2020, raising the 30 percent limit on a taxpayer's adjusted taxable income in the above formula to 50 percent.[31]

Effect of Proposed Change: The bill decouples from the CARES Act's raised limit on a taxpayer's adjusted taxable income for the BIE deduction. The bill limits the BIE deduction for Florida corporate income tax purposes to that under the TCJA for taxable years beginning in 2019 and 2020.

Depreciation of Qualified Improvement Property ("Retail Glitch Fix")

Present Situation: Generally, the Internal Revenue Code allows a depreciation deduction from taxable income, which is a reasonable allowance for the exhaustion and wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business or property held for the production of income.[32] An allowance is set aside each taxable year in accordance with a reasonably consistent plan, starting when the property is placed in service.[33] The aggregate amount of the allowances plus the salvage value, at the end of the estimated useful life of the property, should equal the cost or other specified basis of the property.[34] Over time, the Internal Revenue Code has adopted different systems for computing depreciation. The current system, the Modified Accelerated Cost Recovery System (MACRS), applies to most tangible property generally placed in service after 1986.[35] Under MACRS, the cost of eligible property is recovered over a 3-, 5-, 7-, 10-, 15-, 20-, 27.5-, 31.5-, or 39-year period, depending on the type of property, by applying statutory recovery methods and conventions.

Starting in 2001 with the federal Job Creation and Worker Assistance Act of 2002, Congress implemented, reinstated, and expanded a "bonus depreciation" allowance for qualifying property, which was created to spur increased business investment during periods of negative or sluggish economic growth by lowering the cost of capital for investment in certain assets.[36] Bonus depreciation allows a taxpayer to expense (or deduct as a current rather than a capital expense) up to 100 percent of the cost of the property in the taxable year it is placed in service.

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[28] Taxpayers with average annual gross receipts in the prior three taxable years of $25 million or less are exempted from the limitation, as well as certain trades or businesses. *See* 26 U.S.C. s. 163(j)(3) and (7).
[29] 26 U.S.C. s. 163(j).
[30] 26 U.S.C. s. 163(j)(2).
[31] 26 U.S.C. s. 163(j)(10).
[32] 26 U.S.C. s. 167(a).
[33] 26 C.F.R. ss. 1.167(a)-1(a), 1.167(a)-10(b).
[34] 26 C.F.R. s. 1.167(a)-1(a).
[35] 26 U.S.C. s. 168; 26 C.F.R. 1.168(a)-1, *et seq.*
[36] 26 U.S.C. s. 168(k). *See* Congressional Research Service, *The Section 179 and Section 168(k) Expensing Allowances: Current Law and Economic Effects* (Updated May 1, 2018), *available at* https://crsreports.congress.gov/product/pdf/RL/RL31852 (last visited April 19, 2021).

The bonus depreciation provision has been extended or expanded 10 times since 2002, including by the TCJA.[37] The TCJA generally increased the bonus rate for property acquired and placed in service after September 27, 2017, to 100 percent for property placed in service in 2017 through 2022, 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026.[38]

The TCJA also made changes to the depreciation deduction of certain improvements that leaseholders or owners make to the interior space of nonresidential buildings. Improvement property can take many forms, with some examples being: installing new lighting and carpet in a leased office, adding new woodwork and windows to the dining room of a restaurant, and painting the walls and upgrading the sound system of a retail store.[39] Before the TCJA, the Internal Revenue Code contained four categories of such improvement property, each with different criteria and cost recovery requirements.[40] The TCJA combined the four categories into a single category called qualified improvement property (QIP) and set forth conditions to be satisfied for QIP treatment, which is an accelerated 15-year cost recovery period.[41]

Due to a drafting error, the TCJA left QIP off the list of assets eligible for a 15-year cost recovery period under the MACRS.[42] As a result, the cost of QIP had to be recovered over 39 years under MACRS (or 40 years under an alternative depreciation system) and was ineligible for the bonus depreciation allowance because such improvement property must have a recovery period of 20 years or less to qualify for bonus depreciation.[43] The CARES Act corrected the omission by designating QIP as 15-year property under the MACRS and 20-year property under the alternative depreciation system, if the qualified improvement is done by the taxpayer.[44] This is referred to as the "retail glitch fix." The CARES Act provides that the retail glitch fix shall take effect as if included in the TCJA (i.e., applies retroactively).[45]

Florida has decoupled from federal bonus depreciation since 2008.[46] Since 2009, Florida requires a taxpayer to add back to its taxable income the full amount deducted for bonus depreciation for federal purposes and then apply a straight-line seven-year depreciation schedule beginning with the year of the addback.[47] The schedule applies notwithstanding any sale or disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.[48]

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[37] *Id.* at 10.
[38] 26 U.S.C. s. 168(k)(6)(A).
[39] *See* Congressional Research Service, *Tax Depreciation of Qualified Improvement Property: Current Status and Legislative History* (updated June 24, 2020), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11187 (last visited April 19, 2021).
[40] Qualified leasehold improvement property, qualified restaurant improvement property, qualified retail improvement property, and qualified improvement property. *See id.*
[41] *Id.*
[42] *Supra* note 39.
[43] *Id.*
[44] Pub. L. No. 116-136, s. 2307 (2020).
[45] Pub. L. No. 116-136, s. 2307(b) (2020).
[46] Ch. 2008-206, ss. 1-2, Laws of Fla.
[47] Section 220.13(1)(e)1., F.S.; ch. 2009-18, s. 2, Laws of Fla.
[48] Section 220.13(1)(e)1., F.S.

Effect of Proposed Change: The bill decouples from the CARES' Act treatment of QIP placed in service on or after January 1, 2018. Under the bill, QIP is not eligible for Florida's treatment of bonus depreciation (i.e., a straight-line seven-year depreciation schedule). A 39-year[49] rather than a 15-year cost recovery period is applied to QIP for Florida tax purposes, notwithstanding any sale or other disposition of the QIP and regardless of whether the QIP remains in service in the hands of the taxpayer.

Paycheck Protection Program (Exclusion of Forgiven Loans from Gross Income)

Present Situation: The Paycheck Protection Program (PPP), established by the CARES Act, is implemented by the Small Business Administration with support from the United States Department of the Treasury.[50] This program provides small businesses with funds to pay up to eight weeks of payroll costs including benefits.[51] Funds can also be used to pay interest on mortgages, rent, and utilities.[52] The funds were provided in the form of loans guaranteed under the federal Small Business Act, which are fully forgivable if the borrower maintains employee and compensation levels, spends loan proceeds on eligible expenses, and spends at least 60 percent of the proceeds on payroll costs.[53] The CARES Act provided that for purposes of the Internal Revenue Code, any amount of PPP loans which would be included as gross income of the eligible recipient by reason of forgiveness is excluded from gross income.[54]

Effect of Proposed Change: The bill adopts the CARES Act's treatment of excluding forgiven PPP loans from gross income for purposes of determining federal taxable income, and such amounts would not be subject to the Florida corporate income tax.

Charitable Contribution Deduction

Present Situation: The CARES Act raised the limitation on deductions for charitable contributions by corporations who made cash contributions in 2020, from 10 percent of taxable income to 25 percent of taxable income.[55] To qualify for the increased limit, contributions must be made to a public charity or private operating foundation[56], but does not include contributions to a supporting organization or a donor-advised fund. In addition, the deduction limitation for certain donations of food inventory in 2020 was increased from 15 percent to 25 percent.

Effect of Proposed Change: The bill decouples from the CARES Act's increased limitation on the charitable contribution deduction for 2020, limiting the deduction to that under the TCJA for Florida tax purposes.

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[49] The bill requires applying to QIP the recovery period in s. 168(c) of the Internal Revenue Code for nonresidential real property, which is 39 years.
[50] United States Department of the Treasury, *The CARES Act Provides Assistance to Small Businesses*, *available at* https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses (last visited April 19, 2021).
[51] *Id.*
[52] *Id.*
[53] United States Small Business Administration, *PPP Loan Forgiveness*, *available at* https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-loan-forgiveness (last visited April 19, 2021).
[54] Pub. L. No. 116-136, s. 1106(i) (2020)
[55] Pub. L. No. 116-136, s. 2205 (2020)
[56] *See* 26 U.S.C. s. 170(b)(1)(A) for the list of eligible entities.

Consolidated Appropriations Act, 2021

The federal Consolidated Appropriations Act, 2021 (CAA), was signed into law on December 27, 2020.[57] Provisions relating to corporate income tax included providing for the deductibility of expenses paid with PPP loans, a temporary 100 percent deduction for business meals, and the extension of various other tax incentives and provisions.

Deductibility of Expenses Paid with PPP Loans

Present Situation: The exclusion of forgiven PPP loans from gross income under the CARES Act, as discussed above, raised a related question as to whether a taxpayer could deduct otherwise allowable expenses that were paid with PPP loan proceeds. On May 2, 2020, the Internal Revenue Service (IRS) released a notice stating that an existing prohibition against deductions that are allocable to tax-exempt income[58] applied, and therefore a taxpayer could not claim the double tax benefit.[59]

The CAA overturned the IRS' position, expressly providing that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income" for both original and subsequent PPP loans,[60] meaning that a taxpayer may deduct PPP-funded expenses from their income.[61]

Effect of Proposed Change: The bill adopts the CAA's construction that PPP-funded expenses are deductible, so any additional deductions taken by a taxpayer for federal income tax purposes would flow through to Florida when calculating its Florida net income.

Business Meal Expense Deduction

Present Situation: Before the enactment of the CAA, a taxpayer was generally allowed to deduct up to 50 percent of business meal expenses (food and beverages).[62] To qualify for the deduction, the food or beverage expense may not be "lavish or extravagant under the circumstances" and the taxpayer or the taxpayer's employee must be present at the furnishing of the food or beverages, except under certain circumstances.[63]

The CAA provided that the 50 percent limitation does not apply to meal expenses for food or beverages provided by a restaurant and paid or incurred before January 1, 2023, allowing a 100 percent deduction for such expenses.[64]

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[57] Pub. L. 116-260 (2020).
[58] 26 U.S.C. s. 265(a)(1).
[59] Internal Revenue Service, Notice 2020-32, *available at* https://www.irs.gov/pub/irs-drop/n-20-32.pdf (last visited April 19, 2021). It reaffirmed its conclusion on June 29, 2020, in IRS Revenue Ruling 2020-27, *available at* https://www.irs.gov/pub/irs-drop/rr-20-27.pdf (last visited April 19, 2021).
[60] Pub. L. 116-260, s. 276 (2020).
[61] The IRS subsequently issued IRS Revenue Ruling 2021-2, obsoleting the Notice and Revenue Ruling referenced in *supra* note 59. *Available at* https://www.irs.gov/pub/irs-drop/rr-21-02.pdf (last visited April 19, 2021).
[62] 26 U.S.C. s. 274(n) (2018).
[63] 26 U.S.C. s. 274(k) (2018).
[64] Pub. L. 116-260, Division EE, s. 210 (2020); 26 U.S.C. s. 274(n)(2)(D) (2021).

Effect of Proposed Change: The bill decouples from the CAA's 100 percent deduction for certain business meal expenses paid or incurred before 2023, and such expenses are subject to the 50 percent limitation under the TCJA.

Tax Extenders and Miscellaneous Provisions

Present Situation: The CAA extended or modified a number of tax provisions relating to the federal income tax for corporations, including:

- Providing 5-year extensions for:
  - The "look-thru" treatment of dividends, interest, rents, and royalties received or accrued from related controlled foreign corporations.[65]
  - The 7-year recovery period for motorsports entertainment complexes.[66]
  - Special expensing rules for certain film, television, and live theatrical productions, which allows a taxpayer to expense the first $15 million of production costs for qualified film and television productions and live theatrical productions (or $20 million for productions in low-income communities or distressed areas).[67]
  - Empowerment zone designations under s. 1391(d) of the Internal Revenue Code.[68]
  - The exclusion from gross income of certain employer payments of employee student loans.[69]
- Providing a 1-year extension for:
  - The classification of certain race horses as 3-year property.[70]
  - Accelerated depreciation for business property on Indian reservations.[71]
  - The increased limitation on deductions for charitable contributions by corporations under the CARES Act, as discussed above.[72] The increased limitation applies for 2021.

The CAA also extended or modified a number of federal tax credits affecting the federal corporate income tax.[73]

Effect of Proposed Changes: The bill adopts the above extensions, except for federal tax credits,[74] the extended expensing rules for film, television, and live theatrical productions, and the increased limitation on charitable contribution deductions for 2021. For the expensing rules,

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[65] Pub. L. 116-260, Division EE, s. 111 (2020).
[66] Pub. L. 116-260, Division EE, s. 115 (2020).
[67] Pub. L. 116-260, Division EE, s. 116 (2020); 26 U.S.C. s. 181. The Revenue Estimating Conference's estimated fiscal impact for adopting this extension is described in Section V below.
[68] Pub. L. 116-260, Division EE, s. 118 (2020).
[69] Pub. L. 116-260, Division EE, s. 120 (2020).
[70] Pub. L. 116-260, Division EE, s. 137 (2020).
[71] Pub. L. 116-260, Division EE, s. 138 (2020).
[72] Pub. L. 116-260, Division EE, s. 213 (2020).
[73] *See* Pub. L. 116-260, Division EE, ss. 102, 105, 112, 113, 119, 121, 131, 132, 135, 136, 139, 140, 142, 143, 144, 145, 203, 204, and 305 (2020).
[74] Florida does not allow any adjustment to income for federal credits unless specifically stated in the Florida Statutes. Section 220.13(1)(b)3., F.S., allows a deduction for wages and salaries paid in Florida when a federal deduction is not allowed pursuant to s. 280C(a) of the Internal Revenue Code, which was not amended by the CAA. However, for other federal credits, a Florida deduction is not included in the Florida Statutes and therefore not allowed. *See*, e.g., Florida Dep't of Revenue, *Florida Corporate Income Tax, Adoption of 2020 Internal Revenue Code*, No. 20C01-01, Sept. 24, 2020, *available at* https://floridarevenue.com/taxes/tips/documents/TIP-123151_TIP_20C01-01_Final_RLL.pdf (last visited April 19, 2021).

taxable income for Florida tax purposes must be calculated as though the rules were not extended through 2025 by the CAA. Charitable contribution deductions in 2021 are limited to that under the TCJA for Florida tax purposes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Based on the REC's adopted estimates[75], staff estimates that the bill has no fiscal impact. The following table summarizes the REC's adopted estimates, including total impact for all changes for the out years:[76]

[75] Revenue Estimating Conference, *Corporate Income Tax Piggyback*, April 16, 2021 (revised from March 12, 2021), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page250-275.pdf (last visited April 20, 2021).

[76] *Id.* at 256-258. See *id*. at 263-265 for the REC's PPP estimate, which was not included in the total impact, but was adopted to be used as a consensus adjustment to the CIT baseline.

$ millions *Numbers in parentheses indicate a negative impact*	FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25		FY 2025-26	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
Business meal expense deduction	(40.9)	0	(24.4)	0	(4.4)	0	0	0	0	0
Charitable contribution deduction	(2.1)	0	1.0	0	0.6	0	0.3	0	0.2	0
Net operating loss deduction	(0.1)	0	0.1	0	*	0	*	0	0	0
Business interest expense deduction	(41.7)	0	20.8	0	10.4	0	10.4	0	0	0
Film and entertainment - expensing	*	(2.6)	(2.0)	(1.5)	(0.5)	0.1	0.8	1.4	1.7	2.4
Qualified improvement property - retail glitch fix	(179.6)	(105.7)	(93.2)	(105.7)	(110.6)	(105.7)	(123.6)	(105.7)	(117.9)	(105.7)
Total impact of above changes	**(264.6)**	**(108.3)**	**(97.6)**	**(107.1)**	**(104.5)**	**(105.5)**	**(112.2)**	**(104.2)**	**(116.0)**	**(103.2)**

*Insignificant fiscal impact

B. Private Sector Impact:

Taxpayers will generally use the same calculations to determine both their federal and state taxable income.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 220.03 and 220.13.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 19, 2021:
The committee substitute decouples the Florida corporate income tax code from the following federal income tax changes:

- The increase of the business meals deduction for 2021 and 2022.
- The increase of the charitable contribution deduction for 2020 and 2021.
- The increase of the net operating loss deduction for taxable years beginning in 2018 through 2020.
- Changes to the depreciation of qualified improvement property beginning in 2018.
- The extension of an expensing deduction available for qualified film, television, and live theatrical productions through 2025.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with

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the intent thereof, the following terms shall have the following meanings:

(n) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 2021 ~~2020~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code has the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 2021 ~~2020~~. However, if subsection (3) is implemented, the meaning of a term shall be taken at the time the term is applied under this code.

Section 2. The amendment to s. 220.03, Florida Statutes, made by this act operates retroactively to January 1, 2021.

Section 3. Paragraphs (a), (b), and (e) of subsection (1) of section 220.13, Florida Statutes, are amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1.a. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state

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of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

b. Notwithstanding sub-subparagraph a., if a credit taken under s. 220.1875 is added to taxable income in a previous taxable year under subparagraph 11. and is taken as a deduction for federal tax purposes in the current taxable year, the amount of the deduction allowed shall not be added to taxable income in the current year. The exception in this sub-subparagraph is intended to ensure that the credit under s. 220.1875 is added in the applicable taxable year and does not result in a duplicate addition in a subsequent year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or

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incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount taken as a credit under s. 220.195 which is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.1875. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.193.

13. Any portion of a qualified investment, as defined in s.

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288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

14. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

15. The amount taken as a credit for the taxable year pursuant to s. 220.194.

16. The amount taken as a credit for the taxable year under s. 220.196. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. The addition is not intended to result in adding the same expense back to income more than once.

17. For taxable years beginning after December 31, 2018, and before January 1, 2021, there shall be added to such taxable income an amount equal to the excess, if any, of:

a. One hundred percent of any amount deducted for federal income tax purposes as business interest expense for the taxable year pursuant to s. 163(j) of the Internal Revenue Code of 1986, as amended by s. 2306 of Pub. L. No. 116-136; over

b. One hundred percent of the amount that would be deductible for federal income tax purposes as business interest expense for the taxable year if calculated pursuant to s. 163(j) of the Internal Revenue Code of 1986, as amended by s. 13301 of Pub. L. No. 115-97.

Any expense added back pursuant to this subparagraph shall be treated as a disallowed business expense carryforward from prior years for the year or years following such addition, until such

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time as the expense has been used.

18. For taxable years beginning after December 31, 2020, and before January 1, 2023, there shall be added to such taxable income an amount equal to the excess, if any, of:

a. One hundred percent of any amount deducted for federal income tax purposes for business meals in the taxable year pursuant to s. 274 of the Internal Revenue Code of 1986, as amended by s. 210 of Division EE of Pub. L. No. 116-260; over

b. One hundred percent of the amount that would be deductible for federal income tax purposes for business meals in the taxable year if calculated pursuant to s. 274 of the Internal Revenue Code of 1986, as amended by ss. 13304 and 13310 of Pub. L. No. 115-97.

19. For taxable years beginning after December 31, 2019, and before January 1, 2022, there shall be added to such taxable income an amount equal to the excess, if any, of:

a. One hundred percent of any amount deducted for federal income tax purposes for charitable contributions made in the taxable year pursuant to s. 170 of the Internal Revenue Code of 1986, as amended by s. 2205 of Pub. L. No. 116-136, as amended by s. 213 of Division EE of Pub. L. No. 116-260; over

b. One hundred percent of the amount that would be deductible for federal income tax purposes for charitable contributions made in the taxable year if calculated pursuant to s. 170 of the Internal Revenue Code of 1986, as amended by s. 11023 of Pub. L. No. 115-97.

(b) *Subtractions.*—

1. There shall be subtracted from such taxable income:

a. The net operating loss deduction allowable for federal

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income tax purposes under s. 172 of the Internal Revenue Code for the taxable year, except that any net operating loss that is transferred pursuant to s. 220.194(6) may not be deducted by the seller,

b. The net capital loss allowable for federal income tax purposes under s. 1212 of the Internal Revenue Code for the taxable year,

c. The excess charitable contribution deduction allowable for federal income tax purposes under s. 170(d)(2) of the Internal Revenue Code for the taxable year, and

d. The excess contributions deductions allowable for federal income tax purposes under s. 404 of the Internal Revenue Code for the taxable year.

However, a net operating loss and a capital loss shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers and capital loss carryovers, respectively, and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 and 1212, respectively, of the Internal Revenue Code. For taxable years beginning after December 31, 2017, and before January 1, 2021, the net operating loss subtracted pursuant to this subparagraph shall be limited by the percentage limitation pursuant to s. 172(a)(2) of the Internal Revenue Code of 1986, as amended by s. 13302 of Pub. L. No. 115-97.

2. There shall be subtracted from such taxable income any amount to the extent included therein the following:

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a. Dividends treated as received from sources without the United States, as determined under s. 862 of the Internal Revenue Code.

b. All amounts included in taxable income under s. 78, s. 951, or s. 951A of the Internal Revenue Code.

However, any amount subtracted under this subparagraph is allowed only to the extent such amount is not deductible in determining federal taxable income. As to any amount subtracted under this subparagraph, there shall be added to such taxable income all expenses deducted on the taxpayer’s return for the taxable year which are attributable, directly or indirectly, to such subtracted amount. Further, no amount shall be subtracted with respect to dividends paid or deemed paid by a Domestic International Sales Corporation.

3. In computing “adjusted federal income” for taxable years beginning after December 31, 1976, there shall be allowed as a deduction the amount of wages and salaries paid or incurred within this state for the taxable year for which no deduction is allowed pursuant to s. 280C(a) of the Internal Revenue Code (relating to credit for employment of certain new employees).

4. There shall be subtracted from such taxable income any amount of nonbusiness income included therein.

5. There shall be subtracted any amount of taxes of foreign countries allowable as credits for taxable years beginning on or after September 1, 1985, under s. 901 of the Internal Revenue Code to any corporation which derived less than 20 percent of its gross income or loss for its taxable year ended in 1984 from sources within the United States, as described in s.

861(a)(2)(A) of the Internal Revenue Code, not including credits allowed under ss. 902 and 960 of the Internal Revenue Code, withholding taxes on dividends within the meaning of sub-subparagraph 2.a., and withholding taxes on royalties, interest, technical service fees, and capital gains.

6. Notwithstanding any other provision of this code, except with respect to amounts subtracted pursuant to subparagraphs 1. and 3., any increment of any apportionment factor which is directly related to an increment of gross receipts or income which is deducted, subtracted, or otherwise excluded in determining adjusted federal income shall be excluded from both the numerator and denominator of such apportionment factor. Further, all valuations made for apportionment factor purposes shall be made on a basis consistent with the taxpayer's method of accounting for federal income tax purposes.

(e) *Adjustments related to federal acts.*—Taxpayers shall be required to make the adjustments prescribed in this paragraph for Florida tax purposes with respect to certain tax benefits received pursuant to the Economic Stimulus Act of 2008, the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, the American Taxpayer Relief Act of 2012, the Tax Increase Prevention Act of 2014, the Consolidated Appropriations Act, 2016, ~~and~~ the Tax Cuts and Jobs Act of 2017, the Coronavirus Aid, Relief, and Economic Security Act of 2020, and the Consolidated Appropriations Act, 2021.

1.a. There shall be added to such taxable income an amount equal to 100 percent of any amount deducted for federal income

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tax purposes as bonus depreciation for the taxable year pursuant to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as amended by s. 103 of Pub. L. No. 110-185, s. 1201 of Pub. L. No. 111-5, s. 2022 of Pub. L. No. 111-240, s. 401 of Pub. L. No. 111-312, s. 331 of Pub. L. No. 112-240, s. 125 of Pub. L. No. 113-295, s. 143 of Division Q of Pub. L. No. 114-113, and s. 13201 of Pub. L. No. 115-97, for property placed in service after December 31, 2007, and before January 1, 2027. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income an amount equal to one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.

b. Sub-subparagraph a. does not apply to qualified improvement property that was placed in service on or after January 1, 2018. As used in this paragraph, the term "qualified improvement property" has the same meaning as in s. 168(e)(6) of the Internal Revenue Code of 1986.

2. There shall be added to such taxable income an amount equal to 100 percent of any amount in excess of $128,000 deducted for federal income tax purposes for the taxable year pursuant to s. 179 of the Internal Revenue Code of 1986, as amended by s. 102 of Pub. L. No. 110-185, s. 1202 of Pub. L. No. 111-5, s. 2021 of Pub. L. No. 111-240, s. 402 of Pub. L. No. 111-312, s. 315 of Pub. L. No. 112-240, and s. 127 of Pub. L. No. 113-295, for taxable years beginning after December 31, 2007, and before January 1, 2015. For the taxable year and for

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each of the 6 subsequent taxable years, there shall be subtracted from such taxable income one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.

3. There shall be added to such taxable income an amount equal to the amount of deferred income not included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There shall be subtracted from such taxable income an amount equal to the amount of deferred income included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5.

4. There shall be added to such taxable income an amount equal to 100 percent of any federal income tax depreciation deducted for qualified improvement property. There shall be subtracted an amount equal to the amount of depreciation that would have been deductible for federal income tax purposes if calculated pursuant to s. 168(b)(3) of the Internal Revenue Code using the applicable recovery period in s. 168(c) of the Internal Revenue Code for nonresidential real property, notwithstanding any sale or other disposition of the property that is the subject of the adjustments, and regardless of whether such property remains in service in the hands of the taxpayer.

5. For taxable years beginning after December 31, 2020, and before January 1, 2026, the changes made to the Internal Revenue

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Code by s. 116 of Division EE of Pub. L. No. 116-260, relating to the extension of expensing rules for qualified film, television, and live theatrical productions under s. 181 of the Internal Revenue Code of 1986, do not apply to this chapter. Taxable income under this section shall be calculated as though changes made by that section were not made to the Internal Revenue Code.

6. Subtractions available under this paragraph may be transferred to the surviving or acquiring entity following a merger or acquisition and used in the same manner and with the same limitations as specified by this paragraph.

7.~~5.~~ The additions and subtractions specified in this paragraph are intended to adjust taxable income for Florida tax purposes, and, notwithstanding any other provision of this code, such additions and subtractions shall be permitted to change a taxpayer's net operating loss for Florida tax purposes.

Section 4. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the corporate income tax; amending s. 220.03, F.S.; adopting the 2021 version of the Internal Revenue Code and other federal statutes relating to federal income taxes for purposes of the state corporate income tax code; providing for retroactive operation; amending s. 220.13, F.S.;

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requiring additions to taxable income of certain amounts relating to federal deductions for business interest expense, business meals, and charitable contributions; specifying a limitation on net operating loss subtractions applied during certain taxable years; specifying that Florida bonus depreciation treatment does not apply to certain qualified improvement property; defining the term "qualified improvement property"; specifying required additions and subtractions relating to qualified improvement property; providing that certain federal changes relating to expensing rules for qualified film, television, and live theatrical productions do not apply to the state corporate income tax; providing an effective date.

By the Committee on Finance and Tax

593-04157-21 20217082__

A bill to be entitled

An act relating to the corporate income tax; amending s. 220.03, F.S.; adopting the 2021 version of the Internal Revenue Code and other federal statutes relating to federal income taxes for purposes of the state corporate income tax code; providing for retroactive operation; amending s. 220.13, F.S.; requiring the addition to adjusted federal income of certain amounts of business interest expense deductible in certain taxable years; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(n) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 2021 ~~2020~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code has the same meaning as when

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-04157-21 20217082__

used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 2021 ~~2020~~. However, if subsection (3) is implemented, the meaning of a term shall be taken at the time the term is applied under this code.

Section 2. The amendment to s. 220.03, Florida Statutes, made by this act operates retroactively to January 1, 2021.

Section 3. Paragraph (e) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(e) *Adjustments related to federal acts.*—Taxpayers shall be required to make the adjustments prescribed in this paragraph for Florida tax purposes with respect to certain tax benefits received pursuant to the Economic Stimulus Act of 2008, the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, the American Taxpayer Relief Act of 2012, the Tax Increase Prevention Act of 2014, the Consolidated Appropriations Act, 2016, ~~and~~ the Tax Cuts and Jobs Act of 2017, and the Coronavirus Aid, Relief, and Economic Security Act of 2020.

1. There shall be added to such taxable income an amount equal to 100 percent of any amount deducted for federal income

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

tax purposes as bonus depreciation for the taxable year pursuant to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as amended by s. 103 of Pub. L. No. 110-185, s. 1201 of Pub. L. No. 111-5, s. 2022 of Pub. L. No. 111-240, s. 401 of Pub. L. No. 111-312, s. 331 of Pub. L. No. 112-240, s. 125 of Pub. L. No. 113-295, s. 143 of Division Q of Pub. L. No. 114-113, and s. 13201 of Pub. L. No. 115-97, for property placed in service after December 31, 2007, and before January 1, 2027. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income an amount equal to one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.

2. There shall be added to such taxable income an amount equal to 100 percent of any amount in excess of $128,000 deducted for federal income tax purposes for the taxable year pursuant to s. 179 of the Internal Revenue Code of 1986, as amended by s. 102 of Pub. L. No. 110-185, s. 1202 of Pub. L. No. 111-5, s. 2021 of Pub. L. No. 111-240, s. 402 of Pub. L. No. 111-312, s. 315 of Pub. L. No. 112-240, and s. 127 of Pub. L. No. 113-295, for taxable years beginning after December 31, 2007, and before January 1, 2015. For the taxable year and for each of the 6 subsequent taxable years, there shall be subtracted from such taxable income one-seventh of the amount by which taxable income was increased pursuant to this subparagraph, notwithstanding any sale or other disposition of the property that is the subject of the adjustments and

regardless of whether such property remains in service in the hands of the taxpayer.

3. There shall be added to such taxable income an amount equal to the amount of deferred income not included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There shall be subtracted from such taxable income an amount equal to the amount of deferred income included in such taxable income pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5.

4. For taxable years beginning after December 31, 2018, and before January 1, 2021, there shall be added to such taxable income an amount equal to the excess, if any, of:

a. One hundred percent of any amount deducted for federal income tax purposes as business interest expense for the taxable year pursuant to s. 163(j) of the Internal Revenue Code of 1986, as amended by s. 2306 of Pub. L. No. 116-136; over

b. One hundred percent of the amount that would be deductible for federal income tax purposes as business interest expense for the taxable year if calculated pursuant to s. 163(j) of the Internal Revenue Code of 1986, as amended by s. 13301 of Pub. L. No. 115-97.

5. Subtractions available under this paragraph may be transferred to the surviving or acquiring entity following a merger or acquisition and used in the same manner and with the same limitations as specified by this paragraph.

6.~~5.~~ The additions and subtractions specified in this paragraph are intended to adjust taxable income for Florida tax purposes, and, notwithstanding any other provision of this code,

such additions and subtractions shall be permitted to change a taxpayer's net operating loss for Florida tax purposes.

Section 4. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/2021
Meeting Date

7082
Bill Number (if applicable)

763370
Amendment Barcode (if applicable)

Topic Corporate Income Tax

Name Karen Woodall

Job Title Exec. Director

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Street

Tallahassee FL 32301
City *State* *Zip*

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Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

SB 7082
Bill Number (if applicable)

763370
Amendment Barcode (if applicable)

Topic Corporate Income Tax (Appropriations)

Name French Brown

Job Title Lobbyist

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Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 98
INTRODUCER:	Appropriations Committee; and Senator Albritton
SUBJECT:	Workforce Related Programs and Services
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Favorable**
2.	Brick	Bouck	ED	**Favorable**
3.	Hrdlicka/Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 98 modifies provisions related to Florida workforce development and education. Specifically, the bill:

- Authorizes the Governor to seek federal waivers to create greater flexibility and strategic investment in Florida's implementation of the Workforce Innovation and Opportunity Act (WIOA).
- Creates the Office of Reimagining Education and Career Help (Office) in the Executive Office of the Governor to provide coordination and alignment in Florida's workforce development system.
- Requires the Office to create a "no-wrong-door" entry strategy whereby Floridians may access services from any workforce partner with a common intake form and case management system.
- Creates a publicly available online opportunity portal to provide Floridians with access to identify in-demand jobs, the skills needed, where to obtain those skills, available services, and program performance employability and economic mobility.
- Requires the DEO and the DCF to evaluate the impact of workforce services on participants receiving benefits and welfare transition programs, to include performance reports on participant earnings.
- Requires local workforce development boards (LWDB) to be assigned a letter grade, which must be made public, based on improvement of participant long-term self-sufficiency and return on investment.

- Charges the Labor Market Estimating Conference as the entity responsible for determining Florida's real-time supply and demand in the labor market.
- Requires the Talent Development Council to coordinate Florida's efforts to meet state healthcare workforce needs, by conducting a gap analysis and provide trend information on nursing programs.
- Requires the DEO to establish WIOA eligible training provider criteria focused on participant outcomes.
- Requires the CareerSource state board to appoint a Credentials Review Committee to identify degree and non-degree credentials of value, develop a Master Credentials List for performance funding, and establish policy direction for funding which prioritizes outcomes and leverages resources to support vulnerable populations.
- Creates the Open Door Workforce Grant Program to provide grants to school districts and Florida College System (FCS) institutions to cover up to two-thirds of the cost of short-term, high-demand programs.
- Creates the Money-Back Guarantee Program, requiring each school district and FCS institution to refund the cost of tuition to students who are not able to find a job within 6 months of completing select programs.
- Creates a new workforce performance funding model for school district and FCS institution workforce programs, requiring one-third of performance funding to be based on rewarding student job placement and the remaining two-thirds be based on student earnings, with a focus on increasing the economic mobility of underserved populations.
- Requires that students entering a public postsecondary institution in 2022-2023, and thereafter, must be able to earn nationally recognized digital credentials for competencies within the general education core courses which demonstrate career readiness.

The bill has a significant, negative impact on state expenditures. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

The Workforce Estimating Conference

Current law directs the Workforce Estimating Conference to develop forecasts of employment demand for jobs by occupation and industry. The conference must also review local and regional occupational data generated through the Internet-based job-matching and labor-market information system and consider such data in developing its forecasts for statewide employment demand. Additionally, the data is used to make recommendations to CareerSource on any changes to local target occupation lists. The Workforce Estimating Conference is expected to meet at least twice a year;[1] however, the conference has not met since September 6, 2013.[2]

[1] *See* s. 216.136(7), F.S.
[2] Office of Economic & Demographic Research, Workforce Estimating Conference, http://edr.state.fl.us/content/conferences/workforce/index.cfm (last visited April 9, 2021).

Florida's Workforce Development System

The federal Workforce Investment Act of 1998 (WIA) was passed by Congress in an effort to improve the quality of the nation's workforce through implementation of a comprehensive workforce investment system.[3] The WIA required each state to establish an investment board at the state level and to also establish workforce investment boards to represent local service areas.[4] The WIA also called for the delivery of workforce development services through a system of "one-stop" centers in local communities.[5] Some key principles of the WIA were to better integrate workforce services, empower individuals, provide universal access to participants, increase accountability, and improve youth programs.[6]

In response to the WIA, Florida established a workforce development system under the Workforce Investment Act of 2000.[7] The act aimed to better connect the state's economic development strategies with its workforce development system and to implement the principles of the federal WIA.[8]

Federal Workforce Innovation and Opportunity Act of 2014

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which superseded the Workforce Investment Act of 1998.[9] The WIOA requires each state to develop a single, unified plan for aligning workforce services through the identification and evaluation of core workforce programs.[10] In general, the WIOA maintains the one-stop framework of the WIA and encompasses provisions aimed at streamlining services, easing reporting requirements, and reducing administrative barriers.[11] The WIOA officially became effective on July 1, 2015, the first full program year after enactment.

Core Programs

The WIOA identifies four core programs that must coordinate and complement each other in a manner that ensures job seekers have access to needed resources.[12] The core programs are:

- Adult, Dislocated Worker, and Youth Programs;
- Employment Services under the Wagner-Peyser Employment Act;
- Vocational Rehabilitation Services; and
- Adult Education and Literacy Activities.

[3] Workforce Investment Act of 1998, 29 U.S.C. 2801 (1998), *repealed by* Workforce Innovation and Opportunity Act, Pub. L. No. 113-128 (113th Cong.) (July 22, 2014)(codified at 29 U.S.C. 3101, et seq.).
[4] *See* 29 U.S.C. 2821 and 2832 (1998).
[5] *See* 29 U.S.C. 2841 (1998).
[6] *See* 29 U.S.C. 2811 (1998).
[7] Chapter 2000-165, Laws of Fla.
[8] *See* s. 445.003, F.S.
[9] Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. (2014).
[10] *See* 29 U.S.C. 3112(a) (2014).
[11] *See* 29 U.S.C. 3111.
[12] *See* 29 U.S.C. 3102(13).

Performance Measures

In an effort to promote transparency and accountability, the WIOA created a single set of common measures for the evaluation of core programs.[13] The WIOA requires performance reports to be provided at the state, local, and trainer provider levels. The performance measures that now apply across all core programs are:

- The percentage of participants in unsubsidized employment during second quarter after exit;
- The percentage of participants in unsubsidized employment during fourth quarter after exit;
- The median earnings of participants during second quarter after exit;
- The percentage of participants who obtain a postsecondary credential or secondary school diploma within 1 year after exit;
- The achievement of measureable skill gains toward credentials or employment; and
- The effectiveness in serving employers.[14]

State Workforce Development Plan

Using the common performance measures for core programs, the WIOA requires each state to develop and submit a unified state plan based on a 4-year strategy for workforce development.[15] The state plan must describe an overall strategy for the core programs and how the strategy will meet needs for workers, job seekers, and employers.[16] The WIOA also provides an option for states to submit a combined plan that outlines plans for the core programs along with additional workforce programs.[17]

The WIOA requires the Governor to establish a State Workforce Development Board[18] to assist the Governor in carrying out the duties and responsibilities required by the WIOA.[19] The membership of the state board must represent diverse geographic regions of the state, and the membership must include the Governor, members of the state legislature, representatives of business, representatives of workforce within the state, and membership from state officials with primary responsibility for the core programs.[20] Among other duties, the state board is required to assist in the development, implementation and modification of a 4-year state plan, review statewide policies, programs, and recommendations on actions to align workforce development programs, and identification and dissemination on best practices.[21]

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[13] *See* 29 U.S.C. 3141.
[14] *Id*.
[15] *See* 29 U.S.C. 3112(a).
[16] *See* 29 U.S.C. 3112(b).
[17] *See* 29 U.S.C. 3113.
[18] *See* 20 C.F.R. 679.110.
[19] *See* 20 C.F.R. 679.130.
[20] *See* 20 C.F.R. 679.110. *See also* U.S. Department of Labor, Employment and Training Administration Advisory System, Training and Employment Guidance Letter WIOA No. 27-14 (April 15, 2015), *available at* https://wdr.doleta.gov/directives/attach/TEGL/TEGL_27-14.pdf (last visited March 8, 2021).
[21] *See* 20 C.F.R. 679.130.

Regional Planning and Local Workforce Development Boards

The WIOA requires states to identify regional planning areas for workforce development strategies.[22] Within each area, a local workforce development board must be established.[23] Each local workforce development board is required to coordinate planning and service delivery strategies within their area.[24] Formulated strategies are then used by the local workforce development board to develop and submit a local plan for the delivery of workforce services.[25]

The WIOA requires each Governor to designate local workforce development areas in consultation with the state workforce development board, chief elected officials[26] and local workforce development boards, and after consideration of public comment.[27] In making such designations, the WIOA requires each Governor to consider, with limited exception,[28] the extent to which the areas: (1) are consistent with the labor market areas in the state; (2) are consistent with regional economic development areas in the state; and (3) have the federal and non-federal resources necessary to effectively administer workforce investment activities, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education (CTE) schools.[29]

The Governor's Authority

The WIOA grants the Governor broad oversight authority of both the state and local level workforce development programs. The Governor is responsible for designating the local workforce areas,[30] certifying the local workforce development boards,[31] and negotiating the performance measures required by the WIOA.[32] The Governor also has the authority to decertify a local workforce development board, and require its reorganization, for fraud, abuse, or failure to carry out its statutory duties.[33] If a local workforce development board fails to meet its agreed upon performance measures in two consecutive program years, the Governor must decertify it and implement a reorganization plan.[34]

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[22] *See* 29 U.S.C. 3121.
[23] *Id*.
[24] *See* 29 U.S.C. 3122.
[25] *See* 29 U.S.C. 3123.
[26] *See* Pub. L. 113-128, s. 3(9) (codified at 29 U.S.C. 3102). The term chief elected official means "(a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than 1 unit of general local government, the chief elected officials of such units."
[27] *See* Pub. L. 113-128, s. 106(a) and (b) (codified at 29 U.S.C. 3121).
[28] *Id.* WIOA lists two exceptions: (1) during the first two years after WIOA's enactment, the Governor of each state was required to approve a request to designate a local workforce development area from any areas designated as such under the Workforce Innovation Act of 1998 for the two-year period immediately preceding WIOA's enactment that performed successfully and sustained fiscal integrity; and (2) after the initial designation of such areas, the Governor of each state was further required to approve a subsequent request to designate such areas if, over the two most recent program years, they performed successfully, sustained fiscal integrity, and in the case of a local area planning region met additional requirements, including, but not limited to, the preparation of a regional plan.
[29] *Id*.
[30] *See* 29 U.S.C. 3121(b).
[31] *See* 29 U.S.C. 3122(a).
[32] *See* 29 U.S.C. 3121(c).
[33] *See* 29 U.S.C. 3122(c).
[34] *See* 29 U.S.C. 3141(g).

One-Stop Delivery System

The WIOA aims to strengthen the one-stop delivery system by requiring each local area to have at least one comprehensive one-stop delivery provider.[35] A comprehensive one-stop delivery provider supplies physical access to services provided by core partners, as well as other mandatory partners.[36] The WIOA mandates that each partner shares in the funding of services and infrastructure costs of the one-stop delivery system.[37]

Florida's Implementation of The WIOA

In 2016, Florida made changes to the workforce development system to conform to the new federal guidelines established by the WIOA.[38] Under the current workforce development system, the DEO, CareerSource, the state board, and 24 local workforce development boards act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs. Florida submitted its first Unified State Plan in 2016, a Two-Year Modification in 2018, and most recently a plan for the period July 1, 2020 to June 30, 2024.[39] Florida's plan includes the following required programs:

- Adult Program;
- Dislocated Worker Program;
- Youth Program;
- Adult Education and Family Literacy Act;
- Wagner-Peyser Act; and
- Vocational Rehabilitation Program, including Blind Services Program.[40]

The Unified State Plan includes the required core partners of: CareerSource, the DEO, and the Department of Education's (DOE) Divisions of Career and Adult Education, Vocational Rehabilitation and Blind Services.[41]

The Department of Economic Opportunity

The DEO serves as Florida's lead workforce agency.[42] The DEO is responsible for the fiscal and administrative affairs of the workforce development system.[43] The DEO receives and distributes federal funds for employment-related programs to the local workforce development boards.[44] Additionally, the DEO must annually meet with each local workforce development board to

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[35] *See* 29 U.S.C. 3151.
[36] Other mandatory partners may include programs under the Older Americans Act, Adult Education and Literacy, Department of Housing and Urban Development, Social Security Act, Perkins Career and Technical Education Act, and the Community Service Block Grant Act. 29 U.S.C. 3151(b).
[37] *See* 29 U.S.C. 3151(2).
[38] Chapter 2016-216, Laws of Fla.
[39] Workforce Innovation and Opportunity Act, *State of Florida Unified Plan July 1, 2020-June 30, 2024* (2020), at 1, *available at* https://careersourceflorida.com/wp-content/uploads/2020/09/2020-2024-WIOA-Unified-Plan.pdf (last visited March 8, 2021).
[40] *Id*. at 2.
[41] *Id*. at 1.
[42] Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.
[43] Section 445.009(3)(c), F.S.
[44] *See* s. 445.003, F.S.

review the board's performance and to certify that the board is in compliance with applicable state and federal law.[45]

CareerSource Florida, Inc., and the State Board

CareerSource Florida, Inc., a nonprofit corporation, provides administrative support to Florida's *state-level* workforce development board.[46] CareerSource collaborates with the DEO, the local workforce development boards, and one-stop service providers to ensure workforce services are consistent with state and local plans.[47] CareerSource also implements policy directives of the state board.[48]

The state board is the board of directors of CareerSource.[49] The board of directors includes the Governor, 16 business representatives, six workforce representatives, and eight government officials.[50] The state board conducts its work through its board of directors, two councils, and an executive committee.[51]

Additionally, the state board is responsible for the design and implementation of Florida's workforce development system and provides policy direction to ensure that the DEO is properly administering workforce development activities and programs.[52] The state board is also responsible for developing a 4-year plan that is consistent with the requirements of the WIOA.[53] In partnership with state and local workforce partners, the state board develops strategic planning elements for the state plan to address strategies to fulfill workforce system goals; aggregate, integrate, and leverage resources; coordinate the activities of federal, state, and local workforce system partners; address the needs of small businesses; and foster the participation of rural and distressed communities.[54] The state board submits an annual report by December 1 of each year to the Governor and the Legislature on the operations and accomplishments of the board, as well as all audits.[55]

Local Workforce Development Boards

Twenty-four local workforce development boards deliver Florida's workforce development services through over 100 one-stop service providers.[56] The one-stop service providers give Floridians access to available workforce services; including job placement, career

[45] *See* s. 445.007(3), F.S.
[46] Section 445.004(2), F.S. Prior to 2014, CareerSource was known as Workforce Florida, Inc.
[47] *See* s. 445.004, F.S.
[48] *Id*.
[49] *Id*.
[50] *See* s. 445.004(3)(a)-(d), F.S. *See also* Workforce Innovation and Opportunity Act, *State of Florida Unified Plan July 1, 2020-June 30, 2024* (2020), at 89. The membership roster is as of July 1, 2020.
[51] *Id*. at 59
[52] *See* s. 445.004, F.S.
[53] Section 445.003(2), F.S.
[54] *See*. s. 445.006(2)(a), F.S.
[55] Section 445.004(7)(a)-(b), F.S.
[56] Department of Economic Opportunity, *CareerSource Florida Network Directory*, *available at* http://lcd.floridajobs.org/ (last visited March 8, 2021).

counseling, and skills training.[57] Each local board formulates a local budget and oversees the one-stop delivery system within its local area.[58]

Collectively, the local boards operate under a charter approved by CareerSource.[59] The local boards must submit a request for continued designation every two years, beginning July 1, 2017, to CareerSource and the DEO.[60] Continued designation is granted if the local board performed successfully and sustained fiscal integrity.[61] Each local board must develop their own local plans which are aligned with the vision and goals of the state plan.[62]

Accountability

For the period February 10, 2020, through August 7, 2020, the U.S. Department of Labor (USDOL) Employment Training Administration (ETA) conducted a compliance review of the DEO to determine its level of compliance with programmatic, fiscal, and administrative requirements.[63] The review identified 50 compliance findings, which must be addressed, with several findings having regulatory, statutory, and policy violations.[64]

The DEO has since provided corrective action responses to 46 of the 50 findings.[65] The DEO's response concluded that the state board has not delegated its policy making authority and provided the agreement[66] between the DEO and CareerSource.[67] Additionally, the DEO will incorporate an annual review of local board websites to ensure local plans and modifications are made publicly available. To address conducting business in an open manner, the DEO has

[57] *See* s. 445.009, F.S.
[58] Section 445.007(12), F.S.
[59] CareerSource Florida, Strategic Policy 2000.08.15.8D, *Chartering of Local Workforce Development Boards* (Aug. 15, 2020), *available at* https://careersourceflorida.com/wp-content/uploads/2017/05/2000.08.15.I.8D-Chartering-of-LWDB.pdf (last visited March 8, 2021).
[60] CareerSource Florida, Administrative Policy Number 94, *Local Workforce Development Area Designation* (Mar. 20, 2017), at 3, *available at* https://floridajobs.org/docs/default-source/lwdb-resources/policy-and-guidance/guidance-papers/2017-guidance-papers/localareadesignatn-ap94.pdf?sfvrsn=2e3770b0_4 (last visited March 8, 2021).
[61] *Id.*
[62] Workforce Innovation and Opportunity Act, *State of Florida Unified Plan July 1, 2020-June 30, 2024* (2020), at 111; *See also* Department of Economic Opportunity, *Local Workforce Development Area WIOA Plans*, *available at* https://floridajobs.org/local-workforce-development-board-resources/programs-and-resources/local-workforce-development-area-wioa-plans (last visited March 8, 2021).
[63] U.S. Department of Labor, Employment and Training Administration, *Compliance Review Florida Department of Economic Opportunity* (2020), *available at* http://www.floridajobs.org/docs/default-source/lwdb-resources/program-monitoring-and-reports/2020-usdol-eta-compliance-review/2020-usdol-eta-compliance-review.pdf (last visited March 8, 2021).
[64] *Id*. at 1-2.
[65] Department of Economic Opportunity, *Letter to Ms. Lenita Jacobs-Simmons - Regional Administrator Employment and Training Administration* (Feb. 18, 2021), *available at* https://floridajobs.org/docs/default-source/lwdb-resources/program-monitoring-and-reports/2020-usdol-eta-compliance-review/2021-feb-18-eta-comprehensive-monitoring-report-cap.pdf?sfvrsn=b2074db0_6 (last visited March 8, 2021).
[66] Agreement Between the Department of Economic Opportunity and CareerSource Florida, Inc., *Agreement No: BCS02* (July 1, 2019-June 20, 2021), *available at* https://careersourceflorida.com/wp-content/uploads/2020/01/DEO-CSF-Agreement.pdf (last visited March 8, 2021).
[67] Department of Economic Opportunity, *Letter to Ms. Lenita Jacobs-Simmons - Regional Administrator Employment and Training Administration* (Feb. 18, 2021), at 5.

updated the grantee-sub grantee agreement as well as a policy for local area governance and transparency.[68]

Workforce Education Programs

Workforce education programs include:
- Adult general education programs.
- Career certificate programs.
- Applied technology diploma programs.
- Continuing workforce education courses.
- Degree career education programs.
- Apprenticeship and preapprenticeship programs.[69]

FCS institutions and school districts may conduct workforce education programs; however, only an FCS institution may award college credit for an associate in applied science (AAS) or an associate in science (AS) degree.[70] If an AAS or an AS degree program includes an occupational completion point[71] that confers a certificate or an applied technology diploma (ATD), a school district career center can operate that portion of the program.

Approval Process

The DOE develops and maintains CTE programs which align with 17 career clusters.[72] Each CTE program has a corresponding curriculum framework which outlines the program structure, total hours, and student performance standards.[73] Once a program is approved by the SBE, the program may be offered by any institution in Florida.[74]

The SBE is authorized to review and approve baccalaureate programs offered by FCS institutions.[75] The approval process requires an FCS institution to submit a notice of intent that must include evidence that the FCS institution engaged in need, demand, and impact discussions with the state university and other regionally accredited postsecondary education providers in its service district. A proposal by an FCS institution to offer a baccalaureate program, among other criteria, must include an analysis of workforce demand and unmet need for graduates of the program, cost, and admission requirements.[76]

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[68] *Id*. at 7-9.
[69] Section 1011.80(1)(a)-(f), F.S.
[70] Section 1011.80(2), F.S.
[71] *See* s. 1004.02(21), F.S. An occupational completion point means the occupational competencies that qualify a person to enter an occupation that is linked to a career and technical program.
[72] Florida Department of Education, 2020-21 Career and Technical Education Frameworks, http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/curriculum-frameworks/2020-21-frameworks/ (last visited April 15, 2021).
[73] *Id. See also* s. 1004.92(2)(b), F.S. and Health Sciences Career Cluster, Curriculum Framework, Program Surgical Technology (2020-2021), *available at* http://www.fldoe.org/core/fileparse.php/19869/urlt/H170211-2021.rtf.
[74] Florida Department of Education, Presentation to Senate Committee on Education (Feb. 16, 2021), at 105, *available at* https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/5054/9043_MeetingPacket_5054_2.pdf.
[75] Section 1001.03(15), F.S.
[76] Section 1007.33(5)(a) and (d), F.S.

Continuing Workforce Education (CWE)

CWE is defined as instruction that does not result in a technical certificate, diploma, associate in applied science degree, or associate in science degree.[77] CWE is for:

- Individuals who are required to have training for licensure renewal or certification renewal by a regulatory agency or credentialing body.
- New or expanding businesses.
- Business, industry, and government agencies whose products or services are changing so retraining of employees is necessary or whose employees need training in specific skills to increase efficiency and productivity.
- Individuals who are enhancing occupational skills necessary to maintain current employment, to cross train, or to upgrade employment.[78]

Expenditures for CWE programs provided by an FCS institution or school district must be fully supported by fees. Enrollments in CWE courses may not be counted for purposes of funding FTE enrollment.[79]

Apprenticeships and Preapprenticships

The Florida Legislature has established educational opportunities for young people in the state to be trained for trades, occupations, and professions suited to their abilities.[80]

The federal government works in cooperation with states to oversee the nation's apprenticeship programs. States have the authority to register apprenticeship programs through federally-recognized State Apprenticeship Agencies.[81] In Florida, the Department of Education (DOE) serves as the registering entity to ensure compliance with federal and state apprenticeship standards, provide technical assistance, and conduct quality assurance assessments.

An apprenticeable occupation is a skilled trade that possesses all of the following characteristics:

- It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training;
- It is commonly recognized throughout the industry;
- It involves manual, mechanical, or technical skills and knowledge requiring a minimum of 2,000 hours of work and training, which hours are excluded from the time spent at related instruction; and
- It requires related instruction to supplement on-the-job training. Such instruction may be given in a classroom or through correspondence courses.[82]

[77] Section 1004.02(12), F.S.
[78] Id. at (a)-(d).
[79] Section 1011.80(6)(a), F.S.
[80] Chapter 446, F.S.
[81] 29 C.F.R. 29.1 and 29.13.
[82] Section 446.092, F.S.

Registered Apprenticeship

Registered apprenticeship is an employer-driven, on-the-job workforce educational training program that connects job seekers looking to learn new skills and career opportunities with employers looking to create a pipeline of highly skilled individuals for their workforce.[83]

The key components of a Florida registered apprenticeship program are business involvement, structured on-the-job training, related technical instruction, rewards for skill gains, and a nationally recognized credential.[84]

Apprenticeship Programs

An "apprentice" is a person at least 16 years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of journeyman craftsmen, which should be combined with properly coordinated studies of technical and supplementary subjects. An apprentice must enter into an apprentice agreement with a sponsor who may be either an employer, an association of employers, or a local joint apprenticeship committee.[85]

Potential candidates for apprenticeships may apply with a registered sponsor, who determines whether the candidate meets the required qualifications.[86] Sponsors may provide private classroom instruction or coordinate with a local educational agency[87] to provide related supplemental classroom instruction.[88] The apprentices are exempt from paying tuition and fees at a school district technical center, Florida College System (FCS) institution, or state university.[89]

The sponsor operates and registers an agreed-upon apprenticeship program.[90] An apprenticeship program is an organized course of instruction, registered and approved by the DOE that contains all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices.[91]

The administration and supervision of related and supplemental instruction for apprentices, coordination of such instruction with job experiences, and selection and training of teachers and coordinators for such instruction is the responsibility of the appropriate career education institution. The career education institution is encouraged to provide facilities, equipment and

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[83] Florida Department of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report* (2019-2020), *available at* http://www.fldoe.org/core/fileparse.php/5398/urlt/2020appr-rpt.pdf, at 2 (last visited April 15, 2021).
[84] *Id*.
[85] Section 446.021(2), F.S.
[86] Florida Department of Education, *What is Registered Apprenticeship?*, http://www.fldoe.org/academics/career-adult-edu/apprenticeship-programs/what-is-apprenticeship.stml, (last visited April 15, 2021).
[87] Though not defined in the federal regulations governing the U.S. Department of Labor, the U.S. Department of Education regulations define a local educational agency as a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. 34 C.F.R. s. 400.4.
[88] Section 446.051(2), F.S.
[89] Section 1009.25(1)(b), F.S.
[90] Rule 65A-23.002(21), F.A.C.
[91] Section 446.021(6), F.S. An apprenticeship agreement may not operate to invalidate any apprenticeship provision in a collective agreement between employers and employees that establishes higher apprenticeship standards. Section 446.081(1), F.S.

supplies, and instructors' salaries for the performance of related and supplemental instruction associated with the registered program.[92]

Preapprenticeship Programs

A preapprentice is any person 16 years of age or over engaged in any course of instruction in the public school system or elsewhere, which course is registered as a preapprenticeship program with the DOE. The program's purpose is to provide training that will enable students, upon completion, to obtain entrance into a registered apprenticeship program. The program must be registered with the DOE and sponsored by a registered apprenticeship program.[93]

The DOE is authorized to administer the law[94] relating to preapprenticeship programs in cooperation with district school boards and FCS institution boards of trustees (BOT). District school boards, FCS institution BOT, and sponsors must cooperate in developing and establishing preapprenticeship programs that include career instruction and general education courses required to obtain a high school diploma.[95]

Department of Education Responsibilities

The DOE is responsible for administering, facilitating, and supervising registered apprenticeship programs, including, but not limited to:

- Developing and encouraging apprenticeship programs;
- Registering any apprenticeship or preapprenticeship program, regardless of affiliation,[96] which meets standards established by the DOE;
- Cooperating with and assisting sponsors to develop apprenticeship standards and training requirements;
- Monitoring registered apprenticeship programs;
- Leading and coordinating outreach efforts to educate veterans about apprenticeship and career opportunities;
- Investigating complaints regarding failure to meet the standards established by the DOE; and
- Canceling registration of programs that fail to comply with DOE standards and policies.[97]

The DOE establishes uniform minimum standards and policies governing registered apprenticeship programs and agreements. The standards and policies must govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice for, but not limited to, such matters as ratios of apprentices to journeymen, safety, related instruction, and on-the-job training. The DOE is also required to publish an annual report on apprenticeship and preapprenticeship programs, which must include:

- A list of registered apprenticeship and preapprenticeship programs;
- A summary of each local educational agency's expenditure of funds for apprenticeship and preapprenticeship programs, per trade or occupation;

[92] Section 446.051(1), F.S.
[93] Section 446.021(1) and (5), F.S., and Rule 6A-23.010(1), F.A.C.
[94] Sections 446.011 to 446.092, F.S.
[95] Section 446.052(2), F.S.
[96] Apprenticeship programs may be in both non-union and union workplaces; sponsors may include employers, labor organizations, and joint labor-management organizations.
[97] Section 446.041, F.S.

- The number of apprentices and preapprentices per trade and occupation;
- The percentage of apprentices and preapprentices who complete their respective programs in the appropriate timeframe;
- Information and resources related to applications for new apprenticeship programs and technical assistance and requirements for potential applicants; and
- Documentation of activities conducted by the DOE to promote apprenticeship and preapprenticeship programs through public engagement, community-based partnerships, and other initiatives.[98]

State Apprenticeship Advisory Council

The State Apprenticeship Advisory Council (council) advises the DOE on matters related to apprenticeship. The council may not establish policy, adopt rules, or consider whether particular apprenticeship programs should be approved by DOE. The Commissioner of Education (commissioner) or the commissioner's designee must serve ex officio as chair of the council, but may not vote. The state director of the USDOL also serves ex officio as a nonvoting member of the council. The council is comprised of 10 voting members appointed by the Governor. The council must meet at the call of the chair or at the request of a majority of its membership, but at least twice a year.[99]

Florida Pathways to Career Opportunities Grant Program

In 2019, the Governor issued an executive order directing the DOE to seek funding to seed high quality workforce apprenticeships and other industry specific learning opportunities for students.[100]

The Florida Pathways to Career Opportunities Grant Program (grant program) was established in 2019[101] in the DOE to provide grants on a competitive basis to high schools, career centers, charter technical career centers, FCS institutions, and other entities authorized to sponsor an apprenticeship or preapprenticeship program to establish new apprenticeship or preapprenticeship programs, and expand existing apprenticeship or preapprenticeship programs. Grant funds may be used for instructional equipment, supplies, personnel, student services, and other expenses associated with the creation or expansion of an apprenticeship program. Grant funds may not be used for recurring instructional costs or for indirect costs.[102]

Credentials of Value

Industry certification is a voluntary process through which individuals are assessed by an independent third-party using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be at least one of the following:

- Within an industry that addresses a critical local or statewide economic need.
- Linked to an occupation that is included in the workforce system's targeted occupation list.

[98] Section 446.032(1) and (2), F.S.
[99] Section 446.045(2)(a)-(c), F.S.
[100] Florida Office of the Governor, Executive Order 19-31, at 3.
[101] Section 33, ch. 2019-119, Laws of Fla.
[102] Section 1011.802, F.S.

- Linked to an occupation that is identified as emerging.[103]

Industry certifications for nonfarm occupations must be based on the highest national standards available for the specific industry certification. Industry certifications for farm occupations must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.[104]

Florida produces several lists by various entities to identify industry certifications which may be offered by secondary and postsecondary institutions:

List	Designating Entity	Use
Comprehensive Industry Certifications List	CareerSource	• The DOE adopts fundable industry certifications from this list[105]
Career and Professional Education (CAPE) Industry Certification Funding List (K-12)	Developed jointly by CareerSource and the DEO Adopted annually by the SBE	• Florida Education Finance Program (FEFP) supplemental FTE for industry certification attainment • Acceleration component in the school grades calculation [106]
CAPE Postsecondary Industry Certification Funding List	Adopted annually in rule by the SBE	• Performance funding for school districts and FCS institutions for occupational areas identified in the General Appropriations Act[107]
CTE Audit List	Developed jointly by CareerSource, the DEO, and other stakeholders	• Provides authority to the Commissioner of Education (commissioner) to audit all workforce programs to ensure alignment to market demand[108] • Annually reviewed and synced with curriculum framework process/cycle to ensure quality[109]
Rapid Credentialing Grant Lists	DOE	• Increase capacity around short-term, in-demand middle to high wage occupation, workforce programs[110]

[103] Section 1003.492(2), F.S.
[104] Section 1003.492(3(a) and (b), F.S.
[105] Florida Department of Education, Division of Career and Adult Education, *2020-21 Career Source Florida Recommendations, available at* http://www.fldoe.org/core/fileparse.php/8904/urlt/2021-csfl-rec-all.pdf.
[106] Sections 1003.492 and 1008.44(1), F.S.
[107] Sections 1008.44(1), 1011.80, and 1011.81, F.S.
[108] Section 1003.491(5), F.S.
[109] Florida Department of Education, Presentation to the Senate Education Committee on January 26, 2021, *Career and Technical Education Programs and Labor Market Needs*, at 91, *available at* https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4987/8983_MeetingPacket_4987_2.pdf.
[110] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity(June 16, 2020)*, at 11, 14, and 18, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.

		• Two lists (one non-degree list and one for credit list) of short term CTE programs that meet statewide benchmarks, aligned to a mid-to-high wage occupation and cross walked to Enterprise Florida's targeted industry sectors[111]
Programs of Strategic Emphasis List	State University System (SUS) BOG	• Aligns SUS degrees with Florida's economic and workforce needs • Performance funding component for the SUS[112]

The Florida Career and Professional Education (CAPE) Act

The CAPE Act was created to provide a statewide planning partnership between the business and education communities to attract, expand and retain targeted, high-value industry to sustain a strong, knowledge-based economy. The primary purpose of the CAPE Act is to:

- Improve middle and high school academic performance by providing rigorous and relevant curriculum opportunities;
- Provide rigorous and relevant career-themed courses that articulate to postsecondary-level coursework and lead to industry certification;
- Support local and regional economic development;
- Respond to Florida's critical workforce needs; and
- Provide state residents with access to high-wage and high-demand careers.[113]

In order to fulfill the requirements of the CAPE Act the DOE incentivizes school districts and FCS institutions[114] through two statewide lists.[115]

The CAPE Industry Certification Funding List includes CAPE industry certifications, CAPE acceleration industry certifications, and CAPE digital tool certificates. Industry certifications on the final approved CAPE Industry Certification Funding list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP). The value is added to the total FTE in secondary career education programs for grades 9 through 12. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification to the program that generated the funds.[116]

[111] Florida Department of Education, Presentation to the Senate Education Committee on January 26,2021, *Career and Technical Education Programs and Labor Market Needs*, at 91, *available at* https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4987/8983_MeetingPacket_4987_2.pdf.
[112] State University System, Programs of Strategic Emphasis, *Methodology for Updating Programs of Strategic Emphasis In the State University System of Florida, Board of Governors CIP 2020 Update* (Sept. 2020), https://www.flbog.edu/wp-content/uploads/CIP_2020_PSE_Methodology_CE_FINAL.pdf (last visited April 15, 2021).
[113] Section 1003.491, F.S.
[114] Sections 1011.62(1)(o), 1008.44, 1011.80, and 1011.81(2), F.S.
[115] Sections 1011.62(1)(o), 1011.80(7)(b), and 1011.81(2)(c), F.S.
[116] Section 1011.62(1)(o), F.S.; Rule 6A-6.0573(12), F.A.C.

CAPE Industry Certification Funding List (K-12)

Florida's current process for submitting, reviewing, and approving certifications starts with the submission of a certification application to CareerSource by local boards or public school principals. All submissions are then researched by CareerSource staff, the DOE, and the DEO to determine eligibility and to develop a list of recommended certifications for approval. The CareerSource Board of Directors is responsible for the final approval of certifications that the DOE may consider for funding eligibility and addition to the CAPE Industry Certification Funding List.[117]

Approved industry certifications are published by the DOE, CareerSource, and the Department of Agriculture and Consumer Services (DACS). The selection of industry certifications occurs in two phases. First, CareerSource must identify industry certifications and compile them into a Comprehensive Industry Certification List.[118] Second, the DOE must:

- Review CareerSource's Comprehensive Industry Certification List that includes 236 certifications;[119]
- Identify industry certifications that qualify for additional weighted funding;[120]
- Consider district requests that industry certifications be added to the approved list;[121] and
- Annually publish a final list.[122]

In order for an industry certification to be included on the CAPE Industry Certification Funding List, a certification must require a minimum of 150 hours of instruction and be achievable by secondary students.[123]

CAPE acceleration industry certifications, which are annually approved by the commissioner, must articulate for 15 or more college credit hours and, if successfully completed, must be eligible for additional FTE funding.[124] In order for a CAPE acceleration industry certification to be included on the CAPE Industry Certification Funding List, it must meet the same requirements as an industry certification and also have a statewide articulation agreement that enables students to earn 15 hours or more of college credit.[125]

CAPE digital tool certificates recognize a student's attainment of digital skills. The DOE is required to identify, by June 15 of each year, digital tool certificates that indicate a student's digital skills. The DOE must notify each school district when a digital tool certificate is available. Digital tool certificates must be made available to all public elementary and middle

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[117] CareerSource Florida, *2021-2022 Submission Process and Guidelines for Career and Professional Education Act, available at:* https://careersourceflorida.com/wp-content/uploads/2018/08/CAPE_Process_and_Guidelines.pdf (last visited April 15, 2021).
[118] Section 1003.492(3) and (4), F.S.; rule 6A-6.0573(2)(d), F.A.C.
[119] Rule 6A-6.0573(3), F.A.C. *See also*, Florida Department of Education, Division of Career and Adult Education, *2020-21 Career Source Florida Recommendations, available at* http://www.fldoe.org/core/fileparse.php/8904/urlt/2021-csfl-rec-all.pdf (last visited April 15, 2021).
[120] Rule 6A-6.0573(4), F.A.C.
[121] Rule 6A-6.0573(9), F.A.C.
[122] Section 1003.492(4), F.S.; rule 6A-6.0573(8), F.A.C.
[123] Rule 6A-6.0573(7)(a), F.A.C.
[124] Section 1003.4203(5)(b), F.S.
[125] Rule 6A-6.0573(7)(c), F.A.C.

grades students. By July 1, 2018, and on an annual basis thereafter, at least 75 percent of public middle grades students are expected to earn at least one digital tool certificate.[126] In order for a CAPE digital tool certificate to be included on the CAPE Industry Certification Funding List a certificate must:

- Be achievable by elementary school and middle grades students;
- Assess at least one of the following digital skills: word processing; development of spreadsheets; digital arts; cybersecurity; coding; and development of sound, motion, and color presentations; and
- Be part of a career pathway leading to the attainment of a career and professional education industry certification on the career and professional education funding list.[127]

The commissioner may at any time recommend adding to the CAPE Industry Certification Funding List no more than 30 career and professional education digital tool certificates limited to the areas of word processing; development of spreadsheets; digital arts; cybersecurity; coding; and development of sound, motion, and color presentations that do not articulate for college credit.[128]

The Chancellor of Career and Adult Education may identify certificates and certifications for students with disabilities, which must be included on the CAPE Industry Certification Funding List, i.e., digital tool certifications, workplace industry certification, and occupation safety and health administration industry certifications.[129]

CAPE Postsecondary Industry Certification Funding List

The CAPE Postsecondary Industry Certification Funding List is developed by the Chancellor of the FCS and the Chancellor of Career and Adult Education and approved by the SBE. These industry certifications are linked to occupational areas identified in the General Appropriations Act.[130]

State University System-Programs of Strategic Emphasis

As part of its duties to operate the SUS, the BOG[131] develops a strategic plan which specifies the goals and objectives for each university and the SUS.[132] Part of the strategic plan includes criteria for designating baccalaureate degree and master's degree high-demand programs of

[126] Section 1003.4203(3), F.S.
[127] Rule 6A-6.0573(7)(d), F.A.C.
[128] Section 1008.44(1)(b), F.S.
[129] Section 1008.44(1)(c), F.S.
[130] Sections 1011.80(7)(b) and 1011.81(2)(b), F.S.; ss. 124 and 130, ch. 2020-111, Laws of Fla.
[131] Art. IX., s. 7, Fla. Const.
[132] Section 1001.706(5)(b), F.S.

emphasis.[133] The criteria for designating high-demand programs of emphasis is explained in the following table:

BOG High-Demand Programs of Emphasis Criteria	
Criteria Percentage	**Criteria Metrics**
50%	Achievement of performance outcome thresholds determined by the BOG.[134]
50%	Achievement of performance outcomes linked to: 1. Job placement in employment of 36 hours or more per week and average full-time wages of graduates of the degree program 1 year and 5 years after graduation. 2. BOG data-driven gap analysis of the state's job market demands and the outlook for jobs that require a baccalaureate degree or higher, with a growth rate of at least 10.1 percent, and a median Florida wage of at least $45,000 per year. [135]

The BOG periodically updates the list of identified programs of strategic emphasis (PSE), and most recently updated the list in September 2020[136] identifying 868 PSE.[137] The BOG categorizes PSEs into five areas:

- *Critical Workforce - Education*: comprised of the SBE critical teacher shortage areas.
- *Critical Workforce - Health*: comprised of workforce projections by the DEO.
- *Critical Workforce - Gap Analysis*: programs leading to occupations projected to be critically under-supplied in the BOG analysis of labor market projections and related degree production.
- *Economic Development - Global Competitiveness*: programs that assist in making the SUS globally competitive.
- *Economic Development - Science Technology Engineering and Math (STEM)*: programs identified with national usage. [138]

The PSE are used by the BOG to develop annual accountability plans, coordinate academic programs, and approve new academic programs.[139] PSEs are also a component of SUS performance based funding.[140] For the 2019-2020 academic year, 54 percent of bachelor's

[133] Section 1001.706(5)(b)4., F.S.
[134] *Id.*
[135] Section 1001.706(5)(b)4.a.-b., F.S. *See also* Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (February 10, 2021), at 6, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%202-10-21.pdf.
[136] Florida Board of Governors, *Programs of Strategic Emphasis*, https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/ (last visited April 15, 2021).
[137] Florida Board of Governors, *Approved PSE List 2020-2021* (September 2020), *available at* https://www.flbog.edu/wp-content/uploads/Current-PSE-list-approved-by-the-BOG-at-its-September-2020-meeting-XLSX.xlsx.
[138] Florida Board of Governors, *Current CIP 2020 Programs of Strategic Emphasis methodology* (September 2020), at 3, *available at* https://www.flbog.edu/wp-content/uploads/CIP_2020_PSE_Methodology_CE_FINAL.pdf. at 4-6, and 10.
[139] Florida Board of Governors, *Programs of Strategic Emphasis*, https://www.flbog.edu/resources/academic/programs-of-strategic-emphasis/ (last visited April 15, 2021).
[140] Florida Board of Governors, *Performance Funding Model Overview* (Nov. 2019), at 1, *available at* https://www.flbog.edu/wp-content/uploads/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-

degrees awarded by the SUS and 63 percent of graduate degrees awarded by the SUS were in PSE.[141]

Performance Funding

Incentives are provided for valuable credentials. A value of 0.025 FTE is calculated for CAPE digital tool certificates earned by students in elementary and middle school. Weights of 0.1, 0.2, 0.3, 0.5, or 1.0 FTE are added for courses that lead to the attainment of a CAPE industry certification, as reflected in the following table:[142]

Weight	Course Type
0.1 FTE	CAPE Industry Certification does not articulate to college credit
0.2 FTE	CAPE Industry Certification articulates to college credit
0.3 FTE	CAPE Innovation Course
0.5 FTE	CAPE Acceleration Industry Certification articulates to 15-29 college credit hours
1.0 FTE	CAPE Acceleration Industry Certification articulates to 30+ college credit hours

Bonuses are available for teachers of courses in which students earn industry certifications, as follows:

- A bonus amount of $25 is awarded for a course with a weight of 0.1.
- A bonus amount of $50 is awarded for a course with a weight of 0.2.
- A bonus amount of $75 is awarded for a course with a weight of 0.3.
- A bonus amount of $100 is awarded for a course with a weight of 0.5 or 1.0.[143]

In addition, performance incentive funds are provided for attainment of industry certifications identified on the CAPE Postsecondary Industry Certification Funding List.[144] For FY 2020-21, $6.5 million in performance-based incentives were allocated for school districts and $14 million for state colleges.[145] Each eligible postsecondary-level certification earned by a student at a postsecondary institution generates $1,000 in state performance funding for the institution.[146]

1.pdf. Metric 6 includes bachelor's degrees award in areas of strategic emphasis and Metric 8a. includes graduates degrees awarded in areas of strategic emphasis. *See also* s. 1001.92, F.S.

[141] Florida Board of Governors, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (February 10, 2021), at 11, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%202-10-21.pdf.

[142] Section 1011.62(1)(o), F.S.

[143] Section 1011.62(1)(o)3., F.S.

[144] Section 1011.81(2)(b), F.S.

[145] Sections 124 and 130, ch. 2020-111, L.O.F.

[146] Section 1011.80(7)(b)3., F.S.; s. 1011.81(2)(c), F.S.

Rapid Credentialing Grant

In FY 2020-2021, $35 million was allocated for the Rapid Credentials Grant from the Governor's Emergency Education Fund (GEER),[147] one of the four grant programs created through the Coronavirus Aid Relief and Economic Security (CARES) Act.[148] Grant funds are directed to connecting unemployed, underemployed, or furloughed individuals with training in an in-demand area of the regional workforce board.[149]

Rapid credentialing programs are designed to increase all of Florida's 28 state and 48 technical colleges' capacity to enroll and graduate students in short term, in-demand, middle to high wage occupation, workforce programs that can be completed in 18 weeks or less, aiding in accelerated recovery for residents and the economy after the COVID-19 pandemic.[150] Many of these programs are not eligible for federal financial aid as they do not meet the minimum instructional time requirements.[151]

Rapid credential programs include the following:

- Technical certificate programs (i.e., short, credit options offered by FCS institutions).
- Market-driven and in-demand clock hour career certificate programs (i.e., short, vocational training programs offered by technical colleges).
- Engaging, transformative, in-demand industry certification preparation courses (i.e., courses that culminate in an industry-recognized certification that can articulate into college credit).[152]

The DOE identified over 100 rapid credential programs statewide and cross-walked them to CareerSource's in-demand sector strategies. These workforce education-related options are accessible, affordable, and articulate into "higher-level" credentials (i.e., associate of science degrees or bachelors of applied science degrees).[153]

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[147] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity(June 16, 2020)*, at 14, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.

[148] On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act was signed into law. Four grant programs were created through the CARES Act: Education Stabilization Fund Discretionary Grants; Governor's Emergency Education Relief Fund; Elementary and Secondary School Emergency Relief Fund; and Higher Education Emergency Relief Fund. United States Department of Education, Office of Elementary & Secondary Education, *Education Stabilization Fund*, https://oese.ed.gov/offices/education-stabilization-fund/ (last visited April 15, 2021).

[149] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity* (June 16, 2020), at 16, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.

[150] *Id*. at 11, 14, and 18.

[151] United States Department of Education, Federal Student Aid, *FASFAA Clock Hour Workshop* (Oct. 30 – Nov. 1, 2018), at 2, *available at* https://fasfaa.memberclicks.net/assets/ClockHour/1819/Presentations/FASFAA%20Cl%20Hr%20wkshp%20-%20clock%20hour%20basics%20-%20Oct%202018.pdf.

[152] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity* (June 16, 2020), at 14, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.

[153] *Id*.

Funds were allocated to 73 local education agencies, including charter districts and laboratory schools.[154] The grant requires 25 percent matching by the institution and allocates a minimum of $150,000 per agency plus a pro-rated share of additional funds based on unduplicated headcount in postsecondary CTE programs.[155] Of the $35 million award, $7,130,453 was allocated to technical colleges, and the remaining $27,869,547 was allocated to FCS institutions.[156] Funds may be used to purchase necessary equipment and underwrite costs associated with administering these short term courses/programs.[157]

Measuring Outcomes for Florida's Workforce Programs

Florida Talent Development Council

The Florida Talent Development Council is responsible for the development and monitoring of a strategic plan for talent development to accomplish the attainment goal of 60 percent of working age adults with a high-value postsecondary credential by 2030.[158]

Florida Education & Training Placement Information Program (FETPIP)

The FETPIP is a data collection and consumer reporting system established to provide follow-up data on former students and program participants who have graduated, exited, or completed a public education or training program within the state of Florida. The law requires all elements of Florida's WDS to use information provided through FETPIP for any project they conduct that requires automated matching of administrative records for follow-up purposes.[159]

FETPIP data does not capture certain data elements necessary for WIOA federal reporting criteria. The system is unable to report data on non-WIOA participant performance.[160]

Workforce Development Information System (WDIS)

The DOE is responsible for designing specifications for the collection and reporting of data and performance specifications for the WDIS. The design must allow parallel reporting and state-level access of workforce data necessary to use the data reports as a basis for calculating funding allocations. In addition, the design must be capable of providing reports necessary to comply with other program performance documentation required by state or federal law, without requiring additional data collection or reporting from local educational agencies.[161]

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[154] Florida Department of Education, Division of Career and Adult Education, *Rapid Credentialing*, at 10, *available at* http://www.fldoe.org/core/fileparse.php/19916/urlt/RapidCredentials3.pdf.
[155] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity* (June 16, 2020), at 18-19, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.
[156] Florida Department of Education, Division of Career and Adult Education, *Rapid Credentialing*, at 4, *available at*http://www.fldoe.org/core/fileparse.php/19916/urlt/RapidCredentials3.pdf.
[157] Florida Department of Education, Division of Career and Adult Education, Division of Florida Colleges, *CARES Act, Rapid Credentialing Grant Opportunity* (June 16, 2020), at 16, *available at* http://www.fldoe.org/core/fileparse.php/7515/urlt/RFA-RapidCredentialing.pdf.
[158] *Id.* at (4).
[159] Section 1008.39, F.S.
[160] Email, Florida Department of Economic Opportunity, Director of External Affairs (Nov. 10, 2020).
[161] Section 1008.40(1), F.S.

Career and Technical Education Program Audit

On January 2019, the Governor issued Executive Order 19-31[162] which established a goal for Florida to become number one in the nation for workforce education by 2030.The executive order directed the commissioner to complete an audit of CTE offerings in Florida and develop a methodology to audit and review offerings annually.

The commissioner is required to annually review K-12 and postsecondary CTE programs in consultation with the DEO, CareerSource, leaders of business and industry, the BOG, the FCS, school districts, and other education stakeholders. The review must assess alignment of existing offerings with employer demand, postsecondary credentials, and professional industry certifications. This includes identifying offerings that are linked to occupations that are in high demand by employers, require high-level skills, and provide middle-level to high-level wages.[163]

Under the audit's labor market alignment requirements, current secondary career preparation and postsecondary CTE programs are required to be linked to an occupation on the Statewide or Regional Demand Occupation List, linked to a program that is expected to grow over the next eight years, or train for an occupation with middle to high wages. For programs not meeting any of these criteria, local agencies may document demand using the criteria specified in the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) CLNA.[164]

The commissioner is required to phase out CTE programs which are not aligned with the needs of employers or do not provide program completers with a middle-wage or high-wage occupation and encourage districts and postsecondary institutions to offer new programs.[165]

Nursing

According to the Bureau of Labor Statistics, Florida ranks third among states to employ nurses. While Florida ranks as one of the top states for employment of nurses, a report in June 2020, showed 35,000 or 16.3 percent of registered nurses (RN) and 3,700 or 13.4 percent of advanced practice registered nurses (APRN) are over the age of 60 in Florida and may begin phasing into retirement during the next 5 to 10 years.[166]

According to a 2019-2020 American Association of Critical-Care Nurses report, United States nursing schools turned away 80,407 qualified applicants from baccalaureate and graduate nursing programs in 2019 due to an insufficient number of faculty, clinical sites, classroom space, and clinical preceptors, as well as budget constraints.[167]

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[162] State of Florida, Office of the Governor, *Executive Order Number 19-31* (Jan. 30, 2019), https://www.flgov.com/wp-content/uploads/2019/01/EO-19-31.pdf (last visited April 15, 2021).
[163] Section 1003.491(5)(a), F.S.
[164] Florida Department of Education, *Florida's CTE Audit: Statewide Review of Programs,* at 18, *available at* http://www.fldoe.org/core/fileparse.php/18788/urlt/2020CTEAuditPreliminaryFindings.pdf.
[165] Section 1003.491(5)(b), F.S.
[166] Email, Florida College Access Network (March 1, 2021) (on file with Senate Appropriations Committee).
[167] American Association of Colleges of Nursing, Fact Sheets, *Nursing Faculty Shortage*, https://www.aacnnursing.org/news-information/fact-sheets/nursing-faculty-shortage (last visited April 15, 2021).

Career Planning for Florida's Students

Middle Grades

Before a middle grades student can successfully be promoted to high school, one of the required courses a student must complete is a career and education planning course during grades 6, 7, or 8. The required course must be internet-based and result in a personalized academic and career plan for the student that may be revised as the student progresses; must emphasize the importance of entrepreneurship and employability skills; and must include information from the DEO's economic security report.[168] The required personalized academic and career plan must inform students of high school graduation requirements, the requirements for each scholarship in the Florida Bright Futures Scholarship Program; SUS and FCS institution admission requirements; and available opportunities to earn college credit in high school.[169] The course may be implemented as a stand-alone course or integrated into another course or courses.[170]

The career and education planning course must prepare students to:

- Describe the influences that societal, economic, and technological changes have on employment trends and future training.
- Develop skills to locate, evaluate, and interpret career information.
- Identify and demonstrate processes for making short and long term goals.
- Demonstrate employability skills such as working in a group, problem-solving and organizational skills, and the importance of entrepreneurship.
- Understand the relationship between educational achievement and career choices/postsecondary options.
- Identify a career cluster and related pathways through an interest assessment that match career and education goals.
- Develop a career and education plan that includes short and long-term goals, high school program of study, and postsecondary/career goals.
- Demonstrate knowledge of technology and its application in career fields/clusters.[171]

For the 2020-2021 school year, the DOE identified 79 approved middle grades courses for career and education planning.[172] In addition, the DOE publishes an educator's toolkit, providing resources such as classroom activities, lesson plans, and additional resources to assist teachers in career and education course planning.[173]

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[168] Section 1003.4156(1)(e), F.S.
[169] To include Advanced Placement courses, the International Baccalaureate Program, the Advanced International Certificate of Education Program, dual enrollment, including career dual enrollment and career education courses, including career-themed courses, preapprenticeship and apprenticeship programs, and course sequences that lead to industry certifications. Section 1003.4156(1)(e), F.S.
[170] Section 1003.4156(1)(e), F.S.
[171] Florida Department of Education, *Career & Education Planning Course Standards*, *available at* http://www.fldoe.org/core/fileparse.php/3/urlt/ceplanningcoursecompetencies.pdf.
[172] Florida Department of Education, *Approved Middle School Courses for Career & Education Planning 2020-2021 School Year* (Jan. 31, 2020), *available at* http://www.fldoe.org/core/fileparse.php/7531/urlt/approved-courses.pdf.
[173] Florida Department of Education, *Educator's Toolkit*, http://www.fldoe.org/academics/college-career-planning/educators-toolkit/ (last visited April 15, 2021).

High School

Each district school board must provide appropriate instruction to ensure that students meet SBE-adopted standards[174] in specified subject areas.[175] Each school district must submit a report to the commissioner that describes how instruction was provided during the previous school year.[176] One of the required instructional topics is a character development program required in kindergarten through grade 12.[177]

In grades 9 through 12, the character development curriculum, at a minimum, must include instruction on:

- Developing leadership skills, interpersonal skills, organization skills, and research skills.
- Creating a resume.
- Developing and practicing the skills necessary for employment interviews.
- Conflict resolution, workplace ethics, and workplace law.
- Managing stress and expectations.
- Skills that enable students to become more resilient and self-motivated.[178]

Postsecondary

Florida's postsecondary institutions provide students with opportunities to explore and prepare for their future careers through services available at their career centers and courses on life skills and career planning. The career centers provide students with opportunities to create a resume, prepare for job interviews, and search for jobs among other services.[179]

State Career Planning Resources

The MyCareerShines website is a career planning system available to Florida's middle and high school students to assist in exploring career options and developing an academic and career plan.[180] Some school districts use the system to help satisfy the middle grades course requirements. Effective September 1, 2020, school districts became responsible for their own

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[174] In 2020, the State Board of Education adopted new standards for English language arts and mathematics, called the Benchmarks for Excellent Student Thinking (BEST) standards. The English language arts standards implementation begins with the 2021-2022 school year and implementation of the math standards begin in the 2022-2023 school year.
[175] Section 1003.42(1), F.S.; The required subject areas include: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.
[176] Section 1003.42(2), F.S.; Rule 6A-1.094124(1), F.A.C.
[177] Section 1003.42(2)(s), F.S.
[178] *Id.*
[179] *See* Florida State University, Division of Student Affairs, The Career Center, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (Jan. 27, 2021), at 31, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%201-27-21.pdf.; Atlantic Technical College, Career Center, https://www.atlantictechnicalcollege.edu/atccareercenter/ (last visited April 15, 2021).; Tallahassee Community College, Career Center, https://www.tcc.fl.edu/student-life/career-services/ (last visited April 15, 2021).; DOE Statewide Course Numbering System, Find a Statewide Course, *Browse Statewide Course-Prefix- SLS Student Life Skills*, https://flscns.fldoe.org/ (last visited April 15, 2021).
[180] Florida Department of Education, Educator's Toolkit, *MyCareerShines powered by Kuder*, http://www.fldoe.org/academics/college-career-planning/educators-toolkit/ (last visited April 15, 2021).

career planning and advisement platform, allowing districts to continue to utilize MyCareerShines via contract or to explore alternative options.[181]

The DEO, in consultation with the DOE, prepares an annual economic security report of employment and earning outcomes for degrees or certificates earned at public postsecondary educational institutions. The report must be easy to read and accessible by the public and must be made available online.[182] Additionally, each middle school and high school student or the student's, parent prior to registration, must be provided a 2-page summary of the report.[183] At the postsecondary level, each SUS and FCS institution must provide students, prior to registration, electronic access to the report.[184]

The report, by education sector, must provide data for graduates of degree or certificate programs of public postsecondary institutions in the year after the certificate is earned and 5 years after graduation. The data must include:

- The number and percentage of graduates employed full-time.
- The number and percentage of graduates earning:
  - Quarterly wages of $6,250 and annualized wages of $25,000 and below.
  - Quarterly wages between $6,251 and $11,250 and annualized wages between $25,001 and $45,000.
  - Quarterly wages of $11,251 and annualized wages of $45,001 and above.[185]

Launch My Career Florida serves as an on-line tool which provides students, parents, and the public with a preliminary view of the type of information that is available within the annual Economic Security Report. The tool allows users to explore wage information, current and projected job growth, and search for public postsecondary schools that offer a degree in a selected career path.[186]

Employ Florida serves as Florida's online labor exchange system and case management system.[187] The site serves job seekers looking to find a job or receive additional training, employers seeking to post job openings and find qualified candidates, and individuals looking to explore career fields, build a resume, or access labor market information.[188]

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[181] Florida Department of Education, Memo, *Update on Career Planning and Advisement Platform* (Aug. 12, 2020), *available at* https://info.fldoe.org/docushare/dsweb/Get/Document-8937/dps-2020-94.pdf.
[182] Section 445.07(1) and (2), F.S.; *See also* Outcomes for Graduates of Florida's Public Postsecondary Educational Institutions, *Economic Security Report 2020* (March 2021), *available at* http://lmsresources.labormarketinfo.com/special/ESR.pdf.
[183] Section 1002.20(24), F.S.; *See also* Measuring the Economic Success of Florida's Graduates, *2020 Economic Security Report- Executive Summary* (March 2021), *available at* http://lmsresources.labormarketinfo.com/special/ESR_Summary.pdf.
[184] Section 1001.02(2)(w), F.S. and s. 1001.706(5)(d), F. S.
[185] Section 445.07(2)(c) and (d), F.S.
[186] Launch My Career Florida, *About the Program*, http://launchmycareerfl.org/pages/florida/about.html (last visited April 15, 2021).
[187] Florida Department of Economic Opportunity, Presentation to Post-Secondary Education & Lifelong Learning Subcommittee (Jan. 27, 2021), at 5, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3109&Session=2021&DocumentType=Meeting%20Packets&FileName=pel%201-27-21.pdf.
[188] *Id.* at 9-10; *See also* Employ Florida, https://www.employflorida.com/vosnet/Default.aspx (last visited April 15, 2021).

Additional state career planning tools include Get There, Florida's Workforce Education Initiative to raise awareness and rebrand career and technical education. The site highlights the 17 career pathways offered at Florida's 28 state colleges and 48 technical colleges, providing alternatives to the traditional university pathway.[189] Apprentice Florida is another initiative to expand apprenticeship opportunities in several targeted sectors in Florida as well as expanding apprenticeship and pre-apprenticeship opportunities to underrepresented populations.[190]

General Education Program

The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), the regional accrediting body for Florida's public post-secondary institutions, describes general education as an integral component of an undergraduate degree program and the component of a degree program where students encounter the basic content and methodology of the principal areas of knowledge: humanities and fine arts, social and behavioral sciences, natural sciences and mathematics.[191]

Current law requires an associate in arts degree at an FCS or SUS institution to be no more than 60 semester hours of college credit and include 36 semester hours of general education course work. For the baccalaureate degree, it must be no more than 120 semester hours of college credit, unless prior approval has been granted by the BOG or the SBE, as applicable, and include 36 semester hours of general education coursework.[192]

Since academic year 2015-2016, students entering an FCS or SUS institution are required to complete at least one identified core course in the subject areas of communication, mathematics, social sciences, humanities, and natural sciences. All public postsecondary educational institutions are required to accept these courses as meeting general education core course requirements.[193] After completing the general education core course requirement, the remaining courses and credits that fulfill the total 36-hour general education requirement for an associate in arts or baccalaureate degree are at the discretion of the FCS or SUS institution.[194]

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[189] Florida Department of Education, Statewide Email- Get There- Florida's Workforce Education Initiative Unveiled (Sept. 23, 2020), available at http://www.fldoe.org/core/fileparse.php/7671/urlt/swe-GET-THERE-FL-WorkforceEduInitiativeUnveiled.pdf.
[190] Florida Department of Economic Opportunity, *Apprenticeship FLA*, https://floridajobs.org/office-directory/division-of-workforce-services/workforce-programs/apprenticeship-fla (last visited April 15, 2021).
[191] Southern Association of Colleges and Schools Commission on Colleges, *Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement* (2020), at 81, *available at* https://sacscoc.org/app/uploads/2019/08/2018-POA-Resource-Manual.pdf.
[192] Section 1007.25(8) and (9), F.S.
[193] Section 1007.25(3), F.S.
[194] Florida Board of Governors, General Education Core Course Options, Regulation 8.005(1) and Rule 6A-14.0303(5), F.A.C.

III. Effect of Proposed Changes:

Florida's Workforce Development System (Section 1)

To create greater alignment among Florida's WDS for the delivery of programs suited for the 21st century which are focused on equity and efficiency, the bill creates s. 14.36, F.S., to create the Reimagining Education and Career Help Act (REACH Act).

The REACH Act serves to address the evolving needs of Florida's economy by increasing the level of collaboration and cooperation among state businesses and education communities while improving training and providing for equity and access to a more integrated workforce and education system for Florida. To facilitate alignment and coordination of entities responsible for Florida's WDS, the bill creates the Office of Reimagining Education and Career Help (REACH Office) in the Executive Office of the Governor. The Director of the REACH Office is required to be appointed by the Governor and serve at his or her pleasure.

REACH Office Duties

The REACH Office is required to fulfill the following duties:

- Serve as an advisor to the Governor on matters related to the state's WDS;
- Establish criteria and goals for workforce development and diversification in Florida's WDS;
- Provide strategies to align and improve efficiency in Florida's WDS and the delivery of workforce related programs;
- Coordinate state and federal workforce related programs, plans, resources, and activities provided by CareerSource, the DEO, and the DOE;
- Oversee the workforce development information system designed by the DOE to verify the validity of data collected and monitor compliance of workforce related programs and education and training programs with applicable federal and state requirements as authorized by federal and state law;
- Serve on the Credentials Review Committee to identify non-degree and degree credentials of value and facilitate the collection of data necessary to conduct committee work;
- Coordinate and facilitate a memorandum of understanding (MOU) for data sharing agreements of the state's workforce performance data among state agencies and align, to the greatest extent possible, adopted performance measures;
- Streamline the clinical placement process and increase clinical placement opportunities for students, hospitals, and other clinical sites by administering, directly or through a contract, a web-based centralized clinical placement system for use by all nursing education programs subject to the requirements of nursing education program approval; and
- Direct the objectives of the Talent Development Council.

In addition, the REACH Office will develop the criteria DEO will use to assign a letter grade to each LWDB, and require the criteria, in part, be based on LWDB performance accountability measures and return on investment. The majority of the grade should be based on the improvement by each LWDB in the long-term self-sufficiency of participants through outcome measures such as reduction in long-term public assistance and the percentage of participants whose wages were higher after program completion compared to wages before participation in a program.

No-Wrong-Door Entry Strategy

The REACH Office if required to improve equity and access to the myriad of state and federally funded workforce related programs offered across different entities by creating a no-wrong-door entry strategy whereby a Floridian must not be required to visit multiple locations when seeking access to education and workforce training. In creating the no-wrong-door strategy, the office is required to do the following:

- Develop a training course to cross-train all staff within Florida's WDS on workforce related programs, including how to use an integrated case management system, develop an individual employment plan, conduct a comprehensive needs assessment, pre-certify individuals for workforce related programs, and on any other activities to reinforce the no-wrong-door-entry strategy;
- Coordinate and facilitate a common intake form and case management system for use by workforce related programs to minimize duplicate data entry;
- Coordinate and facilitate a MOU between the DEO and the DCF to permit Supplemental Nutrition Assistance Program (SNAP) and TANF clients to pre-certify for WIOA training services without having to physically visit a one-stop center;
- Oversee the performance evaluation of workforce related programs and services for participants receiving family self-sufficiency benefits and in welfare transition programs; and
- Identify other state and federal programs that serve individuals with significant barriers to employment as demonstrated by low placement, employment, and earnings rates and identify strategies to increase the utilization of such programs by LWDBs.

Workforce Opportunity Portal

The REACH Office is required to minimize duplication and use existing resources to adapt and integrate state information systems into an online workforce opportunity portal. The REACH Office should maximize the use of available federal and private funds for the development and initial operation of the portal.

To determine the quality of workforce related programs offered by public postsecondary educational institutions and public and private training providers, the office must review each program one year after the program's first graduating class and every five years after the first review.

The bill requires the REACH Office to maximize the use of the portal at locations within Florida's WDS and ensure the portal provides access to labor market data consistent with official information developed by the Labor Market Estimating Conference as well as information on how to appropriately use and analyze the presented data, including any limitations.

The REACH Office is required to report to the Legislature on December 1, 2022, and annually thereafter, on the implementation and outcomes of the workforce opportunity portal, including the increase of economic self-sufficiency of individuals.

Definitions

To define the work of the REACH Office, the bill provides the following definitions:

- "Workforce development system" includes the entities and activities that contribute to Florida's talent pipeline system through education, training, and support services that prepare individuals for employment or career advancement. The definition specifics the entities that are responsible for oversight or conducting those activities such as CareerSource, LWDB, One-Stop Centers, the DEO, the DOE, and the Department of Children and Families.
- "Workforce education region" as areas of the state identified by the DOE, in collaboration with the DEO, to maximize resource allocation by combining two or more sources of funding to integrate education and training in order to improve access to credentials of value for participants in adult education programs.
- "Workforce related program" as a program operated, delivered, or enabled, in whole or in part, by a state or local entity using federal funds or state appropriations to offer incentives, funding, support, or guidance for any of the following purposes:
  - Job training;
  - Attainment of a credential of value as identified by the Credentials Review Committee;
  - Attainment of a postsecondary degree or credential;
  - The provision of other types of employment assistance; or
  - Any other program that has, at least in part, the goal of securing employment or better employment for an individual and receives federal funds or a state appropriation.

The bill defines the attainment of a postsecondary degree or credential to include an apprenticeship certificate, industry certification, license, advanced technical certificate, college credit certificate, career certificate, applied technology diploma, associate in applied science degree, associate in science degree, bachelors of applied science degree, and bachelors of science degree.

State Plan (Section 7)

The bill requires the CareerSource state board to work with state and local partners in the workforce development system to develop the strategic planning elements required by WIOA for Florida's state plan. Additionally, the bill modifies s. 445.006, F.S., to require the state plan to describe the following:

- How the activities will be carried out by the core programs to implement the strategy and how the activities will be aligned across the programs and among the entities administering the programs, including using co-enrollment and other strategies.
- How the activities will be aligned with other activities that are provided under employment, training, education, including CTE, and human services programs that are not covered by the state plan, as appropriate, to avoid duplication and assure coordination.
- How the entities carrying out the respective core programs will coordinate activities and provide comprehensive, high-quality services, including supportive services, to individuals.
- How the state's strategy to engage Florida College System (FCS) institutions and local CTE schools as partners in the WDS will enable the state to leverage other federal, state, and local investments and increase access to workforce development programs at those institutions.
- How the activities will be coordinated with economic development strategies.

- How the state's strategy will improve access to activities leading to a state approved recognized postsecondary credential, including a credential that is an industry recognized certificate or certification that is portable and builds on additional education or training.

Use of WIOA Funds (Section 5)

The bill modifies s. 445.003, F.S., to require the 15 percent of WIOA Title I funds which are retained for state administration to be used to evaluate the long-term impact of innovative Individual Training Account pilots, demonstrations, and programs to enable participants to attain self-sufficiency and to evaluate the effectiveness of performance-based contracts[195] used by LWDBs on increasing wages and employment over the long term.

CareerSource State Board (Section 6)

The bill modifies s.445.004, F.S., to add to the membership of the state board a representative from the DOE's Divisions of Vocational Rehabilitation and Blind Services as well as a representative from the DCF.

The bill requires the state board to, beginning July 1, 2022, assign and make public a letter grade for each LWDB using the criteria established by the REACH Office.

In carrying out their duties, the bill requires the state board to do the following:

- Create a state employment, education, and training policy that ensures workforce related programs are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.
- Establish policy direction for a uniform funding system that prioritizes evidence-based, results-driven solutions.
- Include in their policy related to the education and training of target populations the effective use of federal, state, local, and private resources in reducing the need for public assistance by combining two or more sources of funding to support workforce related programs or activities for vulnerable populations.
- Identify barriers to coordination and alignment among workforce related programs and activities and develop solutions to remove such barriers.
- Maintain a Master Credentials List that:
  - Serves as a public and transparent inventory of state-approved credentials of value.
  - Directs the use of federal and state funds for workforce education and training programs that lead to approved credentials of value.
  - Guides workforce education and training programs by informing the public of the credentials that have value in the current or future job market.
- Establish incentives for LWDBs which reward effective alignment and coordination of federal and state programs and programs identified by the REACH Office and outline rewards for achieving long-term self-sufficiency of participants.

[195] Outcomes-based contracts, also known as fixed-price performance-based contracts, help focus on the delivery of results for those being served with an emphasis on the outcomes of participants, such as obtaining and retaining jobs. Traditional cost-reimbursement contracts pay the same amount for the services provided, regardless of whether they actually help people gain skills, get jobs, or earn higher wages. Results for America, *Performance-Based Contracts in WIOA* (Dec. 2020), *available at* https://results4america.org/wp-content/uploads/2019/12/Performance-Based-Contracts-in-WIOA.pdf.

The bill amends s. 445.004, F.S., to require the state board, to work with DEO to submit their annual report on December 1 to the Governor and Legislature and requires the report to include the following:

- All investigations;
- Number of mandatory partners located within one-stop centers; and
- Progress on implementing solutions to address barriers to coordination and alignment among programs and activities.

Section 1 of the bill requires the state board to ensure the Executive Director of CareerSource and his or her staff works with the DEO to minimize duplication and maximize efficient use of resources in carrying out their duties to implement the WIOA.

The bill modifies s. 445.002, F.S., in Section 4 to add gross management and waste as instances which would provide cause for removal of a state board member.

The bill modifies s. 445.004, F.S., to authorize any committees, councils, or administrative entities of the state board to use funds to award recognition by a LWDB, its committees and subdivision, and other units of the workforce system.

The bill amends s. 288.047, F.S., in Section 3 to align the required wages for participants in the Quick-Response Training program administered by CareerSource to present market wages.

The bill amends s. 445.004, F.s., to remove the authority for the state board to designate Institutes of Applied Technology, provide policy direction to evaluate labor market supply, and expand the occupations of the Workforce Estimating Conference. The bill removes duplicative language already in current law which allows the Auditor General to conduct an audit of the state board and CareerSource or any programs or entities created by the state board and the authority for the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review performance outcomes and quality of services of the state board and CareerSource.[196]

DEO Compliance Monitoring (Section 5)

The bill amends s. 445.003, F.S., to require the DEO to adopt rules to monitor the compliance of workforce related programs and determine whether programs are meeting performance expectations, including an analysis of the return on investment of workforce related programs on individual employment, earnings, and public benefit usage outcomes and a cost-benefit analysis of the monetary impacts of workforce services from the participant and taxpayer points of view.

Consumer-First Workforce System (Section 10)

To transform Florida's workforce system into a unified workforce system which focuses on the consumer, the bill amends s. 445.011, F.S. to create a consumer-first workforce system, requiring the DEO to consult with the DOE and the DCF to implement one state automated system that improves coordination among the required one-stop partners to efficiently and effectively provide workforce and education programs and services in Florida.

[196] *See* s.11.45(3)(p) and s. 11.51(1), F.S.

The consumer-first workforce system requires an integrated service delivery system that includes common registration and intake for required one-stop partners and support service integration and case management across programs and agencies. The bill requires the DEO to develop training for required one-stop partners on the use of the system and prequalifying individuals for workforce programs. The bill requires any contract to implement the consumer-first workforce system, entered into or renewed on or after July 1, 2021, to be performance based.

The bill makes conforming changes (ss. 443.151, 445.010, and 445.045, F.S.) to reflect the implementation of one consumer-first workforce system.

One-Stop Career Centers (Section 9)

The bill amends s. 445.009, F.S., to require training services provided to One-Stop Center participants through Individual Training Accounts to be used on programs that prepare individuals to enter occupations identified by the Labor Market Estimating Conference. Additionally, the bill requires training services provided through Individual Training Accounts to condition final payment, of at least 10 percent, to a training provider upon a participant's successful job placement.

Program Evaluation (Section 11)

To effectively assess the impact of services on workforce participants who are dually served, the bill amends s. 445.033, F.S. to require the DEO and DCF to measure the performance of workforce related programs and services for participants who receive benefits and welfare transition programs. The evaluation must include participants who receive TANF and also those receiving family self-sufficiency program benefits.

The DEO is required to consult with LWDBs to develop annual performance reports which analyze participants as they transition from public assistance to self-sufficiency. Participant co-enrollment in programs must be considered as a part of the performance measure.

Each LWDB is required to, at a minimum, provide quarterly reports on the following measures:

- Percent of participants working in unsubsidized employment;
- Percent of participants who stop receiving benefits for reasons other than disqualification or sanction;
- Number of sanctions and waivers that are granted, measured by the type of sanction or waiver and the number of completed compliance activities that lead to a restoration of benefits.
- Median placement wage rate;
- TANF work participation rate; and
- Self-sufficiency index, by county, based on the percent of current or former participants who stop receiving benefits or are working 30 or more hours per week and at 1 and 2 years after participants stop receiving benefits or work 30 or more hours per week.

The self-sufficiency index is required to include the percentage of participants earning at or above 200 percent of the federal poverty level three years after participants stop receiving benefits or work 30 or more hours per week. Additionally, the report must contain an expected

range of performance for each county on the self-sufficiency index. The expected range is required to be derived by a statistical methodology developed in consultation with the local boards and that the methodology control for differences across counties in economic conditions and demographics of participants in family self-sufficiency programs and welfare transition programs.

To conduct the evaluation, the state board and the DEO are required to share information with and develop protocols for information exchange with the Florida Education and Training Placement Information Program (FETPIP).

WIOA Waiver Authority (Section 7)

To provide Florida with additional flexibility in overseeing the state's workforce investment and to streamline administration of our system while also increasing accountability, the bill amends s. 445.006, F.S., to require the DEO to prepare a federal waiver to be submitted by the Governor to the USDOL that allows:

- The CareerSource state board to fulfill the roles and responsibilities of LWDBs or that reduces the number of LWDBs based on population size and commuting patterns in order to:
  - Eliminate multiple layers of administrative entities to improve coordination of the WDS;
  - Establish consistent eligibility standards across the state to improve the accountability of workforce related programs; and
  - Provide greater flexibility in the allocation of resources to maximize the funds directed to training and business services.
- The Governor to reallocate funds among local areas that have a demonstrated need for additional funding and programmatic outcomes that will maximize the use of the additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants.

Local Workforce Boards (Section 8)

The bill amends s. 445.007, F.S., to establish term limits for a LWDB chair as no more than two years and establishes term limits for all members of a LWDB as no more than eight consecutive years, unless the member is a representative of a government entity. The bill requires LWDB members to serve staggered terms and specifies that service which commenced before July 1, 2021, will not count toward the eight year term limit.

To provide greater oversight in a LWDBs contracting process, the bill does the following:

- Requires prior approval from DEO for contracts between the board and an organization or individual represented on the LWDB and states that such contracts may not be included on a consent agenda by the LWDB. Additionally, a member whose organization may benefit from the contract must abstain from voting on the contract.
- Reduces the threshold from $25,000 to $10,000 for contracts between local boards, a relative of a local board, or an employee of the board, which do not require prior approval from the DEO but do require approval by a two-thirds vote of the board.
- Requires the publication of contracts between a LWDB and a member of the board, a relative of a board member, an organization or individual represented on the board, or an employee of the board approved on or after July 1, 2021, to be published on the board's website, or

DEO's website if the local board does not maintain a website within ten days after approval by DEO and requires it to remain published for at least 1 year after termination of the contract.
- Requires the DEO, in the their review of required contracts to consider documentation provided by the LWDB, including performance ratings of the entity under consideration for contract and whether such entity is the only provider of the desired good and services within the area served.

Each LWDB is required to annually, within 30 days after the end of the fiscal year, disclose to the DEO, in a manner determined by the department, the amount and nature of compensation paid to all executives, officers, directors, trustees, key employees, and the highest compensated employees, as defined for purposes of the Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax. The reported compensation must include salary, bonuses, present value of vested benefits including but not limited to retirement, accrued leave and paid time off, cashed-in leave, cash equivalents, severance pay, pension plan accruals and contributions, deferred compensation, real property gifts, and any other liability owed to such persons. The disclosure must be accompanied by a written declaration from the chief financial officer, or his or her designee, that he or she has read the compensation disclosure and affirms it is true and accurate. The compensation disclosure information must also be published on the LWDB's website, or the department's website if the local board does not maintain a website, for a period of three years after it is first published.

The bill amends s. 445.004, F.S., to require any local performance accountability measures established to gauge the performance of a LWDB in achieving the workforce development strategy to be based on identified local area needs.

The bill amends s. 445.002, F.S., to add gross management and waste as instances which would provide cause for removal of a LWDB member and LWDB executive director.

WIOA Eligible Training Providers (Section 5)

To support informed consumer choice, with a focus on positive labor market outcomes for participants, the bill amends s. 445.003, F.S., to direct the use of WIOA workforce program funds to high-quality training providers. The DEO is required to determine high-quality training providers by adopting rules for initial and subsequent eligibility criteria for the ETPL, based on input from the CareerSource state board, LWDBs, the DOE, and other stakeholders. The bill requires a training provider who offers training for credentials identified on the Master Credentials List, as determined by the CareerSource Credentials Review Committee, to no longer be eligible for inclusion on a state or local ETPL if the provider fails to submit required information or fails to meet initial or subsequent eligibility criteria.

The bill amends s. 445.003, F.S., to require subsequent eligibility criteria to use performance and outcome measures which at a minimum, must require each program offered by a training provider to meet the following phased in criteria:
- For the 2021-2022 program year, the DEO and the DOE must set the minimum criteria a training provider program must achieve for completion, earnings, and employment rates of eligible participants. The bill requires that the minimum program criteria set must not exceed

the threshold at which more than 20 percent of all eligible training provider programs in the state would fall below.

- Beginning with the 2022-2023 program year, each program offered by a training provider must, at a minimum, meet all of the following:
  - Income earnings for all individuals who complete the program that are equivalent to or above the state's minimum wage in a calendar quarter.
  - An employment rate of at least 75 percent for all individuals, with programs linked to an occupation, the employment rate must be calculated based on obtaining employment in the field in which the participant was trained.
  - A completion rate of at least 75 percent for all individuals, beginning with the 2023-2024 program year.

Credential Attainment in Florida (Section 25)

To increase momentum towards Florida's SAIL to 60 Attainment goal, and respond to those impacted by job loss or disruption due to COVID-19, the bill amends s. 1004.013, F.S., to create the Strategic Efforts to Achieve Self-Sufficiency (SEAS). SEAS creates three key strategies: the workforce opportunity portal, the Open Door Grant Program, and the Money-Back Guarantee Program.

Workforce Opportunity Portal (Section 1)

The workforce opportunity portal, created in the Office of Reimagining Education and Career Help (REACH Office) under s. 14.36, F.S., is intended to provide the public with more effective access to available federal, state, and local services and a system-wide, global view of workforce related program data across various programs through actionable qualitative and quantitative information. The goal of the portal is to help residents:

- Explore and identify career opportunities.
- Identify in-demand jobs and associated earning potential.
- Identify the skills and credentials needed for specific jobs.
- Access a broad array of federal, state, and local workforce related programs.
- Determine the quality of workforce related programs offered by public postsecondary educational institutions and public and private training providers, based on employment, wages, continued education, student loan debt, and receipt of public assistance by graduates of workforce, certificate, or degree programs.
- Identify opportunities and resources to support individuals along their career pathway.
- Provide information to help individuals understand their potential earnings through paid employment and cope with the loss of public assistance as they progress through career pathways toward self-sufficiency.
- Map the timing and magnitude of the loss of public assistance for in-demand occupations across the state to help individuals visualize how their incomes will increase over time as they move toward self-sufficiency.

Open Door Grant Program (Section 34)

The Open Door Grant Program established under s. 1009.895, F.S., provides grants to school district's postsecondary technical centers and FCS institutions to cover up to two-thirds of the

cost of short-term high-demand programs for eligible students upon successful completion and award of a credential of value.

Under the Open Door Grant program, an eligible student must complete the Free Application for Federal Student Aid and:

- For a student who does not receive state or federal aid, at the time of enrollment, the student is responsible for paying one-third of the cost of the program and signing an agreement to either complete the program or pay an additional one-third of the program cost in the event of non-completion. Grant funds may be used to cover the student's one-third of the cost of the program for students in integrated education and training programs and students who do not have a high school diploma and meet requirements established by the DOE.
- For a student who does receive state or federal aid, grant funds may be awarded to cover the unmet need after all eligible aid is accounted for.

The DOE must prioritize funding for integrated education and training programs in which institutions establish partnerships with LWDBs to provide basic skills instruction contextually and concurrently with workforce training that results in the award of credentials on the Master Credentials List. One-quarter of the appropriated grant funds must be prioritized to serve students attending rural institutions and no more than one-quarter of funds may be disbursed annually to any one eligible institution. Grant funds may be used to cover the cost of a program, which includes tuition and fees, examination, books, and materials. The DOE may not reimburse any institution more than $3,000 per completed workforce training program by an eligible student.

The bill requires the SBE to adopt rules and the DOE to administer the grant by:

- Requiring eligible institutions to provide student-specific data and make final decisions on any dispute between eligible institutions and grant recipients;
- Undertaking periodic assessments of the overall success of the grant program and recommend modifications, interventions, and other actions based on such assessments;
- Establishing the procedure by which eligible institutions shall notify the department when eligible students enroll in eligible programs; and
- Requiring each eligible institution to submit a report with data from the previous fiscal year on program completion and credential attainment by students participating in the grant program.

The DOE must provide an annual report to the SBE on program completion, attainment, and participant wage and demographics categorized by credential name and relevant occupation.

Money-Back Guarantee Program (Section 38)

The Money-Back Guarantee Program created under s. 1011.803, F.S., requires each school district and FCS institution, beginning in the 2022-2023 academic year, to refund the cost of tuition to students who are not able to find a job within six months of successful completion of select workforce related programs.

Each institution is required to offer a money-back guarantee on at least three programs that prepare individuals to enter in-demand, middle-level to high-level wage occupations, or at least

50 percent of workforce education programs if the institution offers six or fewer programs. The money-back guarantee program must be offered for all workforce education programs which are established to meet a critical local economic need and are not aligned to statewide needs identified by the Labor Market Estimating Conference.

Each institution is required to establish student eligibility criteria for the program, including student attendance, career service attendance, participation in internships or work-study, job search documentation and development of a student career plan.

Institutions are required to notify the SBE of the money-back guarantee programs it offers by July 1, 2022 and information on the offered programs are required to be made available on each school district's and FCS institution's website, on the DOE's website, and on the Employ Florida website. The DOE is required to provide a report on performance results by school district, FCS institution, and program by November 1 of each year.

Florida's Healthcare Workforce (Section 26)

To address Florida's health care needs, the bill amends s. 1004.015, F.S., to require the Florida Talent Development Council (FTDC) to coordinate, facilitate, and communicate statewide efforts to meet supply and demand needs for Florida's health care workforce. The FTDC must annually, beginning December 1, 2021, report on their implementation on the council's webpage.

To support the efforts of the council, the BOG and the SBE must do the following:

- Conduct a statistically valid biennial data-driven gap analysis of the healthcare workforce. Demand must align with the Labor Market Estimating Conference.
- Provide 10-year trend information on nursing education programs. In order to collect the information, the bill requires the Department of Health, the BOG, the SBE, the Commission for Independent Education (CIE), the Independent Colleges and Universities of Florida (ICUF), and postsecondary institutions participating in the Access to Better Learning and Education (ABLE) or Effective Access to Student Education (EASE) state grant program to provide data on:
  - Number and type of programs and student slots available;
  - Number of student applications submitted, the number of qualified student applicants, and the number of students accepted;
  - Number of program graduates;
  - Program retention rates of students tracked from program entry to graduation;
  - Graduate passage rates on and the number of times each graduate took the National Council of State Boards of Nursing Licensing Examination;
  - Number of graduates who become employed as practical or professional nurses in the state; and
  - Educational advancement of nurses through career pathways by comparing their initial degree to their highest degree obtained for the preceding 10 years.
- Develop a survey for use by the Department of Health, the CIE, the ICUF, and postsecondary institutions participating in ABLE or EASE, to collect information on trends in nursing education programs. The survey must include, but is not limited to, a student's age, gender, race, ethnicity, veteran status, wage, employer information, loan debt, and retirement expectations.

Through the creation of s. 14.36, F.S., the bill requires the REACH Office to streamline the clinical placement process across the state by administering a web-based centralized clinical placement system for use by all nursing programs.

The bill amends s. 445.003, F.S., to define businesses for Incumbent Working Training Program funds to include hospitals operated by nonprofit or local government entities which provide nursing opportunities to acquire new or improved skills.[197]

Identifying Labor Market Demand in Florida (Section 2)

The bill amends s. 216.136, F.S., to reconstitute the Workforce Estimating Conference as the Labor Market Estimating Conference.

The conference is required to develop real-time supply and demand information on Florida's statewide, regional, and local labor markets. Such information must include labor supply by education level, analyses of labor demand by occupational groups and occupations compared to labor supply, a ranking of critical areas of concern, and identification of in-demand, high-skill, middle-level to high-level wage occupations prioritized by level of statewide or regional shortages.

The Office of Economic and Demographic Research (EDR) is designated as the official lead for the United States Census Bureau's State Data Center Program or its successor. All state agencies are required to provide the EDR with the necessary data to accomplish the goals of the conference and that agencies must ensure that any related work product regarding labor demand and supply is consistent with the official information developed by the conference.

The conference must meet at least twice a year and as necessary to address emerging opportunities for the state's economy.

The bill makes conforming changes to reflect the Labor Market Estimating Conference and their role in developing labor demand and identification of in-demand, high-skill, high-wage occupations.

Credentials of Value

Credentials Review Committee (Section 6)

The bill amends s. 445.004, F.S., to centralize identification and designation of credentials of value by requiring the CareerSource state board to appoint a Credentials Review Committee (committee) to identify non-degree credentials and degree credentials of value for approval by the CareerSource state board and inclusion in a Master Credentials List. Credentials must include registered apprenticeship programs, industry certifications, licenses, advanced technical

[197] *See* United States Department of Labor, Employment and Training Administration, *Training and Employment Guidance Letter WIOA No. 19-16*, at 17, *available at* https://wdr.doleta.gov/directives/attach/TEGL/TEGL_19-16_acc.pdf.

certificates, college credit certificates, career certificates, applied technology diplomas, associate degrees, baccalaureate degrees, and graduate degrees.

The bill provides the composition of the committee to include:
- The Chancellor of the Division of Public Schools;
- The Chancellor of the Division of Career and Adult Education;
- The Chancellor of the FCS;
- The Chancellor of the SUS;
- The Director of the REACH Office;
- Four members from LWDBs, with equal representation from urban and rural regions';
- Two members from nonpublic postsecondary institutions;
- Two members from industry associations;
- Two members from Florida-based businesses;
- Two members from the DEO; and
- One member from the DACS.

The committee is required to establish a definition for credentials of value for Florida and create a framework of quality. The framework must align with federally funded workforce accountability requirements and undergo biennial review. The bill establishes minimum criteria to determine value for non-degree credentials to include the following:
- Evidence the credential meets labor market demand as identified by the Labor Market Estimating Conference or meets local demand as identified in the criteria adopted by the Credentials Review Committee. Evidence must include employer information on present credential use or emerging opportunities.
- Evidence the competencies mastered upon completion of the credential are aligned with labor market demand.
- Evidence of employment and earnings outcomes for individuals after obtaining the credential. Earnings outcomes must provide middle-level to high-level wages with preference given to credentials generating high-level wages. Credentials that do not meet the earnings outcomes criteria must be part of a sequence of credentials required for the next level occupation that does meet the earnings outcomes criteria to be identified as a credential of value. For new credentials, this criteria may be met with conditional eligibility until measurable labor market outcomes are obtained.

The committee is required to establish criteria to determine value for degree programs. Criteria for degree programs must include evidence that the program meets the labor market demand as identified by the Labor Market Estimating Conference or meets local demand as determined by the committee.

The committee is required to establish a process for the following:
- Prioritizing non-degree credentials and degree programs based on critical statewide or regional shortages;
- At a minimum, quarterly review and approval of credential applications which must be used to develop the Master Credentials List;
- Annual review of the Master Credentials List;

- Phasing out credentials on the Master Credentials List that no longer meet the framework of quality;
- Designating performance funding eligibility for credentials earned by postsecondary students, based upon the highest available certification; and
- Linking Classifications of Instructional Programs (CIP) to Standard Occupational Classifications (SOC) for all new credentials of value identified on the Master Credentials List.

The committee must identify all data elements necessary by the Florida Education and Training Placement Program (FETPIP).

All information pertaining to the committee, the process for the approval of credentials of value, and the Master Credentials List must be made publicly available and easily accessible on all relevant state agency websites.

CAPE Industry Certification Identification

Beginning with the 2022-2023 school year, the bill amends s. 4454.004, F.S., to require the CareerSource state board to produce and submit a Master Credentials List to the SBE. The list must, at a minimum, identify non-degree credentials and degree programs determined to be of value for CAPE Industry Certification funding; if the credential or degree program meets statewide, regional, or local level demand; the type of certificate, credential, or degree; and the primary standard occupation classification code. The Master Credentials List shall be used by the SBE to establish the CAPE Industry Certification Funding List beginning with the 2022-2023 school year. For the 2021-2022 school year the SBE will continue to use the certifications identified in the CAPE Industry Certification Funding List and the CAPE Postsecondary Industry Certification Funding List adopted by the SBE before October 1, 2021.

The bill amends s. 570.07, F.S., to require the Department of Agriculture and Consumer Services (DACS) to work with the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida and the College of Agriculture and Food Sciences at the Florida Agricultural and Mechanical University to annually submit industry certifications for agriculture occupations to the committee for consideration on the Master Credentials List.

The CAPE Industry Certification Funding List will assign additional full-time equivalent (FTE) membership (incentives) to certifications identified by the Master Credentials List that meet a statewide, regional, or local demand and courses that lead to such certifications. The bill amends s. 1008.44, F.S., to provide that additional FTE funding for regional and local demand certifications and courses that lead to such certifications may only be earned in areas with regional or local demand as identified by the Credentials Review Committee.

The bill amends s. 1003.4203, F.S., to require the CAPE Industry Certification Funding List to be comprised of CAPE industry certifications identified as credentials of value (both at the secondary and postsecondary level); CAPE digital tools certificates (removing the previous cap of no more than 30 CAPE digital tools); CAPE ESE digital tool certificates, workplace industry certifications, and OSHA industry certificates; CAPE Innovation Courses (removing the previous cap of no more than five courses); and CAPE acceleration industry certifications. The

bill amends s. 1003.4935, F.S., to require middle grades career and professional academy courses and career-themed courses to lead to careers in occupations aligned to the Cape Industry Certification Funding List.

The bill amends s. 1011.81, F.S., to clarify that postsecondary industry certifications must be identified on the CAPE Industry Certification Funding List and are eligible for performance funding. The bill amends s. 1011.80, F.S., to delete occupational areas for which industry certifications may be earned which are identified in the GAA for performance funding eligibility.

The bill amends s. 1008.44, F.S., to require the Chancellor of Career and Adult Education to provide the Articulation Coordinating Committee recommendations for articulation of postsecondary credit for related degrees for the approved certifications within 90 days after an industry certification has been approved for inclusion on the Master Credentials List.

State University System-Programs of Strategic Emphasis

The bill amends s. 1001.706, F.S., to require the BOG, beginning with the 2022-2023 academic year, to adopt the criteria to determine value for and prioritization of degree programs established by the committee to review and designate programs of emphasis. The bill requires the BOG to review the PSE list at least every three years to ensure alignment with the prioritization of degree credentials and degree programs identified by the committee.

Incentivizing Credentials

School Districts and Florida College System Institutions

The bill amends s. 1008.44, F.S., to require the commissioner to conduct a review of the methodology used to determine additional FTE membership weights assigned to CAPE programs and, if necessary, recommend revised weights. The weights must factor in prioritization of critical shortages of labor market demand and middle-level to high-level wage earning outcomes as identified by the Credentials Review Committee (committee). The results of the review and the commissioner's recommendations must be submitted to the Governor and the Legislature no later than December 1, 2021.

Beginning with FY 2022-2023, the bill amends s. 1011.80, F.S., to revise the formula for allocating postsecondary performance incentive funding to school district technical centers and FCS institutions. Rather than each certification, earned by a student, earning $1,000; the Credentials Review Committee is required to develop a returned-value funding formula that rewards job placements and wages for students earning industry certifications, with a focus on increasing the economic mobility of underserved populations. One-third of the performance funds must be allocated based on student job placements. The remaining two-thirds must be allocated using a tiered weighted system based on aggregate student wages that exceed minimum wage with the highest weight applied to the highest wage tier, with additional weight for underserved populations. Student wages above minimum wage are considered to be the value added by the institution's training. At a minimum, the bill requires the Credentials Review Committee to take into account variables such as differences in population and wages across school districts and the state when developing the returned-value funding formula. In addition, when developing the formula, the committee must not penalize school districts or institutions for

students who postpone employment to continue their education. The bill removes an obsolete methodology for distribution of performance funds.

The bill amends s. 1003.491, F.S., to require the CAPE strategic 3-year plan developed jointly by the local school district, LWDBs, economic development agencies, and state-approved postsecondary institutions to be developed based on local and regional workforce needs for the ensuing three years, using labor projections as identified by the Labor Market Estimating Conference and strategies to develop and implement career academies or career-themed courses based on occupations identified by the Labor Market Estimating Conference.

Measuring Outcomes for Florida's Workforce Programs

Florida Education and Training Placement Information Program (FETPIP)

The bill amends s. 1008.39, F.S., to require the DOE automated system, which matches the social security numbers of former participants in state educational and training programs with information in the files of state and federal agencies that maintain educational, employment, and United States armed service records, to include former participants in workforce related programs. Additionally, the bill requires that the system incorporate any data collection elements prescribed by the Credentials Review Committee.

Workforce Development Information System (WDIS)

The bill amends s. 1008.40, F.S., to require the DOE to design the WDIS using common terms and to use the data to conduct audits, and determine compliance of workforce related programs and education and training programs with applicable federal and state requirements as authorized by federal and state law. The bill requires the DOE to establish a process for the collection, review, and reporting of Comprehensive Local Needs Assessments (CLNA) as required by federal law.

The bill requires the WDIS to link data from multiple sources for consideration in developing broad public policy initiatives for workforce related programs and requires the DOE to work with the DEO, the DCF, and other entities to define statewide education, workforce development, and employment metrics and ensure the integrity and quality of data being collected.

The bill requires the DOE to develop a workforce development metrics dashboard that measures the state's investments in workforce development. The bill requires the dashboard to be produced, to the extent feasible, using existing available data and resources that are currently collected and accessible to state agencies. To the extent feasible, the dashboard must use statistically rigorous methodologies to estimate, assess, and isolate the impact of programs on participant outcomes.

The bill the dashboard to provide the following data:

- Impact of workforce related programs on credential attainment, training completion, degree attainment, and participant wages;

- Demographic breakdowns, including, to the extent possible, race, ethnicity, age, gender, veteran status, wage, student loan debt, barriers to employment, and credential or degree outcomes, and information on workforce outcomes in different industry sectors;
- Performance data on training providers to enable individuals to make informed choices; and
- Measure, at a minimum and to the extent feasible with existing resources, the return on investment of the following workforce related programs:
  - CTE programs offered by school districts and FCS institutions;
  - Workforce related programs; and
  - State apprenticeship programs.

The bill amends s. 1003.491, F.S., to require the DOE to utilize the WDIS to conduct the annual review of CTE programs and use data captured in WDIS to provide an automated data collection process that includes the collection and evaluation of the federal CLNA, to assist in the review of programs.

Apprenticeship and Preapprenticeship Programs in Florida

To determine the impact of apprenticeship and preapprenticeship programs on participants, the bill amends s. 446.032, F.S., to require the DOE to establish uniform minimum standards and policies governing apprenticeship and preapprenticeship programs and agreements which must require apprenticeship training providers to submit data which is necessary to determine program performance. The bill clarifies that uniform minimum standards are the requirements established for each occupation under which an apprenticeship or preapprenticeship program is administered. The bill amends s. 446.0915, F.S., to require the DOE to adopt rules to administer such standards and policies.

The bill amends s 446.032, F.S., to require the DOE to provide the following additional information in the annual report on apprenticeship and preapprenticeship programs:

- Detailed summary of each local educational agency's expenditure of total funds allocated, expended for administrative costs, and expended for instructional costs by training provider, program, and occupation;
- Documentation of the outcomes of activities conducted to promote apprenticeship and preapprenticeship programs and their impact on establishing or expanding such programs;
- Retention and completion rates of participants disaggregated by training provider, program, and occupation; and
- Wage progression of participants as demonstrated by starting, exit, and post apprenticeship wages at 1 and 5 years after participants exit the program.

Florida Pathways to Career Opportunities Grant Program (Section 37)

The bill amends s. 1011.802, F.S., to require the DOE to award Florida Pathway to Career Opportunities Grants to preapprenticeship or apprenticeship programs with demonstrated regional demand which:

- address a critical statewide or regional shortage as identified by the Labor Market Estimating Conference and that are industry sectors not adequately represented throughout the state, such as health care;

- address a critical statewide or regional shortage as identified by the Labor Market Estimating Conference; or
- expand existing programs that exceed the median completion rate and employment rate 1 year after completion of similar programs in the region, or the state if there are no similar programs in the region.

The DOE is required to annually report on the Florida Pathways to Career Opportunities website the following information:
- number of programs funded and represented throughout the state;
- retention, completion, and employment rates, categorized by program and provider; and
- starting and ending salaries, as categorized by program and provider, for participants who complete the program.

The DOE is authorized to use up to $200,000 of the total grant allocation to administer the grant program.

The bill requires the SBE to adopt rules to implement the Pathways to Career Opportunities Grant.

Workforce Education Programs

Program Approval (Section 35)

The bill amends s. 1011.80, F.S., to require the SBE to develop criteria for the review and approval of new workforce education programs which are not included in the statewide curriculum framework and are proposed to be offered by a FCS institution or a school district technical center. The bill requires the criteria to be based on the framework of quality established by the Credentials Review Committee.

A FCS institution or school district is authorized to offer new workforce education programs that are already included in the statewide curriculum framework, however, these programs may not receive performance funding and add on FTE funding until they are reviewed and approved by the SBE. The bill requires an expedited SBE review process for these programs that must include, but is not limited to, the following:
- A description of the workforce education program that includes all of the following:
  - An analysis of workforce demand and unmet need for graduates of the program on a district, regional, or statewide basis, as appropriate, including evidence from entities independent of the technical center or institution
  - Geographic region to be served; and
- Documentation of collaboration among technical centers and institutions serving the same students in a geographical or service area that enhances program offerings and prevents program duplication which exceeds workforce need. Unnecessary duplication of programs offered by public and private institutions must be avoided.
- Beginning with the 2022-2023 academic year, alignment of program offerings with credentials or degree programs identified by the Credential Review Committee on the Master Credentials List.

- Articulation agreements between technical centers and FCS institutions for the enrollment of graduates in related workforce education programs.
- Documentation of alignment between the exit requirements of a technical center and the admissions requirements of a FCS institution.
- Performance and compliance indicators that will be used in determining the program's success.

The SBE is authorized to phase out workforce education program offerings that are not aligned with the framework of quality, do not meet labor market demand, or are unwarranted program duplications.

Continuing Workforce Education (CWE)

To provide clarity, the bill amends s. 1004.02, F.S., to revise the definition of CWE to mean instruction that does not result in a registered apprenticeship certificate of completion and revises the definition of workforce education to include a course or program of study which leads to a registered apprenticeship certificate of completion. The revision distinguishes apprenticeship and preapprenticeship programs as a workforce education program.

To expand opportunities for apprenticeship and preapprenticeship programs, the bill amends s. 1011.80, F.s., to authorize\ school districts and FCS institutions to count enrollments in apprenticeship and preapprenticeship programs for purposes of funding FTE enrollment.[198]

Career and Technical Education (CTE) Program Audit (Section 22)

The bill amends s. 1003.491, F.s., to require the DOE's annual CTE audit to examine, at a minimum, the following:

- Alignment of offerings with the framework of quality established by the Credentials Review Committee;
- Alignment of offerings at the K-12 and postsecondary levels with credentials or degree programs identified on the Master Credentials List;
- Program utilization and unwarranted duplication across institutions serving the same students in a geographical or service area; and
- Institutional performance measured by student outcomes.

The CTE audit shall use data captured through the WDIS and provide an automated data collection process that includes the collection and evaluation of the federal CLNA, to assist in the review of programs.

The commissioner is required to use the findings from the CTE audit to phase out CTE offerings which are not aligned with the framework of quality established by the Credentials Review

[198] School districts are presently able to report a maximum of 2,000 on-the-job training hours for apprenticeship FTE. Florida Department of Education, *2020-2021 District Workforce Education Funding Summary*, at 2-4, *available at* http://www.fldoe.org/core/fileparse.php/7529/urlt/2021-wf-fundingsummary.pdf.; For apprenticeship programs at a FCS institution, the students are exempt from the payment of tuition and fees, however, state funding is provided equal to 100 percent of the average cost of instruction. s. 1011.80(6)(c), F.S.

Committee, do not meet labor market demand or institutional performance, or are unwarranted program duplications.

The bill requires the DOE to adopt rules to administer the annual review of K-12 and postsecondary CTE offerings.

Career Planning for Florida's Students

To provide students with the information necessary to explore and make decisions as they plan for their future and embark on a career pathway, the bill amends s. 1003.4156, F.S., to require secondary career and education planning courses, curriculum, and postsecondary career services to utilize state career planning resources as a student progresses along their educational experience.

At the secondary level, the bill requires the middle grades career and education planning course to include information from state career planning resources. In the character development curriculum for grades 9 through 12, the bill amends s. 1003.42, F.S., to require students to explore career pathways using state career planning resources and to create a digital resume.

At the postsecondary level, the bill amends s. 1007.25, F.S., to authorize courses that provide instruction in student life skills, including career planning and exploration, or similar, to use state career planning resources within the course and provide students with the opportunity to create a digital resume. For postsecondary student career service centers, the bill creates s. 1006.75, F.S. to require centers to prepare students for employment upon completion of their academic work. Career service centers, to the extent possible, are required to use state career planning resources to assist students in: exploring and identifying career opportunities; identifying in-demand jobs and associated earnings outcomes; understanding the skills and credentials needed for specific jobs; identifying opportunities to gain on-the-job experiences; and creating a digital resume.

Developing Workplace Readiness

To provide opportunities for students to experience and develop the skills necessary to enter the workforce and distinguish their unique skills to employers, the bill makes the changes discussed below.

Work-based Learning (Section 16)

The bill creates s. 446.090, F.s., to define a work-based learning opportunity to mean an interaction with industry or community professionals that occurs in a workplace setting, to the extent possible, or a simulated environment at an educational institution that allows firsthand experience with tasks required in a given career field, is aligned with curriculum and instruction, and is provided in partnership with an educational institution.

Work-based learning must be developmentally appropriate, identify learning objectives for the experience, explore multiple aspects of an industry, develop workplace skills and competencies, assess performance, provide opportunities for work-based reflection, link to next steps in career planning and preparation in a student's chosen career pathway, be provided in an equal and fair manner, and be documented and reported in compliance with state and federal labor law. The bill

prioritizes paid work-based learning opportunities, such as apprenticeship and preapprenticeship programs.

The SBE is required to adopt rules to implement work-based learning opportunities. The adopted rules must include uniform minimum standards and guidelines for determining student eligibility, obligations of employers, and requirements of institutions that offer work-based learning opportunities.

Career Readiness Credential

Beginning with students initially entering a public postsecondary institution in 2022-2023, and thereafter, the bill amends s. 1007.25, F.S., to require each student to be able to earn a nationally recognized digital credential from competencies within the general education core courses which demonstrate career readiness.

The digital credentials must be identified by a faculty committee appointed by the chair of the SBE and the chair of the BOG. The faculty committee must identify the competencies within the general education core courses which demonstrate career readiness and will result in the award of a verifiable and interoperable nationally recognized digital credential.

In order to ensure students pursuing an associate in applied science or associate in science degree may earn a digital credential, the bill requires, beginning in the 2022-2023 academic year, students entering such degree programs to complete at least one identified core course in the subject areas of communication, mathematics, social sciences, humanities, and natural sciences.

The bill requires all public postsecondary institutions to distinguish in their course catalog the general education core courses linked to earning a digital credential, and requires institutions to grant and accept the identified digital credential.

The bill provides conforming changes.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill identifies and categorizes in-demand credentials and degree programs and requires information to be made available to the public to determine the performance of these programs and training providers offering these programs, as well as long-term earnings results and impact to self-sufficiency.

Employers may incur costs to integrate with a new or modified system to post job, apprenticeship, and training opportunities.

C. Government Sector Impact:

Based on standard salaries/benefits and expense packages for a policy coordinator and associated analysts within the Governor's office, staffing the new Office of Reimagining Education and Career Help (REACH) within the Executive Office of the Governor office is estimated to require 8 full-time-equivalent (FTE) positions, at a cost of $887,503.

The cost of implementing an automated and coordinated Consumer-First Workforce Information System among the state's workforce partners is indeterminate and cannot be quantified at this time as each entity currently operates its own data systems. Analysis by the DOE and the DEO state that the cost could be between $70 million and $140 million for each program and each agency involved. Detailed analysis is required to include data governance for shared data across all entities, engineering of data interoperability and new business processes, and documentation of detailed functional requirements for the procurement of supporting technologies. Analysis should also include how current data and intake systems can be enhanced or augmented to include these functionalities. Based on historical costs related to planning information technology systems, such an analysis could cost between $1.5 million and $2 million. Funding for the Consumer-First Workforce Information System will be dependent upon consideration of the General Appropriations Act for Fiscal Year 2021-2022.

The DOE estimates they would need two additional FTE to assist with data collections and outcome reporting requirements for the development of a workforce development

metrics dashboard. Based on standard salaries/benefits and expense packages associated with the personnel handling this workload, the cost will be $268,265.

The DOE estimates a need of two additional FTE to successfully implement the new reporting requirements in the Pathways to Career Opportunities Grant Program. While costs for these positions are estimated to be $199,496, the DOE states the cost for the new positions can be absorbed within the current, recurring appropriations for the program.

To the extent the Legislature provides funding for the new program, it would have an indeterminate, negative impact based on the amount of appropriations made available for the newly created Open Door Grant Program. Funding requirements for the personnel and the grant program provisions within the bill will be dependent upon consideration of the General Appropriations Act for Fiscal Year 2021-2022.

The application of the Master Credentials List and the development of a returned-value funding formula may affect the distribution of funds currently being allocated to Florida Colleges and District workforce programs, however the affect is indeterminate.

Actual expenditures Money Back Guarantee Program will vary depending on the number of guarantees that must be honored and the cost of tuition for those students.

The bill may require the incorporation of multiple federally funded programs with diverse funding and program requirements. Each agency will need to come to agreements on allocation methodologies to ensure that each federal source is appropriately charged.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 14.36, 216.136, 288.047, 443.151, 445.002, 445.003, 445.004, 445.006, 445.007, 445.009, 445.010, 445.011, 445.033, 445.038, 445.045, 446.021, 446.032, 446.041, 570.07, 943.22, 1001.64, 1001.706, 1003.4156, 1003.42, 1003.4203, 1003.491, 1003.492, 1003.4935, 1004.013, 1004.015, 1004.02, 1007.25, 1008.40, 1008.39, 1008.41, 1008.44, 1011.80, 1011.801, 1011.802, and 1011.81.

The bill creates the following sections of Florida Statutes: 446.0915, 1006.75, 1009.895, and 1011.803.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute makes the following changes:

- Establishes the Reimagining Education and Career Help Act (REACH Act) to create a system-wide approach to Florida's workforce development system by integrating services through the:
  - Creation of the Office of Reimagining Education and Career Help (REACH Office) within the Executive Office of the Governor.
  - Implementation the consumer-first workforce system for data management.
  - Creation of an online opportunity portal to provide public access to identify in-demand jobs, the skills needed, and where to obtain those skills.
- Authorizes the Governor to seek federal waivers to create greater flexibility and strategic investment in Florida's implementation of the Workforce Innovation and Opportunity Act (WIOA).

In relation to labor market supply and demands, the amendment:

- Establishes a Labor Market Estimating Conference to determine real-time labor market supply and demand.
- Requires CareerSourceFL to appoint a Credentials Review Committee, which includes rural representation, to:
  - Identify and include in a Master Credentials List credentials of value, which are associated with positive earnings outcomes.
  - Designate eligibility for performance funding for state college and school district workforce education programs.

To safeguard workforce funding and provide accountability, the amendment requires:

- The Department of Economic Opportunity to establish eligibility requirements for in-demand eligible training program providers.
- The Department of Education to develop a workforce development metrics dashboard to measure return on the state's workforce investments.
- The Department of Education to review for approval new workforce education programs at tech centers and state colleges and phase out existing programs that fail to meet performance benchmarks.
- The REACH Office to develop criteria for assigning letter grades to local workforce development boards (LWDB). The grades must account for local area needs and improvement of participants' self-sufficiency. The amendment also requires staggered 8-year terms for LWDB board members.

In relation to Funding Incentives for Workforce Education, the amendment:

- Aligns the Career and Professional Education (CAPE) Act with projections made by the Labor Market Estimating Conference.

- Requires the Commissioner of Education to recommend revised funding weights for the CAPE Industry Certification Funding List to the Governor and the Legislature by December 31, 2021.
- Creates a new workforce performance funding model for school district and state college workforce programs requiring:
- One-third based on student job placement.
- Two-thirds based on student earnings, with a focus on increasing the economic mobility of underserved populations.

In relation to Healthcare Needs, the amendment:

- Requires the Talent Development Council to conduct a review of the healthcare labor market and nursing program alignment.
- Prioritizes funds in the Incumbent Worker Training programs for nonprofit and local public hospitals that provide nursing education opportunities.
- Requires the REACH Office to administer a web-based centralized clinical placement system for use by all nursing programs.

The amendment encourages work-based learning educational opportunities by:

- Requiring standards to be developed by the Department of Education.
- Breaking down the Department of Education annual report on apprenticeship to better measure individual program outcomes.

The amendment expands educational access for students through:

- The creation of the Open Door Workforce Grant Program, which provides grants to school districts and state colleges to cover some or all of the cost of short-term, high-demand programs, including programs for students without a high school diploma.
- The creation of the Money-Back Guarantee Program, which requires each school district and state college to refund the cost of tuition to students who are not able to find a job within six months of completing one of three in-demand programs chosen by the institution.
- Aligning apprenticeship grants with labor shortages.

In relation to core curriculum, the amendment:

- Requires that seeking students in state colleges and universities earn verified digital credentials which demonstrate career readiness.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Appropriations (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 14.36, Florida Statutes, is created to read:

14.36 Reimagining Education and Career Help Act.—The Reimagining Education and Career Help Act is created to address the evolving needs of Florida's economy by increasing the level of collaboration and cooperation among state businesses and

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education communities while improving training within and equity and access to a more integrated workforce and education system for all Floridians.

(1) The Office of Reimagining Education and Career Help is created in the Executive Office of the Governor to facilitate alignment and coordination of entities responsible for the state's workforce development system. The head of the office is the Director of the Office of Reimagining Education and Career Help. The Director of the Office of Reimagining Education and Career Help shall be appointed by and shall serve at the pleasure of the Governor.

(2) As used in this section, the term:

(a) "Credential" means an apprenticeship certificate, industry certification, license, advanced technical certificate, college credit certificate, career certificate, applied technology diploma, associate in applied science degree, associate in science degree, bachelor of applied science degree, and bachelor of science degree.

(b) "Office" means the Office of Reimagining Education and Career Help.

(c) "Workforce development system" means the entities and activities that contribute to the state's talent pipeline system through education, training, and support services that prepare individuals for employment or career advancement and the entities that are responsible for oversight or conducting those activities, such as CareerSource Florida, Inc., local workforce development boards, one-stop career centers, the Department of Economic Opportunity, the Department of Education, and the Department of Children and Families.

(d) "Workforce education region" means areas of the state identified by the Department of Education, in collaboration with the Department of Economic Opportunity, to maximize resource allocation by combining two or more sources of funding to integrate education and training in order to improve access to credentials of value for participants in adult education programs.

(e) "Workforce-related program" means a program operated, delivered, or enabled, in whole or in part, by a state or local entity using federal funds or state appropriations to offer incentives, funding, support, or guidance for any of the following purposes:

1. Job training.

2. The attainment of a credential of value identified pursuant to s. 445.004(4)(h)4.c.

3. The attainment of a postsecondary degree or credential.

4. The provision of other types of employment assistance.

5. Any other program that has, at least in part, the goal of securing employment or better employment for an individual and receives federal funds or a state appropriation.

(3) The duties of the office are to:

(a) Serve as the advisor to the Governor on matters related to the state's workforce development system.

(b) Establish criteria and goals for workforce development and diversification in the state's workforce development system.

(c) Provide strategies to align and improve efficiency in the state's workforce development system and the delivery of workforce-related programs.

(d) Coordinate state and federal workforce-related

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programs, plans, resources, and activities provided by CareerSource Florida, Inc., the Department of Economic Opportunity, and the Department of Education.

(e) Oversee the Workforce Development Information System described in s. 1008.40 to verify the validity of data collected and monitor compliance of workforce-related programs and education and training programs with applicable federal and state requirements as authorized by federal and state law.

(f) Serve on the Credentials Review Committee established in s. 445.004 to identify nondegree and degree credentials of value and facilitate the collection of data necessary to conduct committee work.

(g) Coordinate and facilitate a memorandum of understanding for data sharing agreements of the state's workforce performance data among state agencies and align, to the greatest extent possible, performance measures adopted under ss. 445.004 and 1008.43.

(h) Develop the criteria for assigning a letter grade for each local workforce development board under s. 445.004. The criteria shall, in part, be based on local workforce development board performance accountability measures and return on investment. The majority of the grade shall be based on the improvement by each local workforce development board in the long-term self-sufficiency of participants through outcome measures such as reduction in long-term public assistance and the percentage of participants whose wages were higher after program completion compared to wages before participation in a program.

(i) Streamline the clinical placement process and increase

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clinical placement opportunities for students, hospitals, and other clinical sites by administering, directly or through a contract, a web-based centralized clinical placement system for use by all nursing education programs subject to the requirements in s. 464.019.

(j) Direct the objectives of the Florida Talent Development Council established in s. 1004.015.

(4) The office shall create a no-wrong-door-entry strategy to improve equity and access to the myriad of state and federally funded workforce-related programs through CareerSource Florida, Inc., local workforce development boards, one-stop career centers, school districts, charter technical centers, Florida College System institutions, the State University System, and through eligible training providers. Individuals may not be required to visit multiple locations when seeking access to education and workforce training. To create the strategy, the office shall:

(a) Develop a training course to cross-train all staff within the state's workforce development system on workforce-related programs, including how to use an integrated case management system, develop an individual employment plan, conduct a comprehensive needs assessment, precertify individuals for workforce-related programs, and on any other activities to reinforce the no-wrong-door-entry strategy.

(b) Coordinate and facilitate a common intake form and case management system for use by workforce-related programs to minimize duplicate data entry.

(c) Coordinate and facilitate a memorandum of understanding between the Department of Economic Opportunity and the

Department of Children and Families to permit Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) clients to precertify for Workforce Innovation and Opportunity Act training services without having to physically visit a one-stop center.

(d) Oversee the performance evaluation of workforce-related programs and services under s. 445.033.

(e) Identify other state and federal programs that serve individuals with significant barriers to employment as demonstrated by low placement, employment, and earnings rates and identify strategies to increase the utilization of such programs by local workforce development boards.

(5) The office shall provide the public with access to available federal, state, and local services and provide stakeholders with a systemwide, global view of workforce-related program data across various programs through actionable qualitative and quantitative information. The office shall:

(a) Minimize duplication and maximize the use of existing resources by facilitating the adaptation and integration of state information systems to improve usability and seamlessly link to the workforce opportunity portal and other compatible state information systems and applications to help residents of the state:

1. Explore and identify career opportunities.

2. Identify in-demand jobs and associated earning potential.

3. Identify the skills and credentials needed for specific jobs.

4. Access a broad array of federal, state, and local

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workforce-related programs.

5. Determine the quality of workforce-related programs offered by public postsecondary educational institutions and public and private training providers, based on employment, wages, continued education, student loan debt, and receipt of public assistance by graduates of workforce, certificate, or degree programs. To gather this information, the office shall review each workforce-related program 1 year after the program's first graduating class and every 5 years after the first review.

6. Identify opportunities and resources to support individuals along their career pathway.

7. Provide information to help individuals understand their potential earnings through paid employment and cope with the loss of public assistance as they progress through career pathways toward self-sufficiency.

8. Map the timing and magnitude of the loss of public assistance for in-demand occupations across the state to help individuals visualize how their incomes will increase over time as they move toward self-sufficiency.

(b) Provide access to labor market data consistent with the official information developed by the Labor Market Estimating Conference and provide guidance on how to analyze the data, the appropriate use of the data, and any limitations of the data, including instances in which such data may not be used.

(c) Maximize the use of the workforce opportunity portal at locations within the workforce development system.

(d) Maximize the use of available federal and private funds for the development and initial operation of the workforce opportunity portal. Any incidental costs to state agencies must

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be derived from existing resources.

(e) By December 1, 2022, and annually thereafter, report to the Legislature on the implementation and outcomes of the workforce opportunity portal, including the increase of economic self-sufficiency of individuals.

Section 2. Subsection (7) of section 216.136, Florida Statutes, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(7) LABOR MARKET ~~WORKFORCE~~ ESTIMATING CONFERENCE.—

(a) The Labor Market ~~Workforce~~ Estimating Conference shall develop such official information with respect to real-time supply and demand in Florida's statewide, regional, and local labor markets ~~on the workforce development system planning process as it relates to the personnel needs of current, new, and emerging industries~~ as the conference determines is needed by the state planning and budgeting system. Such information shall include labor supply by education level, analyses of labor demand by occupational groups and occupations compared to labor supply, a ranking of critical areas of concern, and identification of in-demand, high-skill, middle-level to high-level wage occupations prioritized by level of statewide or regional shortages. The Office of Economic and Demographic Research is designated as the official lead for the United States Census Bureau's State Data Center Program or its successor. All state agencies must provide the Office of Economic and Demographic Research with the necessary data to accomplish the goals of the conference. In accordance with s. 216.135, state agencies must ensure that any related work

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product regarding labor demand and supply is consistent with the official information developed by the Labor Market Estimating Conference created in this section~~, using quantitative and qualitative research methods, must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels. In the development of workforce estimates, the conference shall use, to the fullest extent possible, local occupational and workforce forecasts and estimates~~.

~~(b) The Workforce Estimating Conference shall review data concerning local and regional demands for short-term and long-term employment in High-Skills/High-Wage Program jobs, as well as other jobs, which data is generated through surveys conducted as part of the state's Internet-based job matching and labor market information system authorized under s. 445.011. The conference shall consider this data in developing its forecasts for statewide employment demand, including reviewing local and regional data for common trends and conditions among localities or regions which may warrant inclusion of a particular occupation on the statewide occupational forecasting list developed by the conference. Based upon its review of such survey data, the conference shall also make recommendations semiannually to CareerSource Florida, Inc., on additions or deletions to lists of locally targeted occupations approved by~~

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~~CareerSource Florida, Inc.~~

(b)~~(c)~~ The Labor Market ~~Workforce~~ Estimating Conference, for the purposes described in paragraph (a), shall meet at least twice a year and as necessary to address emerging opportunities for the state's economy ~~no less than 2 times in a calendar year~~. ~~The first meeting shall be held in February, and the second meeting shall be held in August. Other meetings may be scheduled as needed.~~

Section 3. Paragraph (b) of subsection (8) of section 288.047, Florida Statutes, is amended to read:

288.047 Quick-response training for economic development.—

(8) The Quick-Response Training Program is created to provide assistance to participants in the welfare transition program. CareerSource Florida, Inc., may award quick-response training grants and develop applicable guidelines for the training of participants in the welfare transition program. In addition to a local economic development organization, grants must be endorsed by the applicable local workforce development board.

(b) Participants trained under ~~pursuant to~~ this subsection must be employed at a job paying a wage equivalent to or above the state's minimum hourly wage ~~at least $6 per hour~~.

Section 4. Subsection (2) of section 445.002, Florida Statutes, is amended to read:

445.002 Definitions.—As used in this chapter, the term:

(2) "For cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, gross mismanagement,

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waste, or lack of performance.

Section 5. Paragraph (a) of subsection (3) and subsection (6) of section 445.003, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(3) FUNDING.—

(a) Title I, Workforce Innovation and Opportunity Act funds; Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board. The plan must outline and direct the method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers which are passed through to local workforce development boards shall be allocated to and expended on Individual Training Accounts unless a local workforce development board obtains a waiver from the state board. Tuition, books, and fees of training providers and other training services prescribed and authorized by the Workforce Innovation and Opportunity Act qualify as Individual Training Account expenditures.

2. Fifteen percent of Title I funding shall be retained at the state level and dedicated to state administration and shall be used to design, develop, induce, ~~and~~ fund, and evaluate the long-term impact of innovative Individual Training Account pilots, demonstrations, and programs to enable participants to attain self-sufficiency and to evaluate the effectiveness of performance-based contracts used by local workforce development

boards under s. 445.024(5) on increasing wages and employment over the long term. Of such funds retained at the state level, $2 million may be reserved for the Incumbent Worker Training Program created under subparagraph 3. Eligible state administration costs include the costs of funding for the state board and state board staff; operating fiscal, compliance, and management accountability systems through the department; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board. Notwithstanding s. 445.004, such administrative costs may not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be allocated to Individual Training Accounts and other workforce development strategies for other training designed and tailored by the state board in consultation with the department, including, but not limited to, programs for incumbent workers, nontraditional employment, and enterprise zones. The state board, in consultation with the department, shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs. For purposes of this subparagraph, the term “businesses” includes hospitals operated by nonprofit or local government entities which provide nursing opportunities to acquire new or improved

skills.

a. The Incumbent Worker Training Program will be administered by CareerSource Florida, Inc., which may, at its discretion, contract with a private business organization to serve as grant administrator.

b. The program shall be administered under ~~pursuant to~~ s. 134(d)(4) of the Workforce Innovation and Opportunity Act. ~~Priority for~~ Funding priority shall be given in the following order: ~~to~~

(I) Businesses that provide employees with opportunities to acquire new or improved skills by earning a credential on the Master Credentials List.

(II) Hospitals operated by nonprofit or local government entities that provide nursing opportunities to acquire new or improved skills.

(III) Businesses whose grant proposals represent a significant upgrade in employee skills.

(IV) Businesses with 25 employees or fewer, businesses in rural areas, and businesses in distressed inner-city areas.~~,~~

(V) Businesses in a qualified targeted industry~~, businesses whose grant proposals represent a significant upgrade in employee skills,~~ or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by CareerSource Florida, Inc., or the grant administrator. The program may not reimburse businesses for trainee wages, the purchase of capital equipment, or the purchase of any item or service that may possibly be used outside the training project. A business approved for a grant may be reimbursed for

preapproved, direct, training-related costs including tuition, fees, books and training materials, and overhead or indirect costs not to exceed 5 percent of the grant amount.

d. A business that is selected to receive grant funding must provide a matching contribution to the training project, including, but not limited to, wages paid to trainees or the purchase of capital equipment used in the training project; must sign an agreement with CareerSource Florida, Inc., or the grant administrator to complete the training project as proposed in the application; must keep accurate records of the project's implementation process; and must submit monthly or quarterly reimbursement requests with required documentation.

e. All Incumbent Worker Training Program grant projects shall be performance-based with specific measurable performance outcomes, including completion of the training project and job retention. CareerSource Florida, Inc., or the grant administrator shall withhold the final payment to the grantee until a final grant report is submitted and all performance criteria specified in the grant contract have been achieved.

f. The state board may establish guidelines necessary to implement the Incumbent Worker Training Program.

g. No more than 10 percent of the Incumbent Worker Training Program's total appropriation may be used for overhead or indirect purposes.

4. At least 50 percent of Rapid Response funding shall be dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. The department shall also maintain an Emergency Preparedness Fund from Rapid Response funds, which

will immediately issue Intensive Service Accounts, Individual Training Accounts, and other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, these Rapid Response funds shall be released to local workforce development boards for immediate use after events that qualify under federal law. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies and to work with state emergency management officials and local workforce development boards. All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the department and approved by the Governor.

(6) AUTHORITY TO HIRE EXECUTIVE DIRECTOR AND STAFF.—The state board may hire an executive director and staff to assist in carrying out the functions of the Workforce Innovation and Opportunity Act and in using funds made available through the act. The state board shall require ~~authorize~~ the executive director and staff to work with the department to minimize duplication and maximize efficient use of resources in carrying out the functions of the Workforce Innovation and Opportunity Act.

(7) DUTIES OF THE DEPARTMENT.-The department shall adopt rules to implement the requirements of this chapter, including:

(a) The submission, review, and approval of local workforce plans.

(b) Initial and subsequent eligibility criteria, based on input from the state board, local workforce development boards, the Department of Education, and other stakeholders, for the Workforce Innovation and Opportunity Act eligible training

provider list. This list directs training resources to programs leading to employment in high-demand and high-priority occupations that provide economic security, particularly those occupations facing a shortage of skilled workers. A training provider who offers training to obtain a credential on the Master Credentials List under s. 445.004(4)(h) may not be included on a state or local eligible training provider list if the provider fails to submit the required information or fails to meet initial or subsequent eligibility criteria. Subsequent eligibility criteria must use the performance and outcome measures defined and reported under s. 1008.40, to determine whether each program offered by a training provider is qualified to remain on the list.

1. For the 2021-2022 program year, the Department of Economic Opportunity and the Department of Education shall establish the minimum criteria a training provider must achieve for completion, earnings, and employment rates of eligible participants. The minimum program criteria may not exceed the threshold at which more than 20 percent of all eligible training providers in the state would fall below.

2. Beginning with the 2022-2023 program year, each program offered by a training provider must, at a minimum, meet all of the following:

a. Income earnings for all individuals who complete the program that are equivalent to or above the state’s minimum wage in a calendar quarter.

b. An employment rate of at least 75 percent for all individuals. For programs linked to an occupation, the employment rate is calculated based on obtaining employment in

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the field in which the participant was trained.

c. A completion rate of at least 75 percent for all individuals, beginning with the 2023-2024 program year.

(c) Monitoring compliance of programs authorized by this chapter and determining whether such programs are meeting performance expectations, including an analysis of the return on investment of workforce-related programs on individual employment, earnings, and public benefit usage outcomes and a cost-benefit analysis of the monetary impacts of workforce services from the participant and taxpayer points of view.

Section 6. Paragraph (d) of subsection (3), paragraphs (b) and (e) of subsection (5), subsections (6), (7), and (8), paragraph (b) of subsection (9), and subsection (11) of section 445.004, Florida Statutes, are amended, and paragraph (h) is added to subsection (4) of that section, to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(3)

(d) The state board must include the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, the Division of Vocational Rehabilitation, the Division of Blind Services, the Department of Children and Families, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

(4)

(h)1. The state board shall appoint a Credentials Review

Committee to identify nondegree credentials and degree credentials of value for approval by the state board and inclusion in the Master Credentials List. Such credentials must include registered apprenticeship programs, industry certifications, licenses, advanced technical certificates, college credit certificates, career certificates, applied technology diplomas, associate degrees, baccalaureate degrees, and graduate degrees. The Credentials Review Committee must include:

a. The Chancellor of the Division of Public Schools.

b. The Chancellor of the Division of Career and Adult Education.

c. The Chancellor of the Florida College System.

d. The Chancellor of the State University System.

e. The director of the Office of Reimagining Education and Career Help.

f. Four members from local workforce development boards, with equal representation from urban and rural regions.

g. Two members from nonpublic postsecondary institutions.

h. Two members from industry associations.

i. Two members from Florida-based businesses.

j. Two members from the Department of Economic Opportunity.

k. One member from the Department of Agriculture and Consumer Services.

2. All information pertaining to the Credentials Review Committee, the process for the approval of credentials of value, and the Master Credentials List must be made available and be easily accessible to the public on all relevant state agency websites.

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3. The Credentials Review Committee shall establish a definition for credentials of value and create a framework of quality. The framework must align with federally funded workforce accountability requirements and undergo biennial review.

4. The criteria to determine value for nondegree credentials should, at a minimum, require:

a. Evidence that the credential meets labor market demand as identified by the Labor Market Estimating Conference created in s. 216.136 or meets local demand as identified in the criteria adopted by the Credentials Review Committee. Evidence must include employer information on present credential use or emerging opportunities.

b. Evidence that the competencies mastered upon completion of the credential are aligned with labor market demand.

c. Evidence of the employment and earnings outcomes for individuals after obtaining the credential. Earnings outcomes must provide middle-level to high-level wages with preference given to credentials generating high-level wages. Credentials that do not meet the earnings outcomes criteria must be part of a sequence of credentials that are required for the next level occupation that does meet the earnings outcomes criteria in order to be identified as a credential of value. For new credentials, this criteria may be met with conditional eligibility until measurable labor market outcomes are obtained.

5. The Credentials Review Committee shall establish the criteria to determine value for degree programs. This criteria shall include evidence that the program meets the labor market demand as identified by the Labor Market Estimating Conference

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created in s. 216.136 or meets local demand as determined by the committee. Such criteria must be used to designate programs of emphasis under s. 1001.706 and to guide the development of program standards and benchmarks under s. 1004.92.

6. The Credentials Review Committee shall establish a process for prioritizing nondegree credentials and degree programs based on critical statewide or regional shortages.

7. The Credentials Review Committee shall establish a process for:

a. At a minimum, quarterly review and approval of credential applications. Approved credentials of value shall be used by the committee to develop the Master Credentials List.

b. Annual review of the Master Credentials List.

c. Phasing out credentials on the Master Credentials List which no longer meet the framework of quality.

d. Designating performance funding eligibility under ss. 1011.80 and 1011.81, based upon the highest available certification for postsecondary students.

e. Beginning with the 2022-2023 school year, the state board shall submit the Master Credentials List to the State Board of Education. The list must, at a minimum, identify nondegree credentials and degree programs determined to be of value for purposes of ss. 1008.44 and 1011.62(1); if the credential or degree program meets statewide, regional, or local level demand; the type of certificate, credential, or degree; and the primary standard occupation classification code. For the 2021-2022 school year, the Master Credentials List shall be composed of the CAPE Industry Certification Funding List and the CAPE Postsecondary Industry Certification Funding List under ss.

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1008.44 and 1011.62(1) and adopted by the State Board of Education before October 1, 2021.

8. The Credentials Review Committee shall establish a process for linking Classifications of Instructional Programs (CIP) to Standard Occupational Classifications (SOC) for all new credentials of value identified on the Master Credentials List. The CIP code aligns instructional programs to occupations. A CIP to SOC link indicates that programs classified in the CIP code category prepare individuals for jobs classified in the SOC code category. The state board shall submit approved CIP to SOC linkages to the State Board of Education with each credential that is added to the Master Credentials List.

9. The Credentials Review Committee shall identify all data elements necessary to collect information on credentials by the Florida Education and Training Placement Program automated system under s. 1008.39.

10. The Credentials Review Committee shall develop a returned-value funding formula as provided under ss. 1011.80(7)(b) and 1011.81(2)(b). When developing the formula, the committee may not penalize Florida College System institutions or school districts if students postpone employment to continue their education.

(5) The state board has all the powers and authority not explicitly prohibited by statute which are necessary or convenient to carry out and effectuate its purposes as determined by statute, Pub. L. No. 113-128, and the Governor, as well as its functions, duties, and responsibilities, including, but not limited to, the following:

(b) Providing policy direction to ensure that the following

programs are administered by the department consistent with approved plans:

1. Programs authorized under Title I of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, with the exception of programs funded directly by the United States Department of Labor under Title I, s. 167.

2. Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.

3. Activities authorized under Title II of the Trade Act of 2002, as amended, 19 U.S.C. ss. 2272 et seq., and the Trade Adjustment Assistance Program.

4. Activities authorized under 38 U.S.C. chapter 41, including job counseling, training, and placement for veterans.

5. Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

6. Welfare transition services funded by the Temporary Assistance for Needy Families Program, created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193, and Title IV, s. 403, of the Social Security Act, as amended.

7. The Florida Bonding Program, provided under Pub. L. No. 97-300, s. 164(a)(1).

8. The Food Assistance Employment and Training Program, provided under the Food and Nutrition Act of 2008, 7 U.S.C. ss. 2011-2032; the Food Security Act of 1988, Pub. L. No. 99-198; the Hunger Prevention Act, Pub. L. No. 100-435; and the Agriculture Improvement Act of 2018, Pub. L. No. 115-334.

9. The Quick-Response Training Program, provided under ss.

288.046-288.047. Matching funds and in-kind contributions that are provided by clients of the Quick-Response Training Program count toward the requirements of s. 288.904, pertaining to the return on investment from activities of Enterprise Florida, Inc.

10. The Work Opportunity Tax Credit, provided under the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

11. Offender placement services, provided under ss. 944.707-944.708.

~~The department may adopt rules necessary to administer this chapter which relate to implementing and administering the programs listed in this paragraph as well as rules related to eligible training providers and auditing and monitoring subrecipients of the workforce system grant funds~~.

(e) Ensuring that the state does not waste valuable training resources. The state board's policy is that all resources, including equipment purchased for training Workforce Innovation and Opportunity Act clients, be available for use at all times by eligible populations as first priority users. At times when eligible populations are not available, such resources shall be used for any other state-authorized education and training purpose. The state board and any of its committees, councils, or administrative entities may authorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by a local workforce development board, its committees and subdivisions, and other units of the workforce system. The state board may also authorize expenditures for promotional items, such as t-shirts, hats, or

pens printed with messages promoting the state's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds.

(6) The state board shall ~~may take action that it deems necessary to~~ achieve the purposes of this section by~~, including, but not limited to~~:

(a) Creating a state employment, education, and training policy that ensures workforce-related programs ~~that programs to prepare workers~~ are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.

(b) Establishing policy direction for a uniform funding system that prioritizes evidence-based, results-driven solutions by providing ~~provides~~ incentives to improve the outcomes of career education, registered apprenticeship, and work-based learning programs and that focuses resources on occupations related to new or emerging industries that add greatly to the value of the state's economy.

(c) Establishing a comprehensive policy related to the education and training of target populations such as those who have disabilities, are economically disadvantaged, receive public assistance, are not proficient in English, or are dislocated workers. This approach should ensure the effective use of federal, state, local, and private resources in reducing the need for public assistance by combining two or more sources of funding to support workforce-related programs or activities for vulnerable populations.

(d) Identifying barriers to coordination and alignment

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among workforce-related programs and activities and developing solutions to remove such barriers.

(e) Maintaining a Master Credentials List that:

1. Serves as a public and transparent inventory of state-approved credentials of value.

2. Directs the use of federal and state funds for workforce education and training programs that lead to approved credentials of value.

3. Guides workforce education and training programs by informing the public of the credentials that have value in the current or future job market

~~(d) Designating Institutes of Applied Technology composed of public and private postsecondary institutions working together with business and industry to ensure that career education programs use the most advanced technology and instructional methods available and respond to the changing needs of business and industry.~~

~~(e) Providing policy direction for a system to project and evaluate labor market supply and demand using the results of the Workforce Estimating Conference created in s. 216.136 and the career education performance standards identified under s. 1008.43.~~

~~(f) Reviewing the performance of public programs that are responsible for economic development, education, employment, and training. The review must include an analysis of the return on investment of these programs~~.

~~(g) Expanding the occupations identified by the Workforce Estimating Conference to meet needs created by local emergencies or plant closings or to capture occupations within emerging~~

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~~industries.~~

(7) By December 1 of each year, the state board, in consultation with the department, shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed annual report setting forth:

(a) All audits and investigations~~, including any audit conducted under subsection (8)~~.

(b) The operations and accomplishments of the state board, including the programs or entities specified in subsection (6).

(c) The number of mandatory partners located within one-stop centers.

(d) The progress on implementing solutions to address barriers to coordination and alignment among programs and activities identified under paragraph (6)(d).

(8) Annually, beginning July 1, 2022, the state board shall assign and make public a letter grade for each local workforce development board using the criteria established by the Office of Reimagining Education and Career Help under s. 14.36 ~~Pursuant to his or her own authority or at the direction of the Legislative Auditing Committee, the Auditor General may conduct an audit of the state board and CareerSource Florida, Inc., or the programs or entities created by the state board. The Office of Program Policy Analysis and Government Accountability, pursuant to its authority or at the direction of the Legislative Auditing Committee, may review the systems and controls related to performance outcomes and quality of services of the state board and CareerSource Florida, Inc~~.

(9) The state board, in collaboration with the local workforce development boards and appropriate state agencies and local public and private service providers, shall establish uniform performance accountability measures that apply across the core programs to gauge the performance of the state and local workforce development boards in achieving the workforce development strategy.

(b) The performance accountability measures for each local area consist of the primary indicators of performance, any additional indicators of performance, and a local level of performance for each indicator pursuant to Pub. L. No. 113-128. The local level of performance is determined by the local board, the chief elected official, and the Governor pursuant to Pub. L. No. 113-128, Title I, s. 116(c). Any local performance accountability measures that are established must be based on identified local area needs.

(11) The workforce development system must use local design and control of service delivery and targeted activities. The state board, in consultation with the department, is responsible for ensuring that local workforce development boards have a membership consistent with the requirements of federal and state law and have developed a plan consistent with the state's workforce development strategy. The plan must specify methods for allocating the resources and programs in a manner that eliminates unwarranted duplication, minimizes administrative costs, meets the existing job market demands and the job market demands resulting from successful economic development activities, ensures access to quality workforce development services for all Floridians, allows for pro rata or partial

distribution of benefits and services, prohibits the creation of a waiting list or other indication of an unserved population, serves as many individuals as possible within available resources, and maximizes successful outcomes. The state board shall establish incentives for effective alignment and coordination of federal and state programs and those identified by the Office of Reimagining Education and Career Help under s. 14.36(4)(e), outline rewards for long-term self-sufficiency of ~~successful job placements~~ participants, and institute collaborative approaches among local service providers.

Section 7. Subsection (2) of section 445.006, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

445.006 State plan for workforce development.—

(2) STRATEGIC PLANNING ELEMENTS.—The state board, in conjunction with state and local partners in the workforce development system, shall develop strategic planning elements, pursuant to Pub. L. No. 113-128, Title I, s. 102, for the state plan.

(a) The strategic planning elements of the state plan must include, but need not be limited to, strategies for:

1. Fulfilling the workforce system goals and strategies prescribed in s. 445.004.~~;~~

2. Aggregating, integrating, and leveraging workforce system resources.~~;~~

3. Coordinating the activities of federal, state, and local workforce system partners.~~;~~

4. Addressing the workforce needs of small businesses.~~; and~~

5. Fostering the participation of rural communities and

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distressed urban cores in the workforce system.

(b) The strategic planning elements must include criteria for allocating workforce resources to local workforce development boards. With respect to allocating funds to serve customers of the welfare transition program, such criteria may include weighting factors that indicate the relative degree of difficulty associated with securing and retaining employment placements for specific subsets of the welfare transition caseload.

(c) The state plan must describe:

1. How the activities will be carried out by the respective core programs to implement the strategy and how the activities will be aligned across the programs and among the entities administering the programs, including using coenrollment and other strategies.

2. How the activities will be aligned with other activities that are provided under employment, training, education, including career and technical education, and human services programs that are not covered by the state plan, as appropriate, to avoid duplication and assure coordination.

3. How the entities carrying out the respective core programs will coordinate activities and provide comprehensive, high-quality services, including supportive services, to individuals.

4. How the state’s strategy to engage Florida College System institutions and local career and technical education schools as partners in the workforce development system will enable the state to leverage other federal, state, and local investments and increase access to workforce development

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programs at those institutions.

5. How the activities will be coordinated with economic development strategies.

6. How the state's strategy will improve access to activities leading to a state approved recognized postsecondary credential, including a credential that is an industry recognized certificate or certification that is portable and builds on additional education or training.

(4) WAIVERS.—The department shall prepare a federal waiver to be submitted by the Governor to the United States Department of Labor which:

(a) Allows the state board to fulfill the roles and responsibilities of local workforce development boards or that reduces the number of local workforce development boards based on population size and commuting patterns in order to:

1. Eliminate multiple layers of administrative entities to improve coordination of the workforce development system.

2. Establish consistent eligibility standards across the state to improve the accountability of workforce-related programs.

3. Provide greater flexibility in the allocation of resources to maximize the funds directed to training and business services.

(b) Allows the Governor to reallocate funds among local areas that have a demonstrated need for additional funding and programmatic outcomes that will maximize the use of the additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants.

Section 8. Section 445.007, Florida Statutes, is amended to read:

445.007 Local workforce development boards.—

(1) One local workforce development board shall be appointed in each designated service delivery area and shall serve as the local workforce development board pursuant to Pub. L. No. 113-128. The membership of the local board must be consistent with Pub. L. No. 113-128, Title I, s. 107(b). If a public education or training provider is represented on the local board, a representative of a private education provider must also be appointed to the local board. The state board may waive this requirement if requested by a local ~~workforce development~~ board if it is demonstrated that such representatives do not exist in the region. The importance of minority and gender representation shall be considered when making appointments to the local board. The local board, its committees, subcommittees, and subdivisions, and other units of the workforce system, including units that may consist in whole or in part of local governmental units, may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Local ~~workforce development~~ boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution. ~~If the local workforce development board enters into a contract with an organization or individual represented on the local board, the contract must be approved by a two-thirds vote of the local board, a quorum having been established, and the local board~~

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~~member who could benefit financially from the transaction must abstain from voting on the contract. A local board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143.~~ Each member of a local ~~workforce development~~ board who is not otherwise required to file a full and public disclosure of financial interests under s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under s. 112.3145. The executive director or designated person responsible for the operational and administrative functions of the local ~~workforce development~~ board who is not otherwise required to file a full and public disclosure of financial interests under s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under s. 112.3145. The local board's website, or the department's website if the local board does not maintain a website, must inform the public that each disclosure or statement has been filed with the Commission on Ethics and provide information on how each disclosure or statement may be reviewed. The notice to the public must remain on the website throughout the term of office or employment of the filer and until 1 year after the term on the local board or employment ends.

(2)(a) The local workforce development board shall elect a chair from among the representatives described in Pub. L. No. 113-128, Title I, s. 107(b)(2)(A) to serve for a term of no more than 2 years and may not ~~shall~~ serve ~~no~~ more than two terms as chair. Members of a local workforce development board shall serve staggered terms and may not serve for more than 8 consecutive years, unless such member is a representative of a

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governmental entity. Service in a term of office which commenced before July 1, 2021, does not count toward the 8-year limitation.

(b) The Governor may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause.

(c) The chief elected official for the local ~~workforce development~~ board may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause.

(3) The department shall assign staff to meet with each local workforce development board annually to review the local board's performance as determined under s. 445.004(8) and to certify that the local board is in compliance with applicable state and federal law.

(4) In addition to the duties and functions specified by the state board and by the interlocal agreement approved by the local county or city governing bodies, the local workforce development board shall have the following responsibilities:

(a) Develop, submit, ratify, or amend the local plan pursuant to Pub. L. No. 113-128, Title I, s. 108 and this act.

(b) Conclude agreements necessary to designate the fiscal agent and administrative entity. A public or private entity, including an entity established under s. 163.01, which makes a majority of the appointments to a local ~~workforce development~~ board may serve as the local board's administrative entity if approved by the department based upon a showing that a fair and

competitive process was used to select the administrative entity.

(c) Provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development, equal access, compliance and accountability, and performance outcomes.

(d) Oversee the one-stop delivery system in its local area.

(5) The department and CareerSource Florida, Inc., in consultation with the state board, shall implement a training program for the local workforce development boards to familiarize local board members with the state's workforce development goals and strategies.

(6) Consistent with federal and state law, the local workforce development board shall designate all local service providers and may not transfer this authority to a third party. Consistent with the intent of the Workforce Innovation and Opportunity Act, local ~~workforce development~~ boards should provide the greatest possible choice of training providers to those who qualify for training services. A local ~~workforce development~~ board may not restrict the choice of training providers based upon cost, location, or historical training arrangements. However, a local board may restrict the amount of training resources available to any one client. Such restrictions may vary based upon the cost of training in the client's chosen occupational area. The local ~~workforce development~~ board may be designated as a one-stop operator and direct provider of intake, assessment, eligibility determinations, or other direct provider services except training services. Such designation may occur only with the

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agreement of the chief elected official and the Governor as specified in 29 U.S.C. s. 2832(f)(2). The state board shall establish procedures by which a local ~~workforce development~~ board may request permission to operate under this section and the criteria under which such permission may be granted. The criteria shall include, but need not be limited to, a reduction in the cost of providing the permitted services. Such permission shall be granted for a period not to exceed 3 years for any single request submitted by the local ~~workforce development~~ board.

(7) Local workforce development boards shall adopt a committee structure consistent with applicable federal law and state policies established by the state board.

(8) The importance of minority and gender representation shall be considered when appointments are made to any committee established by the local workforce development board.

(9) For purposes of procurement, local workforce development boards and their administrative entities are not state agencies and are exempt from chapters 120 and 287. The local ~~workforce development~~ boards shall apply the procurement and expenditure procedures required by federal law and policies of the department and the state board for the expenditure of federal, state, and nonpass-through funds. The making or approval of smaller, multiple payments for a single purchase with the intent to avoid or evade the monetary thresholds and procedures established by federal law and policies of the department and the state board is grounds for removal for cause. Local ~~workforce development~~ boards, their administrative entities, committees, and subcommittees, and other workforce

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units may authorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by units of the workforce development system. Local ~~workforce development~~ boards; their administrative entities, committees, and subcommittees; and other workforce units may authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting the state's ~~Florida's~~ workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds. All contracts executed by local ~~workforce development~~ boards must include specific performance expectations and deliverables.

(10) State and federal funds provided to the local workforce development boards may not be used directly or indirectly to pay for meals, food, or beverages for members, staff, or employees of local ~~workforce development~~ boards, the state board, or the department except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and shall be in compliance with all applicable federal and state requirements. The department shall provide fiscal and programmatic guidance to the state board, CareerSource Florida, Inc., and all local ~~workforce development~~ boards to hold both the state and local ~~workforce development~~ boards strictly accountable for adherence to the policy and subject to regular and periodic monitoring by the department. Local boards are prohibited from expending state or

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federal funds for entertainment costs and recreational activities for local board members and employees as these terms are defined by 2 C.F.R. part 200.

(11)(a) To increase transparency and accountability, a local workforce development board must comply with the requirements of this section before contracting with a member of the local board; ~~or~~ a relative, as defined in s. 112.3143(1)(c), of a local board member; an organization or individual represented on the local board; or of an employee of the local board. Such contracts may not be executed before or without the prior approval of the department. Such contracts, as well as documentation demonstrating adherence to this section as specified by the department, must be submitted to the department for review and approval. Such a contract must be approved by a two-thirds vote of the local board, a quorum having been established; all conflicts of interest must be disclosed before the vote in a manner consistent with the procedures outlined in s. 112.3143(4); and any member who may benefit from the contract, or whose organization or relative may benefit from the contract, must abstain from the vote. A contract subject to the requirements of this subsection may not be included on a consent agenda.

(b) A contract under $10,000 ~~$25,000~~ between a local ~~workforce development~~ board, ~~and a member of that board or between~~ a relative, as defined in s. 112.3143(1)(c), of a local board member, or of an employee of the local board is not required to have the prior approval of the department, but must be approved by a two-thirds vote of the local board, a quorum having been established, and must be reported to the department

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and the state board within 30 days after approval.

(c) All contracts between a local board and a member of the local board; a relative, as defined in s. 112.3143(1)(c), of a local board member; an organization or individual represented on the local board; or an employee of the local board, approved on or after July 1, 2021, must also be published on the local board's website, or on the department's website if the local board does not maintain a website, within 10 days after approval by the local board or department, whichever is later. Such contracts must remain published on the website for at least 1 year after termination of the contract.

(d) In considering whether to approve a contract under this subsection, the department shall review and consider all documentation provided to the department by the local board, including the performance of the entity with which the local board is proposing to contract with, if applicable, and the nature, size, and makeup of the business community served by the local board, including whether the entity with which the local board is proposing to contract with is the only provider of the desired goods or services within the area served by the local board ~~If a contract cannot be approved by the department, a review of the decision to disapprove the contract may be requested by the local workforce development board or other parties to the disapproved contract~~.

(12) Each local workforce development board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official. Each local ~~workforce development~~ board shall submit its annual budget for review to the department no later

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than 2 weeks after the chair approves the budget. The local board shall publish the budget on its website, or the department's website if the local board does not maintain a website, within 10 days after approval by the department. The budget must remain published on the website for the duration of the fiscal year for which it accounts for the expenditure of funds.

(13) Each local workforce development board shall annually, within 30 days after the end of the fiscal year, disclose to the department, in a manner determined by the department, the amount and nature of compensation paid to all executives, officers, directors, trustees, key employees, and the highest compensated employees, as defined for purposes of the Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax, including salary, bonuses, present value of vested benefits, including, but not limited to, retirement, accrued leave and paid time off, cashed-in leave, cash equivalents, severance pay, pension plan accruals and contributions, deferred compensation, real property gifts, and any other liability owed to such persons. The disclosure must be accompanied by a written declaration, as provided for under s. 92.525(2), from the chief financial officer, or his or her designee, that he or she has read the foregoing document and the facts stated in it are true. Such information must also be published on the local board's website, or the department's website if the local board does not maintain a website, for a period of 3 years after it is first published.

(14) Each local workforce development board shall annually publish its most recent Internal Revenue Service Form 990,

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Return of Organization Exempt from Income Tax, on its website, or the department's website if the local board does not maintain a website. The form must be posted on the local board's website within 60 calendar days after it is filed with the Internal Revenue Service and remain posted for 3 years after it is filed.

Section 9. Paragraphs (a) and (e) of subsection (8) of section 445.009, Florida Statutes, are amended to read:

445.009 One-stop delivery system.—

(8)(a) Individual Training Accounts must be expended on programs that prepare people to enter ~~high-wage~~ occupations identified by the Labor Market ~~Workforce~~ Estimating Conference created by s. 216.136, and on other programs recommended and approved by the state board following a review by the department to determine the program's compliance with federal law.

(e) Training services provided through Individual Training Accounts must be performance-based, with successful job placement triggering final ~~full~~ payment of at least 10 percent.

Section 10. Section 445.011, Florida Statutes, is amended, to read:

445.011 Consumer-first workforce system ~~information systems~~.—

(1) The department, in consultation with the state board, the Department of Education, and the Department of Children and Families, shall implement, subject to legislative appropriation, an automated consumer-first workforce system that improves coordination among required one-stop partners and is ~~information systems that are~~ necessary for the efficient and effective operation and management of the workforce development system. This system ~~These information systems~~ shall include, but need

not be limited to, the following:

(a) An integrated management system for the one-stop service delivery system, which includes, at a minimum, common registration and intake for required one-stop partners, screening for needs and benefits, case management ~~planning and tracking~~, training benefits management, service and training provider management, performance reporting, executive information and reporting, and customer-satisfaction tracking and reporting.

1. The system should report current budgeting, expenditure, and performance information for assessing performance related to outcomes, service delivery, and financial administration for workforce programs pursuant to s. 445.004(5) and (9).

2. The ~~information~~ system should include auditable systems and controls to ensure financial integrity and valid and reliable performance information.

3. The system should support service integration and case management across programs and agencies by providing for case tracking for participants in workforce programs, participants who receive benefits pursuant to public assistance programs under chapter 414, and participants in welfare transition programs under this chapter.

(b) An automated job-matching information system that is accessible to employers, job seekers, and other users via the Internet, and that includes, at a minimum:

1. Skill match information, including skill gap analysis; resume creation; job order creation; skill tests; job search by area, employer type, and employer name; and training provider linkage;

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2. Job market information based on surveys, including local, state, regional, national, and international occupational and job availability information; and

3. Service provider information, including education and training providers, child care facilities and related information, health and social service agencies, and other providers of services that would be useful to job seekers.

(2) The department may procure independent verification and validation services associated with developing and implementing the consumer-first ~~any~~ workforce ~~information~~ system.

(3) The department shall coordinate development and implementation of the consumer-first workforce system ~~information systems~~ with the state chief information officer to ensure compatibility with the state's information system strategy and enterprise architecture.

(4) Any contract entered into or renewed on or after July 1, 2021, for the purpose of implementing this section must be performance based.

(5) The department shall develop training for required one-stop partners on the use of the consumer-first workforce system and how to prequalify individuals for workforce programs.

Section 11. Section 445.033, Florida Statutes, is amended to read:

445.033 Evaluation.—The department ~~state board~~ and the Department of Children and Families shall measure the performance of workforce-related programs and services for participants who receive benefits pursuant to family self-sufficiency programs under chapter 414, and participants in welfare transition ~~arrange for evaluation of TANF-funded~~

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programs ~~operated~~ under this chapter, as follows:

~~(1) If required by federal waivers or other federal requirements, the state board and the department may provide for evaluation according to these requirements.~~

(1)~~(2)~~ The ~~state board and the~~ department shall consult with local workforce development boards to develop annual performance reports that analyze participants' transition from public assistance to self-sufficiency, including, but not limited to, ~~shall participate in the evaluation of this program in conjunction with evaluation of the state's workforce development programs or similar activities aimed at evaluating~~ program outcomes, cost-effectiveness, ~~or~~ return on investment, coenrollment in these programs, and the impact of time limits, sanctions, and other welfare reform measures ~~set out in this chapter~~. Each local board shall, at a minimum, provide quarterly reports on the following measures:

(a) The percent of participants working in unsubsidized employment.

(b) The percent of participants who stop receiving benefits for reasons other than disqualification or sanction.

(c) The number of sanctions and waivers that are granted, measured by the type of sanction or waiver and the number of completed compliance activities that lead to a restoration of benefits.

(d) The median placement wage rate.

(e) The TANF work participation rate, defined as the participation requirements specified under Pub. L. No. 109-171, the Deficit Reduction Act of 2005.

(f) A self-sufficiency index, by county, calculated each

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quarter based on the percent of current or former participants who stop receiving benefits or are working 30 or more hours per week and at 1 and 2 years after participants stop receiving benefits or work 30 or more hours per week. The quarterly report must include the percentage of participants earning at or above 200 percent of the federal poverty level 3 years after participants stop receiving benefits or work 30 or more hours per week. The quarterly report must also contain an expected range of performance for each county on the self-sufficiency index. The expected range shall be derived by a statistical methodology developed in consultation with the local boards. The statistical methodology shall control differences across counties in economic conditions and demographics of participants in family self-sufficiency programs under chapter 414, and welfare transition programs under this chapter ~~Evaluation shall also contain information on the number of participants in work experience assignments who obtain unsubsidized employment, including, but not limited to, the length of time the unsubsidized job is retained, wages, and the public benefits, if any, received by such families while in unsubsidized employment. The evaluation must solicit the input of consumers, community-based organizations, service providers, employers, and the general public, and must publicize, especially in low-income communities, the process for submitting comments~~.

(2) ~~(3)~~ The state board and the department shall ~~may~~ share information with and develop protocols for information exchange with the Florida Education and Training Placement Information Program.

(3) ~~(4)~~ The state board and the department may initiate or

participate in additional evaluation or assessment activities that will further the systematic study of issues related to program goals and outcomes.

(4) ~~(5)~~ In providing for evaluation activities, the state board and the department shall safeguard the use or disclosure of information obtained from program participants consistent with federal or state requirements. Evaluation methodologies may be used which are appropriate for evaluation of program activities, including random assignment of recipients or participants into program groups or control groups. To the extent necessary or appropriate, evaluation data shall provide information with respect to the state, district, or county, or other substate area.

(5) ~~(6)~~ The state board and the department may contract with a qualified organization for evaluations conducted under this section.

Section 12. Section 445.038, Florida Statutes, is amended to read:

445.038 Digital media; job training.—CareerSource Florida, Inc., through the Department of Economic Opportunity, may use funds dedicated for incumbent worker training for the digital media industry. Training may be provided by public or private training providers for broadband digital media jobs listed on the ~~targeted~~ occupations list developed by the Labor Market ~~Workforce~~ Estimating Conference ~~or CareerSource Florida, Inc~~. Programs that operate outside the normal semester time periods and coordinate the use of industry and public resources should be given priority status for funding.

Section 13. Subsection (8) of section 446.021, Florida

Statutes, is amended to read:

446.021 Definitions of terms used in ss. 446.011-446.092.—As used in ss. 446.011-446.092, the term:

(8) "Uniform minimum ~~preapprenticeship~~ standards" means the minimum requirements established uniformly for each occupation ~~craft~~ under which an apprenticeship or a preapprenticeship program is administered or a work-based learning opportunity is provided. The term ~~and~~ includes standards of admission, training goals, training objectives, curriculum outlines, objective standards to measure successful completion of the apprenticeship or preapprenticeship program or work-based learning opportunity, and the percentage of credit which may be given to an apprentice or a preapprentice or work-based learning student ~~preapprenticeship graduates upon acceptance into the apprenticeship program~~.

Section 14. Subsection (1), paragraphs (b) and (f) of subsection (2), and subsection (3) of section 446.032, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (2) of that section, to read:

446.032 General duties of the department for apprenticeship training.—The department shall:

(1) Establish uniform minimum standards and policies governing apprenticeship and preapprenticeship ~~apprentice~~ programs and agreements which must require training providers to submit data necessary to determine program performance consistent with state and federal law. The standards and policies shall govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice for, but not limited to, such matters

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as ratios of apprentices to journeyworkers, safety, related instruction, and on-the-job training; but these standards and policies may not include rules, standards, or guidelines that require the use of apprentices and job trainees on state, county, or municipal contracts. The department shall ~~may~~ adopt rules necessary to administer the standards and policies.

(2) By September 1 of each year, publish an annual report on apprenticeship and preapprenticeship programs. The report must be published on the department's website and, at a minimum, include all of the following:

(b) A detailed summary of each local educational agency's expenditure of funds for apprenticeship and preapprenticeship programs, including:

1. The total amount of funds received for apprenticeship and preapprenticeship programs.~~;~~

2. The total amount of funds allocated by training provider, program, and ~~to each trade or~~ occupation.~~;~~

3. The total amount of funds expended for administrative costs by training provider, program, and ~~per trade or~~ occupation.~~; and~~

4. The total amount of funds expended for instructional costs by training provider, program, ~~per trade~~ and occupation.

(f) Documentation of activities conducted by the department to promote apprenticeship and preapprenticeship programs through public engagement, community-based partnerships, and other initiatives and the outcomes of such activities and their impact on establishing or expanding apprenticeship and preapprenticeship programs.

(g) Retention and completion rates of participants

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disaggregated by training provider, program, and occupation.

(h) Wage progression of participants as demonstrated by starting, exit, and postapprenticeship wages at 1 and 5 years after participants exit the program.

(3) Provide assistance to district school boards, Florida College System institution boards of trustees, program sponsors, and local workforce development boards in notifying students, parents, and members of the community of the availability of apprenticeship and preapprenticeship opportunities, including data provided in the economic security report under ~~pursuant to~~ s. 445.07 and other state career planning resources.

Section 15. Section 446.041, Florida Statutes, is amended to read:

446.041 ~~Apprenticeship program,~~ Duties of the department.—The department shall:

(1) Administer ss. 446.011-446.092.

(2) Administer the standards established by the department.

(3) Register in accordance with this chapter any apprenticeship or preapprenticeship program, regardless of affiliation, which meets standards established by the department.

(4) Investigate complaints concerning the failure of any registered program to meet the standards established by the department.

(5) Cancel the registration of any program that fails to comply with the standards and policies of the department or that unreasonably fails or refuses to cooperate with the department in monitoring and enforcing compliance with the standards.

(6) Develop and encourage apprenticeship programs.

(7) Lead and coordinate outreach efforts to educate veterans about apprenticeship and career opportunities.

(8) Cooperate with and assist local apprenticeship sponsors in the development of their apprenticeship standards and training requirements.

(9) Encourage registered apprenticeship programs to grant consideration and credit to individuals completing registered preapprenticeship programs.

(10) Monitor registered apprenticeship programs to ensure that they are being operated in compliance with all applicable standards.

(11) Supervise all apprenticeship programs that are registered with the department.

(12) Ensure that minority and gender diversity are considered in administering this program.

(13) Adopt rules required to administer ss. 446.011-446.092.

Section 16. Section 446.090, Florida Statutes, is created to read:

446.090 Work-based learning opportunities.—

(1) As used in this section, the term "work-based learning opportunity" means an interaction with industry or community professionals which occurs in a workplace setting, to the extent possible, or a simulated environment at an educational institution that allows firsthand experience with tasks required in a given career field, is aligned with curriculum and instruction, and is provided in partnership with an educational institution.

(2) A work-based learning opportunity must meet all of the

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following criteria:

(a) Be developmentally appropriate.

(b) Identify learning objectives for the term of experience.

(c) Explore multiple aspects of an industry.

(d) Develop workplace skills and competencies.

(e) Assess performance.

(f) Provide opportunities for work-based reflection.

(g) Link to next steps in career planning and preparation in a student's chosen career pathway.

(h) Be provided in an equal and fair manner.

(i) Be documented and reported in compliance with state and federal labor laws.

A work-based learning opportunity should prioritize paid experiences, such as apprenticeship and preapprenticeship programs.

(3) The State Board of Education shall adopt rules to implement this section which must include uniform minimum standards and guidelines for determining student eligibility, obligations of employers, and requirements of institutions that offer work-based learning opportunities.

Section 17. Subsection (43) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43) In cooperation with the Institute of Food and Agricultural Sciences at the University of Florida and the

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College of Agriculture and Food Sciences at the Florida Agricultural and Mechanical University, submit industry certifications for agriculture occupations ~~to annually provide~~ to the Credentials Review Committee established in s. 445.004(4) ~~State Board of Education and the Department of Education information and industry certifications for farm occupations~~ to be considered for placement on the Master Credentials List ~~CAPE Industry Certification Funding List and the CAPE Postsecondary Industry Certification Funding List pursuant to s. 1008.44~~. ~~Information and industry certifications provided by the department must be based upon the best available data~~.

Section 18. Paragraph (b) of subsection (5) of section 1001.706, Florida Statutes, is amended to read:

1001.706 Powers and duties of the Board of Governors.—

(5) POWERS AND DUTIES RELATING TO ACCOUNTABILITY.—

(b) The Board of Governors shall develop a strategic plan specifying goals and objectives for the State University System and each constituent university, including each university's contribution to overall system goals and objectives. The strategic plan must:

1. Include performance metrics and standards common for all institutions and metrics and standards unique to institutions depending on institutional core missions, including, but not limited to, student admission requirements, retention, graduation, percentage of graduates who have attained employment, percentage of graduates enrolled in continued education, licensure passage, average wages of employed graduates, average cost per graduate, excess hours, student loan

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burden and default rates, faculty awards, total annual research expenditures, patents, licenses and royalties, intellectual property, startup companies, annual giving, endowments, and well-known, highly respected national rankings for institutional and program achievements.

2. Consider reports and recommendations of the Florida Talent Development Council under ~~pursuant to~~ s. 1004.015 and the Articulation Coordinating Committee under ~~pursuant to~~ s. 1007.01.

3. Include student enrollment and performance data delineated by method of instruction, including, but not limited to, traditional, online, and distance learning instruction.

4. Include criteria for designating baccalaureate degree and master's degree programs at specified universities as high-demand programs of emphasis. The programs of emphasis list adopted by the Board of Governors before July 1, 2021, shall be used for the 2021-2022 academic year. Beginning in the 2022-2023 academic year, the Board of Governors shall adopt the criteria to determine value for and prioritization of degree credentials and degree programs established by the Credentials Review Committee under s. 445.004 for designating ~~Fifty percent of the criteria for designation as~~ high-demand programs of emphasis. The Board of Governors must review designated programs of emphasis, at a minimum, every 3 years to ensure alignment with the prioritization of degree credentials and degree programs identified by the Credentials Review Committee ~~must be based on achievement of performance outcome thresholds determined by the Board of Governors, and 50 percent of the criteria must be based on achievement of performance outcome thresholds specifically~~

~~linked to:~~

~~a. Job placement in employment of 36 hours or more per week and average full-time wages of graduates of the degree programs 1 year and 5 years after graduation, based in part on data provided in the economic security report of employment and earning outcomes produced annually pursuant to s. 445.07.~~

~~b. Data-driven gap analyses, conducted by the Board of Governors, of the state's job market demands and the outlook for jobs that require a baccalaureate or higher degree. Each state university must use the gap analyses to identify internship opportunities for students to benefit from mentorship by industry experts, earn industry certifications, and become employed in high-demand fields~~.

Section 19. Paragraph (e) of subsection (1) of section 1003.4156, Florida Statutes, is amended to read:

1003.4156 General requirements for middle grades promotion.—

(1) In order for a student to be promoted to high school from a school that includes middle grades 6, 7, and 8, the student must successfully complete the following courses:

(e) One course in career and education planning to be completed in grades 6, 7, or 8, which may be taught by any member of the instructional staff. The course must be Internet-based, customizable to each student, and include research-based assessments to assist students in determining educational and career options and goals. In addition, the course must result in a completed personalized academic and career plan for the student that may be revised as the student progresses through middle school and high school; must emphasize the importance of

entrepreneurship and employability skills; and must include information from the Department of Economic Opportunity's economic security report under s. 445.07 and other state career planning resources. The required personalized academic and career plan must inform students of high school graduation requirements, including a detailed explanation of the requirements for earning a high school diploma designation under s. 1003.4285; the requirements for each scholarship in the Florida Bright Futures Scholarship Program; state university and Florida College System institution admission requirements; available opportunities to earn college credit in high school, including Advanced Placement courses; the International Baccalaureate Program; the Advanced International Certificate of Education Program; dual enrollment, including career dual enrollment; and career education courses, including career-themed courses, preapprenticeship and apprenticeship programs, and course sequences that lead to industry certification pursuant to s. 1003.492 or s. 1008.44. The course may be implemented as a stand-alone course or integrated into another course or courses.

Section 20. Paragraph (s) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing

approved methods of instruction, the following:

(s) A character development program in the elementary schools, similar to Character First or Character Counts, which is secular in nature. Beginning in school year 2004-2005, the character development program shall be required in kindergarten through grade 12. Each district school board shall develop or adopt a curriculum for the character development program that shall be submitted to the department for approval. The character development curriculum shall stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation. The character development curriculum for grades 9 through 12 shall, at a minimum, include instruction on developing leadership skills, interpersonal skills, organization skills, and research skills; creating a resume, including a digital resume; exploring career pathways; using state career planning resources; developing and practicing the skills necessary for employment interviews; conflict resolution, workplace ethics, and workplace law; managing stress and expectations; and developing skills that enable students to become more resilient and self-motivated.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. A character development program that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character building and veteran awareness

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initiative meets the requirements of paragraphs (s) and (t).

Section 21. Subsections (3) and (5) of section 1003.4203, Florida Statutes, are amended to read:

1003.4203 Digital materials, CAPE Digital Tool certificates, and technical assistance.—

(3) CAPE DIGITAL TOOL CERTIFICATES.—The department shall identify, in the CAPE Industry Certification Funding List under ss. 1003.492 and 1008.44 ~~by June 15 of each year~~, CAPE Digital Tool certificates that indicate a student's digital skills. The department shall notify each school district when the certificates are available. The certificates shall be made available to all public elementary and middle grades students.

(a) Targeted skills to be mastered for the certificate include digital skills that are necessary to the student's academic work and skills the student may need in future employment. ~~The skills must include, but are not limited to, word processing; spreadsheets; presentations, including sound, motion, and color presentations; digital arts; cybersecurity; and coding consistent with CAPE industry certifications that are listed on the CAPE Industry Certification Funding List, pursuant to ss. 1003.492 and 1008.44.~~ CAPE Digital Tool certificates earned by students are eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.a.

(b) The school district shall notify each middle school advisory council of the methods of delivery of the open-access content and assessments for the certificates. If there is no middle school advisory council, notification must be provided to the district advisory council.

(c) The Legislature intends that by July 1, 2018, on an

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annual basis, at least 75 percent of public middle grades students earn at least one CAPE Digital Tool certificate.

(5) CAPE INNOVATION AND CAPE ACCELERATION.—

(a) *CAPE Innovation.* ~~Up to five~~ Courses identified in the CAPE Industry Certification Funding List which ~~annually approved by the commissioner that~~ combine academic and career content, and performance outcome expectations that, if achieved by a student, shall articulate for college credit and be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.c. Such approved courses must incorporate at least two third-party assessments that, if successfully completed by a student, shall articulate for college credit. At least one of the two third-party assessments must be associated with an industry certification that is identified on the CAPE Industry Certification Funding List. Each course that is approved by the commissioner must be specifically identified in the Course Code Directory as a CAPE Innovation Course.

(b) *CAPE Acceleration.*—Industry certifications~~, annually approved by the commissioner,~~ that articulate for 15 or more college credit hours and, if successfully completed, are ~~shall be~~ eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.d. Each approved industry certification must be specifically identified in the CAPE Industry Certification Funding List as a CAPE Acceleration Industry Certification.

Section 22. Paragraphs (a) and (b) of subsection (3) and subsection (5) of section 1003.491, Florida Statutes, are amended to read:

1003.491 Florida Career and Professional Education Act.—The

Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(3) The strategic 3-year plan developed jointly by the local school district, local workforce development boards, economic development agencies, and state-approved postsecondary institutions shall be constructed and based on:

(a) Research conducted to objectively determine local and regional workforce needs for the ensuing 3 years, using labor projections as identified by the Labor Market Estimating Conference created in s. 216.136 ~~of the United States Department of Labor and the Department of Economic Opportunity~~;

(b) Strategies to develop and implement career academies or career-themed courses based on occupations identified by the Labor Market Estimating Conference created in s. 216.136 ~~those careers determined to be high-wage, high-skill, and high-demand~~;

(5)(a) The Commissioner of Education shall conduct an annual review of K-12 and postsecondary career and technical education offerings that, at a minimum, must examine:~~, in consultation with the Department of Economic Opportunity, CareerSource Florida, Inc., leaders of business and industry, the Board of Governors, the Florida College System, school districts, and other education stakeholders, to determine the alignment of existing offerings with employer demand, postsecondary degree or certificate programs, and professional industry certifications. The review shall identify career and technical education offerings that are linked to occupations~~

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~~that are in high demand by employers, require high-level skills, and provide middle-level and high-level wages.~~

1. Alignment of offerings with the framework of quality under s. 445.004(4).

2. Alignment of offerings at the K-12 and postsecondary levels with credentials or degree programs identified on the Master Credentials List under s. 445.004(4).

3. Program utilization and unwarranted duplication across institutions serving the same students in a geographical or service area.

4. Institutional performance measured by student outcomes such as academic achievement, college readiness, postsecondary enrollment, credential and certification attainment, job placement, and wages.

(b) The annual review shall utilize data captured through the Workforce Development Information System under s. 1008.40 and provide an automated data collection process that includes the collection and evaluation of the federal Comprehensive Local Needs Assessments, to assist in the review of programs.

(c) ~~(b)~~ Using the findings from the annual review required in paragraphs (a) and (b) ~~paragraph (a)~~, the commissioner shall phase out career and technical education offerings that are not aligned with the framework of quality, do not meet labor market demand under s. 445.004(4), do not meet institutional performance, or are unwarranted program duplications. The commissioner shall ~~needs of employers or do not provide program completers with a middle-wage or high-wage occupation and~~ encourage school districts and Florida College System institutions to offer programs that are not offered currently.

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(d) The department shall adopt rules to administer this section.

Section 23. Subsections (2) through (5) of section 1003.492, Florida Statutes, are amended to read:

1003.492 Industry-certified career education programs.—

(2) Industry certification as used in this section is a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is identified on the Master Credentials List under s. 445.004(4) ~~nationally recognized and must be at least one of the following:~~

~~(a) Within an industry that addresses a critical local or statewide economic need;~~

~~(b) Linked to an occupation that is included in the workforce system's targeted occupation list; or~~

~~(c) Linked to an occupation that is identified as emerging.~~

~~(3) The State Board of Education shall use the expertise of CareerSource Florida, Inc., and the Department of Agriculture and Consumer Services to develop and adopt rules pursuant to ss. 120.536(1) and 120.54 for implementing an industry certification process~~.

~~(a) For nonfarm occupations, industry certification must be based upon the highest available national standards for~~ ~~specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends. A local workforce development board or a school principal may apply to CareerSource Florida, Inc., to request additions to the approved list of industry certifications based on high-skill, high-wage,~~

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~~and high-demand job requirements in the local economy.~~

~~(b) For farm occupations submitted pursuant to s. 570.07, industry certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.~~

~~(4) The list of industry certifications approved by CareerSource Florida, Inc., the Department of Agriculture and Consumer Services, and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.~~

(3)~~(5)~~ The Department of Education shall collect student achievement and performance data in industry-certified career education programs and career-themed courses which includes ~~and shall work with CareerSource Florida, Inc., and the Department of Agriculture and Consumer Services in the analysis of collected data. The data collection and analyses shall examine the performance of participating students over time. Performance factors must include~~, but need not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, return on investment, and employer satisfaction. ~~The results of this study shall be submitted to the President of the Senate and the Speaker of the House of Representatives annually by December 31.~~

Section 24. Paragraph (a) of subsection (2) and subsection (3) of section 1003.4935, Florida Statutes, are amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(2) Each middle grades career and professional academy or

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career-themed course must be aligned with at least one high school career and professional academy or career-themed course offered in the district and maintain partnerships with local business and industry and economic development boards. Middle grades career and professional academies and career-themed courses must:

(a) Lead to careers in occupations aligned to ~~designated as high-skill, high-wage, and high-demand in~~ the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education;

(3) Beginning with the 2012-2013 school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(3) ~~s. 1003.492(5)~~ for students enrolled in an academy or a career-themed course.

Section 25. Subsection (3) is added to section 1004.013, Florida Statutes, to read:

1004.013 SAIL to 60 Initiative.—

(3) There is created within the SAIL to 60 Initiative the Strategic Efforts to Achieve Self-Sufficiency (SEAS) which consists of:

(a) The workforce opportunity portal under s. 14.36, which provides the public with more effective access to available federal, state, and local services and a systemwide, global view of workforce-related program data across various programs through actionable qualitative and quantitative information.

(b) The Open Door Grant Program under s. 1009.895, which

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provides grants to school district's postsecondary technical centers and Florida College System institutions to cover up to two-thirds of the cost of short-term high-demand programs for eligible students upon successful completion and award of a credential of value.

(c) The Money-Back Guarantee Program under s. 1011.803, which requires each school district and Florida College System institution to refund the cost of tuition to students who are not able to find a job within 6 months of successful completion of select workforce-related programs.

Section 26. Subsection (6) is added to section 1004.015, Florida Statutes, to read:

1004.015 Florida Talent Development Council.—

(6) The council shall coordinate, facilitate, and communicate statewide efforts to meet supply and demand needs for the state's healthcare workforce. Annually, beginning December 1, 2021, the council shall report on the implementation of this subsection and any other relevant information on the Florida Talent Development Council's webpage located on the Department of Economic Opportunity's website. To support the efforts of the council, the Board of Governors and the State Board of Education shall:

(a) Conduct a statistically valid biennial data-driven gap analysis of the supply and demand of the healthcare workforce. Demand must align with the Labor Market Estimating Conference created in s. 216.136.

(b) Provide 10-year trend information on nursing education programs subject to the requirements of s. 464.019. The Department of Health, the Board of Governors, the State Board of

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Education, the Commission for Independent Education, the Independent Colleges and Universities of Florida, and postsecondary institutions participating in a state grant program under s. 1009.89 or s. 1009.891 shall provide data on:

1. The number and type of programs and student slots available.

2. The number of student applications submitted, the number of qualified student applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on and the number of times each graduate took the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in this state.

7. The educational advancement of nurses through career pathways by comparing their initial degree to the highest degree they obtained for the preceding 10 years.

(c) Develop a survey for use by the Department of Health, the Commission for Independent Education, the Independent Colleges and Universities of Florida, and postsecondary institutions participating in a state grant program under s. 1009.89 or s. 1009.891, to collect data required under paragraph (b). The survey must include, but is not limited to, a student's age, gender, race, ethnicity, veteran status, wage, employer information, loan debt, and retirement expectations.

Section 27. Subsections (12) and (25) of section 1004.02,

Florida Statutes, are amended to read:

1004.02 Definitions.—As used in this chapter:

(12) "Continuing workforce education" means instruction that does not result in a registered apprenticeship certificate of completion, technical certificate, diploma, associate in applied science degree, or associate in science degree. Continuing workforce education is for:

(a) Individuals who are required to have training for licensure renewal or certification renewal by a regulatory agency or credentialing body;

(b) New or expanding businesses as described in chapter 288;

(c) Business, industry, and government agencies whose products or services are changing so that retraining of employees is necessary or whose employees need training in specific skills to increase efficiency and productivity; or

(d) Individuals who are enhancing occupational skills necessary to maintain current employment, to cross train, or to upgrade employment.

(25) "Workforce education" means adult general education or career education and may consist of a continuing workforce education course or a program of study leading to an occupational completion point, a career certificate, an applied technology diploma, ~~or~~ a career degree, or a registered apprenticeship certificate of completion.

Section 28. Section 1006.75, Florida Statutes, is created to read:

1006.75 Student career services.—

(1) Each career center, charter technical center, Florida

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College System institution, and state university shall ensure that their student career service centers and job placement resources prepare students for employment upon completion of their academic work.

(2) Student career service centers shall, to the extent possible, use state career planning resources to assist students with all of the following:

(a) Exploring and identifying career opportunities.

(b) Identifying in-demand jobs and associated earning outcomes.

(c) Understanding the skills and credentials needed for specific jobs.

(d) Identifying opportunities to gain on-the-job experiences.

(e) Creating a digital resume.

Section 29. Subsections (4) through (9) of section 1007.25, Florida Statutes, are redesignated as subsections (5) through (10), respectively, present subsections (10), (11), and (12) are redesignated as subsections (12), (13), and (14), respectively, new subsections (4) and (11) are added to that section, and present subsections (3) and (5) are amended, to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(3) The chair of the State Board of Education and the chair of the Board of Governors, or their designees, shall jointly appoint faculty committees to identify statewide general education core course options. General education core course options shall consist of a maximum of five courses within each of the subject areas of communication, mathematics, social

sciences, humanities, and natural sciences. The core courses may be revised, or the five-course maximum within each subject area may be exceeded, if approved by the State Board of Education and the Board of Governors, as recommended by the subject area faculty committee and approved by the Articulation Coordinating Committee as necessary for a subject area. Each general education core course option must contain high-level academic and critical thinking skills and common competencies that students must demonstrate to successfully complete the course. Beginning with students initially entering a Florida College System institution or state university in 2015-2016 and thereafter, each student must complete at least one identified core course in each subject area as part of the general education course requirements. Beginning in the 2022-2023 academic year and thereafter, students entering a technical degree education program as defined in s. 1004.02(13) must complete at least one identified core course in each subject area as part of the general education course requirements before a degree is awarded. All public postsecondary educational institutions shall accept these courses as meeting general education core course requirements. The remaining general education course requirements shall be identified by each institution and reported to the department by their statewide course number. The general education core course options shall be adopted in rule by the State Board of Education and in regulation by the Board of Governors.

(4) The chair of the State Board of Education and the chair of the Board of Governors, or their designees, shall jointly appoint faculty committees to identify the competencies within

the general education core courses which demonstrate career readiness and will result in the award of a verifiable and interoperable, nationally recognized digital credential. All public postsecondary educational institutions shall grant and accept the identified digital credential. Beginning with students initially entering a Florida College System institution or state university in 2022-2023 and thereafter, each student must be able to distinguish in the institution's or university's catalog which general education core courses are linked to earning a digital credential.

(6) ~~(5)~~ The department shall identify those courses offered by universities and accepted for credit toward a degree. The department shall identify courses designated as either general education or required as a prerequisite for a degree and the digital credentials that may be earned through the general education core courses. The courses shall be identified by their statewide course numbers.

(11) Courses that provide instruction in student life skills, including career planning and exploration, or similar instruction, and fulfill the requirements for a degree in subsection (9) or subsection (10) or a degree from a technical degree education program as defined in s. 1004.02(13), may use state career planning resources and provide students with the opportunity to create a digital resume.

Section 30. Subsection (2) of section 1008.39, Florida Statutes, is amended to read:

1008.39 Florida Education and Training Placement Information Program.—

(2) Any project conducted by the Department of Education or

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the workforce development system that requires placement information shall use information provided through the Florida Education and Training Placement Information Program, and shall not initiate automated matching of records in duplication of methods already in place in the Florida Education and Training Placement Information Program. The department shall implement an automated system which matches the social security numbers of former participants in workforce-related programs as defined in s. 14.36 and state educational and training programs with information in the files of state and federal agencies that maintain educational, employment, and United States armed service records and shall implement procedures to identify the occupations of those former participants whose social security numbers are found in employment records, as required by Specific Appropriation 337A, chapter 84-220, Laws of Florida; Specific Appropriation 337B, chapter 85-119, Laws of Florida; Specific Appropriation 350A, chapter 86-167, Laws of Florida; and Specific Appropriation 351, chapter 87-98, Laws of Florida. The system shall incorporate data collection elements prescribed by the Credentials Review Committee under s. 445.004.

Section 31. Section 1008.40, Florida Statutes, is amended to read:

1008.40 Workforce Development Information System.—The Department of Education shall:

(1) Design specifications for the collection and reporting of data and performance specifications for the Workforce Development Information System. This design must:

(a) Use common terms and enable parallel reporting and state-level access of workforce data necessary to use the data

reports as a basis for calculating funding allocations, conducting audits, and determining compliance of workforce-related programs, as defined in s. 14.36, and education and training programs with applicable federal and state requirements as authorized by federal and state law. This includes establishing a process for the collection, review, and reporting of Comprehensive Local Needs Assessments as required by federal law.

(b) Provide ~~In addition, the design must be capable of providing~~ reports necessary to comply with other program performance documentation required by state or federal law, without requiring additional data collection or reporting from local educational agencies.

(c) Link data from multiple sources for consideration in developing broad public policy initiatives for workforce-related programs as defined in s. 14.36.

(2) Develop the computer programs, software, and edit processes necessary for local and state users to produce a single, unified Workforce Development Information System.

(3) Work with the Department of Economic Opportunity, the Department of Children and Families, and other entities to define statewide education, workforce development, and employment metrics and ensure the integrity and quality of data being collected.

(4) Develop a workforce development metrics dashboard that measures the state’s investments in workforce development. To the extent feasible, the dashboard shall use statistically rigorous methodologies to estimate, assess, and isolate the impact of programs on participant outcomes. The workforce

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development metrics dashboard shall be produced, to the extent feasible, using existing available data and resources that are currently collected and accessible to state agencies. The department shall convene workforce-related program partners to develop a standardized set of inputs and outputs for the workforce development metrics dashboard. The workforce development metrics dashboard must:

(a) Display the impact of workforce-related programs, as defined in s. 14.36, on credential attainment, training completion, degree attainment, and participant wages.

(b) Provide demographic breakdowns, including, to the extent possible, race, ethnicity, age, gender, veteran status, wage, student loan debt, barriers to employment, and credential or degree outcomes, and information on workforce outcomes in different industry sectors.

(c) Measure, at a minimum and to the extent feasible with existing resources, the return on investment of the following workforce-related programs:

1. Career and technical education offered by school districts and Florida College System institutions.

2. Workforce-related programs as defined in s. 14.36.

3. State apprenticeship programs.

(d) Provide performance data on training providers to enable individuals to make informed choices.

Section 32. Subsection (3) of section 1008.41, Florida Statutes, is amended to read:

1008.41 Workforce education; management information system.—

(3) Planning and evaluation of job-preparatory programs

shall be based on standard sources of data and use standard occupational definitions and coding structures, including, but not limited to:

(a) The Florida Occupational Information System.~~;~~

(b) The Florida Education and Training Placement Information Program.~~;~~

(c) The Department of Economic Opportunity.~~;~~

(d) The United States Department of Labor.~~; and~~

(e) The Labor Market Estimating Conference created in s. 216.136.

(f)~~(e)~~ Other sources of data developed using statistically valid procedures.

Section 33. Subsections (1) and (2) and paragraph (c) of subsection (4) of section 1008.44, Florida Statutes, are amended to read:

1008.44 CAPE Industry Certification Funding List ~~and CAPE Postsecondary Industry Certification Funding List~~.—

(1) The State Board of Education ~~Pursuant to ss. 1003.4203 and 1003.492, the Department of Education~~ shall adopt, at least annually, based upon recommendations by the Commissioner of Education the CAPE Industry Certification Funding List that assigns additional full-time equivalent membership to certifications identified in the Master Credentials List under s. 445.004(4) that meets a statewide, regional, or local demand, and courses that lead to such certifications, in accordance with s. 1011.62(1)(o). Additional full-time equivalent membership funding for regional and local demand certifications and courses that lead to such certifications may only be earned in those areas with regional or local demand as identified by the

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Credentials Review Committee. ~~identify, under rules adopted by the State Board of Education, and the Commissioner of Education may at any time recommend adding~~ The CAPE Industry Certification Funding List may include the following certificates, certifications, and courses:

(a) CAPE industry certifications identified as credentials of value that meet the framework of quality under pursuant to s. 445.004(4), ~~on the CAPE Industry Certification Funding List~~ that must be applied in the distribution of funding to school districts under ~~pursuant to~~ s. 1011.62(1)(o). The CAPE Industry Certification Funding List shall incorporate by reference the industry certifications on the career pathways list approved for the Florida Gold Seal CAPE ~~Vocational~~ Scholars award. ~~In addition, by August 1 of each year, the not-for-profit corporation established pursuant to s. 445.004 may annually select one industry certification, that does not articulate for college credit, for inclusion on the CAPE Industry Certification Funding List for a period of 3 years unless otherwise approved by the curriculum review committee pursuant to s. 1003.491. Such industry certifications, if earned by a student, shall be eligible for additional full-time equivalent membership, pursuant to s. 1011.62(1)(o)1.~~

(b) ~~No more than 30~~ CAPE Digital Tool certificates under ~~limited to the areas of word processing; spreadsheets; sound, motion, and color presentations; digital arts; cybersecurity; and coding pursuant to~~ s. 1003.4203(3) that do not articulate for college credit. ~~Such certificates shall be annually identified on the CAPE Industry Certification Funding List and updated solely by the Chancellor of Career and Adult Education.~~

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The certificates shall be made available to students in elementary school and middle school grades and, if earned by a student, shall be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.

(c) CAPE ESE Digital Tool certificates, workplace industry certifications, and OSHA industry certifications ~~identified by the Chancellor of Career and Adult Education~~ for students with disabilities under ~~pursuant to~~ s. 1003.4203(2). Such certificates and certifications shall ~~be identified on the CAPE Industry Certification Funding List and~~, if earned by a student, be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.

(d) CAPE Innovation Courses that combine academic and career performance outcomes with embedded industry certifications under ~~shall be annually approved by the Commissioner of Education and identified pursuant to~~ s. 1003.4203(5)(a). Such courses shall ~~and~~, if completed by a student, be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.

(e) CAPE Acceleration Industry Certifications that articulate for 15 or more college credit hours under ~~pursuant to~~ s. 1003.4203(5)(b). Such certifications shall ~~be annually approved by the Commissioner of Education and~~, if successfully completed, ~~shall~~ be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1. ~~The approved industry certifications must be identified on the CAPE Industry Certification Funding List.~~

(f) The Commissioner of Education shall conduct a review of the methodology used to determine additional full-time

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equivalent membership weights assigned in s. 1011.62(1)(o) and, if necessary, recommend revised weights. The weights must factor in the prioritization of critical shortages of labor market demand and middle-level to high-level wage earning outcomes as identified by the Credentials Review Committee under s. 445.004. The results of the review and the commissioner's recommendations must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2021.

(2) ~~The State Board of Education shall approve, at least annually, the CAPE Postsecondary Industry Certification Funding List pursuant to this section. The Commissioner of Education shall recommend, at least annually, the CAPE Postsecondary Industry Certification Funding List to the State Board of Education and may at any time recommend adding certifications. The Chancellor of the State University System, the Chancellor of the Florida College System, and the Chancellor of Career and Adult Education shall work with local workforce boards, other postsecondary institutions, businesses, and industry to identify, create, and recommend to the Commissioner of Education industry certifications to be placed on the funding list.~~ The CAPE Industry Certification Funding List adopted under subsection (1) must ~~list shall~~ be used to determine annual performance funding distributions to school districts or Florida College System institutions as specified in ss. 1011.80 and 1011.81, respectively. ~~The chancellors shall review results of the economic security report of employment and earning outcomes produced annually pursuant to s. 445.07 when determining recommended certifications for the list, as well as other~~

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~~reports and indicators available regarding certification needs.~~

(4)

(c) The Articulation Coordinating Committee shall review statewide articulation agreement proposals for industry certifications and make recommendations to the State Board of Education for approval. After an industry certification is approved by CareerSource Florida, Inc., under s. 445.004(4) ~~adopted by the State Board of Education for inclusion on the CAPE Industry Certification Funding List~~, the Chancellor of Career and Adult Education, within 90 days, must provide to the Articulation Coordinating Committee recommendations for articulation of postsecondary credit for related degrees for the approved certifications.

Section 34. Section 1009.895, Florida Statutes, is created to read:

1009.895 Open Door Grant Program.—

(1) As used in this section, the term:

(a) "Cost of the program" means the cost of tuition, fees, examination, books, and materials to a student enrolled in an eligible program.

(b) "Department" means the Department of Education.

(c) "Institution" means school district postsecondary technical career centers under s. 1001.44, Florida College System institutions under s. 1000.21(3), and charter technical career centers under s. 1002.34.

(d) "Program" means a noncredit industry certification preparation, clock-hour career certificate programs, or for-credit short-term career and technical education programs that result in the award of credentials identified under s.

445.004(4).

(e) "Student" means a person who is a resident of this state as determined under s. 1009.21 and is unemployed, underemployed, or furloughed.

(2) The Open Door Grant Program is established for the purpose of:

(a) Creating and sustaining a demand-driven supply of credentialed workers for high-demand occupations by addressing and closing the gap between the skills needed by workers in this state and the skills of the available workforce in this state.

(b) Expanding the affordability of workforce training and credentialing.

(c) Increasing the interest of current and future workers in short-term, high-demand career and technical education credentialing and certificate programs.

(3) The department shall provide grants to institutions on a first-come, first-serve basis for students who enroll in an eligible program. The department shall prioritize funding for integrated education and training programs in which institutions establish partnerships with local workforce development boards to provide basic skills instruction, contextually and concurrently, with workforce training that results in the award of credentials under s. 445.004(4). One-quarter of the appropriated funds must be prioritized to serve students attending rural institutions. No more than one-quarter of the appropriated funds may be disbursed annually to any eligible institution.

(4) To be eligible to receive an open door grant under this section, a student must complete the Free Application for

Federal Student Aid for each academic year in which the grant is sought.

(5) Subject to the availability of funds:

(a) A student who enrolls in an eligible program offered by an institution and who does not receive state or federal financial aid may apply for and be awarded a grant to cover two-thirds of the cost of the program, if at the time of enrollment the student pays one-third of the cost of the program and signs an agreement to either complete the program or pay an additional one-third of the cost of the program in the event of noncompletion. The department shall reimburse the institution in an amount equal to one-third of the cost of the program upon a student's completion of the program. An additional one-third shall be provided upon attainment of a workforce credential or certificate by the student. Grant funds may be used to cover the student's one-third of the cost of the program for students in integrated education and training programs and students who do not have a high school diploma and meet the requirements established by the department.

(b) A student receiving state or federal financial aid who enrolls in an eligible program offered by an institution may apply for and be awarded a grant to cover the unmet need of the cost of the program after the application of all eligible financial aid. Financial aid and grants received by the student shall be credited first to the student's costs before the award of an open door grant. After a student is enrolled in an eligible program, the department shall award the grant to the institution for the amount of unmet need for the eligible student.

(6) The department may not reimburse any institution more than $3,000 per completed workforce training program by an eligible student.

(7) The department shall administer the grant and shall carry out the goals and purposes of the grant set forth in subsection (2). In administering the grant, the department shall:

(a) Require eligible institutions to provide student-specific data.

(b) Undertake periodic assessments of the overall success of the grant program and recommend modifications, interventions, and other actions based on such assessments.

(c) Establish the procedure by which eligible institutions shall notify the department when eligible students enroll in eligible programs.

(d) Require each eligible institution to submit a report with data from the previous fiscal year on program completion and credential attainment by students participating in the grant program that, at a minimum, includes:

1. A list of the programs offered.

2. The number of students who enrolled in the programs.

3. The number of students who completed the programs.

4. The number of students who attained workforce credentials, categorized by credential name and relevant occupation, after completing training programs.

5. The average cost per workforce credential attained, categorized by credential name and relevant occupation.

(8) The department shall compile the data provided under paragraph (7)(d) and annually report such data, in the aggregate

and categorize such information by eligible institution, to the State Board of Education. The report shall also include information on the average wage, age, gender, race, ethnicity, veteran status, and other relevant information, of students who have completed workforce training programs categorized by credential name and relevant occupation.

(9) The State Board of Education shall adopt rules to implement this section.

Section 35. Subsections (10), (11), and (12), of section 1011.80, Florida Statutes, are redesignated as subsections (9), (10), and (13), respectively, a new subsection (12) is added to that section, and subsection (2), paragraph (a) of subsection (6), paragraph (b) of subsection (7), and subsection (9) of that section are amended, to read:

1011.80 Funds for operation of workforce education programs.—

(2) Upon approval by the State Board of Education, any workforce education program may be conducted by a Florida College System institution or a school district, except that college credit in an associate in applied science or an associate in science degree may be awarded only by a Florida College System institution. However, if an associate in applied science or an associate in science degree program contains within it an occupational completion point that confers a certificate or an applied technology diploma, that portion of the program may be conducted by a school district career center. Any instruction designed to articulate to a degree program is subject to guidelines and standards adopted by the State Board of Education under ~~pursuant to~~ s. 1007.25.

(a) The State Board of Education shall establish criteria, based on the framework of quality established by the Credentials Review Committee under s. 445.004(4), for review and approval of new workforce education programs by a Florida College System institution or a school district that are not included in the statewide curriculum framework.

(b) A Florida College System institution or school district offering a new workforce education program in the statewide curriculum framework may not receive performance funding and additional full-time equivalent membership funding until the workforce education program is reviewed, through an expedited review process, and approved by the State Board of Education based on criteria that must include, but is not limited to, the following:

1. A description of the new workforce education program that includes all of the following:

a. An analysis of workforce demand and unmet need for graduates of the program on a district, regional, or statewide basis, as appropriate, including evidence from entities independent of the technical center or institution.

b. The geographic region to be served.

2. Documentation of collaboration among technical centers and institutions serving the same students in a geographical or service area that enhances program offerings and prevents program duplication that exceeds workforce need. Unnecessary duplication of programs offered by public and private institutions must be avoided.

3. Beginning with the 2022-2023 academic year, alignment of program offerings with credentials or degree programs identified

on the Master Credentials List under s. 445.004(4).

4. Articulation agreements between technical centers and Florida College System institutions for the enrollment of graduates in related workforce education programs.

5. Documentation of alignment between the exit requirements of a technical center and the admissions requirements of a Florida College System institution into which students typically transfer.

6. Performance and compliance indicators that will be used in determining the program's success.

(6) State funding and student fees for workforce education instruction shall be established as follows:

(a) Expenditures for the continuing workforce education programs provided by the Florida College System institutions or school districts must be fully supported by fees, except for preapprenticeship and apprenticeship programs as defined in s. 446.021(5) and (6). Enrollments in continuing workforce education courses shall not be counted for purposes of funding full-time equivalent enrollment, except for preapprenticeship and apprenticeship programs as defined in s. 446.021(5) and (6).

(7)

(b) Performance funding for industry certifications for school district workforce education programs is contingent upon specific appropriation in the General Appropriations Act and shall be determined as follows:

~~1. Occupational areas for which industry certifications may be earned, as established in the General Appropriations Act, are eligible for performance funding. Priority shall be given to the occupational areas emphasized in state, national, or corporate~~

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~~grants provided to Florida educational institutions.~~

1.~~2. The Chancellor of Career and Adult Education shall identify the~~ Industry certifications identified ~~eligible for funding~~ on the CAPE ~~Postsecondary~~ Industry Certification Funding List approved by the State Board of Education under ~~pursuant to~~ s. 1008.44, are eligible for performance funding ~~based on the occupational areas specified in the General Appropriations Act~~.

2.~~3.~~ Each school district shall be provided $1,000 for each industry certification earned by a workforce education student. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated. Beginning with the 2022-2023 fiscal year, the Credentials Review Committee established in s. 445.004 shall develop a returned-value funding formula to allocate school district performance funds that rewards student job placements and wages for students earning industry certifications, with a focus on increasing the economic mobility of underserved populations. One-third of the performance funds shall be allocated based on student job placements. The remaining two-thirds shall be allocated using a tiered, weighted system based on aggregate student wages that exceed minimum wage, with the highest weight applied to the highest wage tier, with additional weight for underserved populations. Student wages above minimum wage are considered to be the value added by the institution’s training. At a minimum, the formula must take into account variables such as differences in population and wages across school districts.

~~(9) The State Board of Education and the state board as defined in s. 445.002 shall provide the Legislature with recommended formulas, criteria, timeframes, and mechanisms for~~

~~distributing performance funds. The commissioner shall consolidate the recommendations and develop a consensus proposal for funding. The Legislature shall adopt a formula and distribute the performance funds to the State Board of Education for Florida College System institutions and school districts through the General Appropriations Act. These recommendations shall be based on formulas that would discourage low-performing or low-demand programs and encourage through performance-funding awards:~~

~~(a) Programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136 and other programs as approved by the state board as defined in s. 445.002. At a minimum, performance incentives shall be calculated for adults who reach completion points or complete programs that lead to specified high-wage employment and to their placement in that employment.~~

~~(b) Programs that successfully prepare adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers for high-wage occupations. At a minimum, performance incentives shall be calculated at an enhanced value for the completion of adults identified in this paragraph and job placement of such adults upon completion. In addition, adjustments may be made in payments for job placements for areas of high unemployment.~~

~~(c) Programs that are specifically designed to be consistent with the workforce needs of private enterprise and regional economic development strategies, as defined in guidelines set by the state board as defined in s. 445.002. The state board as defined in s. 445.002 shall develop guidelines to~~

~~identify such needs and strategies based on localized research of private employers and economic development practitioners.~~

~~(d) Programs identified by the state board as defined in s. 445.002 as increasing the effectiveness and cost efficiency of education.~~

(12) The State Board of Education shall phase out program offerings that do not align with the framework of quality or do not meet labor market demand under s. 445.004(4) or that are unwarranted program duplications.

Section 36. Subsection (3) of section 1011.801, Florida Statutes, is amended to read:

1011.801 Workforce Development Capitalization Incentive Grant Program.—The Legislature recognizes that the need for school districts and Florida College System institutions to be able to respond to emerging local or statewide economic development needs is critical to the workforce development system. The Workforce Development Capitalization Incentive Grant Program is created to provide grants to school districts and Florida College System institutions on a competitive basis to fund some or all of the costs associated with the creation or expansion of workforce development programs that serve specific employment workforce needs.

(3) The State Board of Education shall give highest priority to programs that train people to enter high-skill, high-wage occupations identified by the Labor Market ~~Workforce~~ Estimating Conference and other programs approved by the state board as defined in s. 445.002, programs that train people to enter occupations under the welfare transition program, or programs that train for the workforce adults who are eligible

for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers. The State Board of Education shall consider the statewide geographic dispersion of grant funds in ranking the applications and shall give priority to applications from education agencies that are making maximum use of their workforce development funding by offering high-performing, high-demand programs.

Section 37. Subsection (4) of section 1011.802, Florida Statutes, is renumbered as subsection (6), subsection (3) of that section is amended, and new subsections (4) and (5) are added to that section, to read:

1011.802 Florida Pathways to Career Opportunities Grant Program.—

(3)(a) The department shall award grants for preapprenticeship or ~~give priority to~~ apprenticeship programs with demonstrated regional demand that:

1. Address a critical statewide or regional shortage as identified by the Labor Market Estimating Conference created in s. 216.136 and that are industry sectors not adequately represented throughout this state, such as health care;

2. Address a critical statewide or regional shortage as identified by the Labor Market Estimating Conference created in s. 216.136; or

3. Expand existing programs that exceed the median completion rate and employment rate 1 year after completion of similar programs in the region, or the state if there are no similar programs in the region.

(b) Grant funds may be used for instructional equipment, supplies, instructional personnel, student services, and other

expenses associated with the creation or expansion of an apprenticeship program. Grant funds may not be used for ~~recurring instructional costs or for~~ indirect costs. Grant recipients must submit quarterly reports in a format prescribed by the department.

(4) The department shall annually report on its website:

(a) The number of programs funded and represented throughout the state under this section.

(b) Retention, completion, and employment rates, categorized by program and provider.

(c) Starting and ending salaries, as categorized by program and provider, for participants who complete the program.

(5) The department may use up to $200,000 of the total amount allocated to administer the grant program.

(6)~~(4)~~ The State Board of Education shall ~~may~~ adopt rules to administer this section.

Section 38. Section 1011.803, Florida Statutes, is created to read:

1011.803 Money-Back Guarantee Program.—

(1) The Money-Back Guarantee Program is established to help individuals achieve self-sufficiency by requiring each school district and Florida College System institution to refund the cost of tuition to students who are not able to find a job in the field in which the student was trained within 6 months of successful completion of select workforce education programs that prepare students for in-demand, middle-level to high-level wage occupations.

(2) Beginning in the 2022-2023 academic year, each school district and Florida College System institution shall establish

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a money-back guarantee program to:

(a) Offer a money-back guarantee on at least three programs that prepare individuals to enter in-demand, middle-level to high-level wage occupations identified by the Labor Market Estimating Conference created in s. 216.136. School district or Florida College System institutions must offer a money-back guarantee on at least 50 percent of workforce education programs if they offer six or fewer programs.

(b) Offer a money-back guarantee for all workforce education programs that are established to meet a critical local economic industry need, but are not linked to the statewide needs list as identified by the Labor Market Estimating Conference created in s. 216.136.

(c) Establish student eligibility criteria for the money-back guarantee program that includes:

1. Student attendance.

2. Student program performance.

3. Career Service or Career Day attendance.

4. Participation in internship or work-study programs.

5. Job search documentation.

6. Development of a student career plan with the institution’s career services department.

(3) No later than July 1, 2022, each school district and Florida College System institution shall notify the State Board of Education of the money-back guarantee programs it offers. Information about these programs shall be made available on each school district’s and Florida College System institution’s website, on the department’s website, and on Employ Florida’s website.

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(4) By November 1 of each year, the Department of Education shall report performance results by school district, Florida College System institution, and program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 39. Subsection (2) of section 1011.81, Florida Statutes, is amended to read:

1011.81 Florida College System Program Fund.—

(2) Performance funding for industry certifications for Florida College System institutions is contingent upon specific appropriation in the General Appropriations Act and shall be determined as follows:

(a) ~~Occupational areas for which industry certifications may be earned, as established in the General Appropriations Act, are eligible for performance funding. Priority shall be given to the occupational areas emphasized in state, national, or corporate grants provided to Florida educational institutions.~~

~~(b)~~ Postsecondary ~~The Chancellor of the Florida College System shall identify the~~ industry certifications identified ~~eligible for funding~~ on the CAPE ~~Postsecondary~~ Industry Certification Funding List approved by the State Board of Education under ~~pursuant to~~ s. 1008.44, are eligible for performance funding ~~based on the occupational areas specified in the General Appropriations Act~~.

(b) ~~(c)~~ Each Florida College System institution shall be provided $1,000 for each industry certification earned by a student under paragraph (a). If funds are insufficient to fully fund the calculated total award, such funds shall be prorated. Beginning with the 2022-2023 fiscal year, the Credentials Review

Committee established in s. 445.004 shall develop a returned-value funding formula to allocate institution performance funds that rewards student job placements and wages for students earning industry certifications, with a focus on increasing the economic mobility of underserved populations. One-third of the performance funds shall be allocated based on student job placements. The remaining two-thirds shall be allocated using a tiered weighted system based on aggregate student wages that exceed minimum wage, with the highest weight applied to the highest wage tier, with additional weight for underserved populations. Student wages above minimum wage are considered to be the value added by the institution's training. At a minimum, the formula must take into account variables such as differences in population and wages across the state.

Section 40. Paragraph (b) of subsection (2) of section 443.151, Florida Statutes, is amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(b) *Process.*—When the Reemployment Assistance Claims and Benefits Information System described in s. 443.1113 is fully operational, the process for filing claims must incorporate the process for registering for work with the consumer-first workforce system ~~information systems~~ established under ~~pursuant to~~ s. 445.011. Unless exempted under s. 443.091(1)(b)5., a claim for benefits may not be processed until the work registration requirement is satisfied. The department may adopt rules as necessary to administer the work registration requirement set forth in this paragraph.

Section 41. Section 445.010, Florida Statutes, is amended to read:

445.010 Consumer-first workforce system ~~information~~ technology; principles and information sharing.—

(1) The following principles shall guide the development and management of workforce system ~~information~~ resources:

(a) Workforce system entities should be committed to information sharing.

(b) Cooperative planning by workforce system entities is a prerequisite for the effective development of systems to enable the sharing of data.

(c) Workforce system entities should maximize public access to data, while complying with legitimate security, privacy, and confidentiality requirements.

(d) When the capture of data for the mutual benefit of workforce system entities can be accomplished, the costs for capturing, managing, and disseminating those data should be shared.

(e) The redundant capture of data should, insofar as possible, be eliminated.

(f) Only data that are auditable, or that otherwise can be determined to be accurate, valid, and reliable, should be maintained in the consumer-first workforce system ~~information systems~~.

(g) The design of the consumer-first workforce system ~~information systems~~ should support technological flexibility for users without compromising system integration or data integrity, be based upon open standards, and use platform-independent technologies to the fullest extent possible.

(2) Information that is essential to the integrated delivery of services through the one-stop delivery system must be shared between partner agencies within the consumer-first workforce system to the full extent permitted under state and federal law. In order to enable the full integration of services for a specific workforce system customer, that customer must be offered the opportunity to provide written consent prior to sharing any information concerning that customer between the workforce system partners which is subject to confidentiality under state or federal law.

Section 42. Subsection (3) of section 445.045, Florida Statutes, is amended to read:

445.045 Development of an Internet-based system for information technology industry promotion and workforce recruitment.—

(3) CareerSource Florida, Inc., shall ensure that the website developed and maintained under this section is consistent, compatible, and coordinated with the consumer-first workforce system ~~information systems~~ required under s. 445.011, including, but not limited to, the automated job-matching information system for employers, job seekers, and other users.

Section 43. Paragraph (c) of subsection (1) of section 943.22, Florida Statutes, is amended to read:

943.22 Salary incentive program for full-time officers.—

(1) For the purpose of this section, the term:

(c) "Community college degree or equivalent" means graduation from an accredited community college or having been granted a degree pursuant to s. 1007.25(13) ~~s. 1007.25(11)~~ or successful completion of 60 semester hours or 90 quarter hours

and eligibility to receive an associate degree from an accredited college, university, or community college.

Section 44. Subsection (7) and paragraph (d) of subsection (8) of section 1001.64, Florida Statutes, are amended to read:

1001.64 Florida College System institution boards of trustees; powers and duties.—

(7) Each board of trustees has responsibility for: ensuring that students have access to general education courses as identified in rule; requiring no more than 60 semester hours of degree program coursework, including 36 semester hours of general education coursework, for an associate in arts degree; notifying students that earned hours in excess of 60 semester hours may not be accepted by state universities; notifying students of unique program prerequisites; and ensuring that degree program coursework beyond general education coursework is consistent with degree program prerequisite requirements adopted pursuant to s. 1007.25(7) ~~s. 1007.25(6)~~.

(8) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.

(d) Boards of trustees shall identify their general education curricula pursuant to s. 1007.25(8) ~~s. 1007.25(7)~~.

Section 45. This act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

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A bill to be entitled

An act relating to workforce-related programs and services; creating s. 14.36, F.S.; creating the Office of Reimagining Education and Career Help Act for certain purposes; creating the Office of Reimagining Education and Career Help within the Executive Office of the Governor for a specified purpose; providing definitions; providing the duties of the office; requiring the office to create a specified strategy; providing requirements for such strategy; requiring the office to establish a workforce opportunity portal; providing requirements related to the portal; requiring a report to the Legislature; amending s. 216.136, F.S.; renaming the Workforce Estimating Conference as the Labor Market Estimating Conference; removing requirements of the Workforce Estimating Conference; providing requirements for the Labor Market Estimating Conference; amending s. 288.047, F.S.; requiring participants of the Quick-Response Training Program to earn at or above minimum wage; amending s. 445.002, F.S.; revising the definition of the term "for cause"; amending s. 445.003, F.S.; revising requirements for Workforce Innovation and Opportunity Act Title I funds; requiring, rather than authorizing, the executive director of the state workforce development board to work with the Department of Economic Opportunity for certain purposes; defining the term "businesses"; providing duties of the Department of Economic Opportunity for

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the implementation of the federal Workforce Innovation and Opportunity Act; amending s. 445.004, F.S.; revising the composition of the state board; requiring the state board to appoint a Credentials Review Committee for a specified purpose; providing the composition of the committee; requiring certain information to be accessible to the public; providing duties and requirements of the committee; specifying entities that can authorize certain expenditures; providing and revising requirements for the state board in order to achieve certain purposes; requiring the state board, in consultation with the Department of Economic Opportunity, to submit a report to the Governor and Legislature; providing and revising reporting requirements; requiring the state board to assign and make public a letter grade for each local workforce development board based on certain criteria; removing certain auditing authority of the Auditor General; requiring local performance accountability measures to be based on identified local area needs; amending s. 445.006, F.S.; providing requirements for the state plan for workforce development; requiring the Department of Economic Opportunity to prepare a federal waiver for specified purposes; amending s. 445.007, F.S.; requiring certain information be accessible on the website of a local workforce development board or the Department of Economic Opportunity; providing term limits for members of local boards; providing an exception; requiring

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actions of the local board to be consistent with federal and state law; providing requirements for certain contracts between a local board and certain entities; providing an exception; requiring the Department of Economic Opportunity to review certain documentation when considering whether to approve a contract; removing authority for a local board to review a decision by the Department of Economic Opportunity to deny a contract; requiring a local board to disclose certain compensation information to the Department of Economic Opportunity; requiring a local board to annually publish specified information on its website or the Department of Economic Opportunity's website; amending s. 445.009, F.S.; requiring a certain final payment amount to Individual Training Accounts; conforming provisions to changes made by the act; amending s. 445.011, F.S.; establishing an automated consumer-first workforce system; requiring the Department of Education and the Department of Children and Families, in consultation with the Department of Economic Opportunity, to implement such system; requiring that such system improve coordination among specified partners; revising requirements for such system; requiring that certain contracts be performance based; requiring the Department of Economic Opportunity to develop training for specified partners; amending s. 445.033, F.S.; requiring the Department of Economic Opportunity and the Department of Children and Families, rather than

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the state board, to measure the performance of certain workforce-related programs and services; requiring the state board to consult with local boards; requiring local boards to provide quarterly reports to the state board with certain information; requiring, rather than authorizing, the state board and the Department of Economic Opportunity to share certain information; amending s. 445.038, F.S.; conforming provisions to changes made by the act; amending s. 446.021, F.S.; revising the definition of the term "uniform minimum standards"; amending s. 446.032, F.S.; requiring certain standards and policies established by the Department of Education to include a specified requirement for training providers; requiring, rather than authorizing, the Department of Education to adopt rules; revising provisions relating to a certain summary of expenditures for apprenticeship and preapprenticeship programs; providing requirements for a certain annual report; requiring the Department of Education to provide data from certain resources to specified persons and entities; amending s. 446.041, F.S.; revising a catchline relating to the Department of Education's duties regarding apprenticeship and preapprenticeship programs; creating s. 446.090, F.S.; defining the term "work-based learning opportunity"; specifying the required criteria for such opportunity; providing that such opportunity should prioritize paid experiences; requiring the State Board of Education to adopt rules; amending s. 570.07, F.S.; requiring the

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Department of Agriculture and Consumer Services to submit certain information to the Credentials Review Committee for placement on the Master Credentials List, rather than the CAPE Industry Certification Funding List or CAPE Postsecondary Industry Certification Funding List; amending s. 1001.706, F.S.; revising and providing requirements for the Board of Governors' strategic plan; removing criteria for the designation of high-demand programs of emphasis; amending s. 1003.4156, F.S.; requiring a career and education planning course to include certain resources; amending s. 1003.42, F.S.; requiring a specified character development curriculum to include certain instruction and resources; amending s. 1003.4203, F.S.; specifying where the Department of Education has to identify CAPE Digital Tool certificates; removing the deadline for such identification; removing specified skills that have to be mastered; authorizing courses identified in the CAPE Industry Certification Funding List to articulate for college credit; removing the course limit; amending s. 1003.491, F.S.; requiring certain strategic plans to use labor projections identified by the Labor Market Estimating Conference; providing and revising the information that the Commissioner of Education must review for the annual review of K-12 and postsecondary career and technical education offerings; requiring the Department of Education to adopt rules; amending s. 1003.492, F.S.; providing

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that industry certification is achieved when a student receives a credential that is identified on the Master Credentials List; conforming provisions to changes made by the act; amending s. 1003.4935, F.S.; conforming provisions to changes made by the act; amending s. 1004.013, F.S.; creating the Strategic Efforts to Achieve Self-Sufficiency consisting of the workforce opportunity portal, the Open Door Grant Program, and the Money-Back Guarantee Program; amending s. 1004.015, F.S.; providing responsibilities of the Florida Talent Development Council relating to the health care workforce in this state; providing responsibilities of the Board of Governors and the State Board of Education; requiring a specified gap analysis; requiring specified entities to provide certain data; requiring a survey to collect certain data; amending s. 1004.02, F.S.; revising the definitions of the terms “continuing workforce education” and “workforce education”; creating s. 1006.75, F.S.; requiring specified educational centers and institutions to ensure that certain services and resources prepare students for employment; requiring student career service centers to use specified resources to assist students with certain activities; amending s. 1007.25, F.S.; requiring specified students to complete certain courses before a certain degree is awarded; requiring the chairs of the State Board of Education and the Board of Governors, or their designees, to jointly appoint faculty committees

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to identify competencies that will result in a digital credential; requiring specified institutions to grant and accept such credential; requiring the Department of Education to identify certain courses in which such credential may be earned; authorizing certain courses to use specified resources and provide students with the opportunity to create a digital resume; amending s. 1008.39, F.S.; conforming provisions to changes made by the act; amending s. 1008.40, F.S.; providing requirements for design specifications for the Workforce Development Information System; requiring the Department of Education to work with certain entities to develop certain metrics; providing requirements for a workforce development metrics dashboard; amending s. 1008.41, F.S; conforming provisions to changes made by the act; amending s. 1008.44, F.S.; removing the CAPE Postsecondary Industry Certification Funding List; requiring the State Board of Education to annually adopt, based on recommendations by the Commissioner of Education, the CAPE Industry Certification Funding List; providing that certain full-time equivalent membership funding may only be earned in certain areas; providing certificates, certifications, and courses that may be included on the list; requiring the Commissioner of Education to conduct a certain review and make recommendations; requiring that the recommendations be provided to the Governor and Legislature by specified date; requiring the CAPE Industry Certification

Funding List to be used to determine certain funding distributions; conforming provisions to changes made by the act; creating s. 1009.895, F.S.; defining terms; creating the Open Door Grant Program; providing the purpose of the program; requiring the Department of Education to provide certain grants; providing for the prioritization of grant funding; requiring a student to complete a specified application to be eligible for the grant; providing for the distribution of the grant to a student based on whether the student receives other types of financial aid; providing for reimbursement to an institution; providing requirements for the Department of Education in administering the grant program; requiring the Department of Education to report certain information to the State Board of Education annually; requiring the Department of Education to adopt rules; amending s. 1011.80, F.S.; requiring approval by the State Board of Education to conduct workforce education programs; requiring the State Board of Education to establish criteria for the review and approval of new workforce education programs; prohibiting certain funding to a school district or Florida College System institution until new workforce education programs are reviewed and approved; providing requirements for the criteria; exempting preapprenticeship and apprenticeship programs from continuing workforce education requirements relating to state funding and fees; requiring the Credentials Review Committee to

develop a returned-value funding formula beginning in a certain fiscal year; conforming provisions to changes made by the act; requiring the State Board of Education to phase out certain program offerings; amending s. 1011.801, F.S.; conforming a provision to changes made by the act; amending s. 1011.802, F.S.; requiring the Department of Education to award grants for preapprenticeship programs, in addition to apprenticeship programs, that meet certain criteria; authorizing grant funds to be used for instructional personnel; requiring the Department of Education to report certain information annually on its website; authorizing the Department of Education to use certain funds to administer the grant program; requiring, rather than authorizing, the State Board of Education to adopt rules; creating s. 1011.803, F.S.; creating the Money-Back Guarantee Program to help individuals achieve self-sufficiency; beginning in a specified academic year, requiring each school district and Florida College System institution to offer a money-back guarantee on certain programs and to establish student eligibility criteria; requiring each school district and Florida College System institution to notify the State Board of Education of its program by a specified date; requiring information about the program to be posted on certain websites; requiring the Department of Education to annually report specified information to the Governor and Legislature by a specified date; amending s. 1011.81, F.S.;

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requiring the Credentials Review Committee to develop a returned-value funding formula beginning with a specified fiscal year; conforming provisions to changes made by the act; amending ss. 443.151, 445.010, and 445.045, F.S.; conforming provisions to changes made by the act; amending ss. 943.22 and 1001.64, F.S.; conforming cross-references; providing an effective date.

960408

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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The Committee on Appropriations (Albritton) recommended the following:

Senate Amendment to Amendment (151258) (with title amendment)

Delete lines 1391 - 1393
and insert:
Section 16. Section 446.0915, Florida Statutes, is created to read:
446.0915 Work-based learning opportunities.—

========== T I T L E A M E N D M E N T ==========

960408

And the title is amended as follows:

Delete line 2789

and insert:

preapprenticeship programs; creating s. 446.0915, F.S.;

By Senator Albritton

26-01507A-21 202198__

A bill to be entitled

An act relating to workforce related programs and services; amending s. 216.136, F.S.; renaming the Workforce Estimating Conference as the Labor Market Estimating Conference; removing requirements for the Workforce Estimating Conference; providing requirements for the Labor Market Estimating Conference; amending s. 445.002, F.S.; redefining the term "for cause"; amending s. 445.004, F.S.; expanding the membership of the state workforce development board; specifying entities that can authorize certain expenditures; providing and revising requirements for the state board in order to achieve certain purposes; requiring the state board, in consultation with the department, to submit a report to the Governor and Legislature; providing and revising reporting requirements; requiring the state board to assign letter grades to local workforce development boards; requiring local performance accountability measures to be based on identified local area needs; amending s. 445.007, F.S.; removing authority for a local board to review a decision by the department to deny a contract; requiring a local board to disclose certain compensation information to the department; providing term limits for local board members; providing an exception; requiring actions of the local board to be consistent with federal and state law; providing requirements for certain contracts between a local board and certain entities; providing an exception;

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requiring the department to review certain documentation when considering whether to approve a contract; removing authority for a local board to review a decision by the department to deny a contract; requiring a local board to disclose certain compensation information to the department; requiring local boards to publish specified information; requiring the department to review certain information provided by a local board in reviewing contracts; amending s. 445.009, F.S.; requiring a certain final payment amount to Individual Training Accounts; conforming provisions to changes made by the act; amending s. 445.038, F.S.; conforming provisions to changes made by the act; amending s. 446.021, F.S.; revising the definition of the term "uniform minimum preapprenticeship standards"; expanding the definition to include apprenticeship programs; amending s. 446.032, F.S.; requiring certain standards and policies established by the Department of Education to include a specified requirement for training providers; requiring, rather than authorizing, the department to adopt rules; providing requirements for a certain annual report; requiring the department to provide data from certain resources to specified persons and entities; amending s. 446.045, F.S.; specifying that the Governor shall fill vacancies on the State Apprenticeship Advisory Council for the remainder of a term; amending s. 1003.4156, F.S.; requiring a career and education planning course to

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include certain resources; amending s. 1003.4203, F.S.; specifying the sections under which the Department of Education must identify certain CAPE Digital Tool certificates; removing the deadline for such identification; removing specified skills that must be mastered; authorizing courses identified in the CAPE Industry Certification Funding List to articulate for college credit; removing the course limit; amending s. 1003.491, F.S.; requiring certain strategic plans to use labor projections identified by the Labor Market Estimating Conference; amending s. 1003.4935, F.S.; requiring that middle grades career and professional academies and career-themed courses lead to careers in occupations aligned with the CAPE Industry Certification Funding List; amending s. 1008.41, F.S.; adding the Labor Market Estimating Conference as a source of workforce data; amending s. 1008.44, F.S.; requiring the Commissioner of Education to conduct a review of the methodology used to determine certain full-time equivalent membership weights and, if necessary, recommend revised weights; requiring that the recommendations be provided to the Governor and the Legislature by a specified date; amending s. 1011.801, F.S.; conforming a provision to changes made by the act; amending s. 1011.802, F.S.; requiring the department to prioritize programs identified by the Labor Market Estimating Conference; providing requirements for awards under the Florida Pathways to Career Opportunities Grant Program;

amending s. 445.011, F.S.; conforming a cross-reference; amending s. 1011.80, F.S.; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 216.136, Florida Statutes, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(7) LABOR MARKET ~~WORKFORCE~~ ESTIMATING CONFERENCE.—

(a) The Labor Market ~~Workforce~~ Estimating Conference shall develop such official information with respect to real-time supply and demand in Florida's statewide, regional, and local labor markets ~~on the workforce development system planning process as it relates to the personnel needs of current, new, and emerging industries~~ as the conference determines is needed by the state planning and budgeting system. Such information must include labor supply by education level, analyses of labor demand by occupational groups and occupations compared to labor supply, a ranking of critical areas of concern, and identification of in-demand, high-skill, high-wage occupations. The Office of Economic and Demographic Research is designated as the official lead for the United States Census Bureau's State Data Center Program or its successor. All state agencies must provide the Office of Economic and Demographic Research with the necessary data to accomplish the goals of the conference. In accordance with s. 216.135, state agencies shall ensure that any

work product regarding labor demand and supply is consistent with the official information developed by the Labor Market Estimating Conference~~,using quantitative and qualitative research methods, must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels. In the development of workforce estimates, the conference shall use, to the fullest extent possible, local occupational and workforce forecasts and estimates~~.

(b) ~~The Workforce Estimating Conference shall review data concerning local and regional demands for short-term and long-term employment in High-Skills/High-Wage Program jobs, as well as other jobs, which data is generated through surveys conducted as part of the state's Internet-based job matching and labor market information system authorized under s. 445.011. The conference shall consider this data in developing its forecasts for statewide employment demand, including reviewing local and regional data for common trends and conditions among localities or regions which may warrant inclusion of a particular occupation on the statewide occupational forecasting list developed by the conference. Based upon its review of such survey data, the conference shall also make recommendations semiannually to CareerSource Florida, Inc., on additions or deletions to lists of locally targeted occupations approved by~~

~~CareerSource Florida, Inc.~~

~~(c)~~ The Labor Market ~~Workforce~~ Estimating Conference~~, for the purposes described in paragraph (a),~~ shall meet at least twice a year for the purposes described in paragraph (a) ~~no less than 2 times in a calendar year~~. ~~The first meeting shall be held in February, and the second meeting shall be held in August. Other meetings may be scheduled as needed.~~

Section 2. Subsection (2) of section 445.002, Florida Statutes, is amended to read:

445.002 Definitions.—As used in this chapter, the term:

(2) "For cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, gross mismanagement, or lack of performance.

Section 3. Present subsections (8) through (13) of section 445.004, Florida Statutes, are redesignated as subsections (9) through (14), respectively, a new subsection (8) is added to that section, and paragraph (d) of subsection (3), subsections (6) and (7), paragraph (b) of present subsection (9), and present subsection (11) of that section are amended, to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(3)

(d) The state board must include the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, the Division of Vocational Rehabilitation, the

Department of Children and Families, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

(6) The state board shall ~~may take action that it deems necessary to~~ achieve the purposes of this section by~~, including, but not limited to~~:

(a) Creating a state employment, education, and training policy that ensures that workforce-related programs ~~to prepare workers~~ are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.

(b) Establishing policy direction for a uniform funding system that prioritizes evidence-based, results-driven solutions by providing ~~provides~~ incentives to improve the outcomes of career education, registered apprenticeship, and work-based learning programs and that focuses resources on occupations related to new or emerging industries that add greatly to the value of the state's economy.

(c) Establishing a comprehensive policy related to the education and training of target populations such as those who have disabilities, are economically disadvantaged, receive public assistance, are not proficient in English, or are dislocated workers. This approach should ensure the effective use of federal, state, local, and private resources in reducing the need for public assistance by combining two or more sources of funding to support workforce-related programs or activities for vulnerable populations when appropriate or authorized.

(d) Identifying barriers to coordination and alignment among workforce-related programs and activities and developing

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solutions to remove such barriers ~~Designating Institutes of Applied Technology composed of public and private postsecondary institutions working together with business and industry to ensure that career education programs use the most advanced technology and instructional methods available and respond to the changing needs of business and industry~~.

(e) Providing policy direction for a system to project and evaluate labor market supply and demand using the results of the Labor Market ~~Workforce~~ Estimating Conference created in s. 216.136 and the career education performance standards identified under s. 1008.43.

(f) Reviewing the performance of public programs that are responsible for economic development, education, employment, and training. The review must include an analysis of the return on investment of these programs.

(g) Expanding the occupations identified by the Labor Market ~~Workforce~~ Estimating Conference to meet needs created by local emergencies or plant closings or to capture occupations within emerging industries.

(7) By December 1 of each year, the state board, in consultation with the department, shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed annual report setting forth:

(a) All audits and investigations, including any audit or investigation conducted under subsection (9) ~~(8)~~.

(b) The operations and accomplishments of the state board, including the programs or entities specified in subsection (6).

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(c) The number of mandatory partners located within one-stop centers.

(d) The amount of progress made toward implementing solutions to address barriers to coordination and alignment among programs and activities identified under paragraph (6)(d).

(8) Beginning July 1, 2022, the state board shall annually assign a letter grade for each local workforce development board.

(10)~~(9)~~ The state board, in collaboration with the local workforce development boards and appropriate state agencies and local public and private service providers, shall establish uniform performance accountability measures that apply across the core programs to gauge the performance of the state and local workforce development boards in achieving the workforce development strategy.

(b) The performance accountability measures for each local area consist of the primary indicators of performance, any additional indicators of performance, and a local level of performance for each indicator pursuant to Pub. L. No. 113-128. The local level of performance is determined by the local board, the chief elected official, and the Governor pursuant to Pub. L. No. 113-128, Title I, s. 116(c). Any local performance accountability measures that are established must be based on identified local area needs.

(12)~~(11)~~ The workforce development system must use local design and control of service delivery and targeted activities. The state board, in consultation with the department, is responsible for ensuring that local workforce development boards have a membership consistent with the requirements of federal

and state law and have developed a plan consistent with the state's workforce development strategy. The plan must specify methods for allocating the resources and programs in a manner that eliminates unwarranted duplication, minimizes administrative costs, meets the existing job market demands and the job market demands resulting from successful economic development activities, ensures access to quality workforce development services for all Floridians, allows for pro rata or partial distribution of benefits and services, prohibits the creation of a waiting list or other indication of an unserved population, serves as many individuals as possible within available resources, and maximizes successful outcomes. The state board shall establish incentives for effective alignment ~~coordination~~ of federal and state programs, outline rewards for achieving the long-term self-sufficiency of participants ~~successful job placements~~, and institute collaborative approaches among local service providers.

Section 4. Subsection (1), paragraph (a) of subsection (2), and subsections (6), (11), and (12) of section 445.007, Florida Statutes, are amended, and subsections (13) and (14) are added to that section, to read:

445.007 Local workforce development boards.—

(1) One local workforce development board shall be appointed in each designated service delivery area and shall serve as the local workforce development board pursuant to Pub. L. No. 113-128. The membership of the local board must be consistent with Pub. L. No. 113-128, Title I, s. 107(b). If a public education or training provider is represented on the local board, a representative of a private education provider

must also be appointed to the local board. The state board may waive this requirement if requested by a local workforce development board if it is demonstrated that such representatives do not exist in the region. The importance of minority and gender representation shall be considered when making appointments to the local board. The local board, its committees, subcommittees, and subdivisions, and other units of the workforce system, including units that may consist in whole or in part of local governmental units, may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Local workforce development boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution. ~~If the local workforce development board enters into a contract with an organization or individual represented on the local board, the contract must be approved by a two-thirds vote of the local board, a quorum having been established, and the local board member who could benefit financially from the transaction must abstain from voting on the contract. A local board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143.~~ Each member of a local workforce development board who is not otherwise required to file a full and public disclosure of financial interests under s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under s. 112.3145. The executive director or designated person responsible for the operational and administrative functions of the local workforce

development board who is not otherwise required to file a full and public disclosure of financial interests under s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under s. 112.3145. The local workforce development board's website, or the department's website if the local board does not maintain a website, must inform the public that each disclosure or statement has been filed with the Commission on Ethics and provide information as to how each disclosure or statement may be reviewed. The notice to the public must remain on the website throughout the term of office or employment of the filer and until 1 year after his or her term on the local board or employment, as applicable, ends.

(2)(a) The local workforce development board shall elect a chair from among the representatives described in Pub. L. No. 113-128, Title I, s. 107(b)(2)(A) to serve for a term of no more than 2 years and may not ~~shall~~ serve ~~no~~ more than two terms as chair. A member of a local workforce development board may not serve as a member of the board for more than 6 consecutive years, unless such member is a representative of a governmental entity.

(6) Consistent with federal and state law, the local workforce development board shall designate all local service providers and may not transfer this authority to a third party. Consistent with the intent of the Workforce Innovation and Opportunity Act, local workforce development boards should provide the greatest possible choice of training providers to those who qualify for training services. A local ~~workforce development~~ board may not restrict the choice of training providers based upon cost, location, or historical training

arrangements. However, a local board may restrict the amount of training resources available to any one client. Such restrictions may vary based upon the cost of training in the client's chosen occupational area. The local workforce development board may be designated as a one-stop operator and direct provider of intake, assessment, eligibility determinations, or other direct provider services except training services. Such designation may occur only with the agreement of the chief elected official and the Governor as specified in 29 U.S.C. s. 2832(f)(2). The state board shall establish procedures by which a local workforce development board may request permission to operate under this section and the criteria under which such permission may be granted. The criteria shall include, but need not be limited to, a reduction in the cost of providing the permitted services. Such permission shall be granted for a period not to exceed 3 years for any single request submitted by the local workforce development board.

(11)(a) To increase transparency and accountability, a local workforce development board must comply with the requirements of this section before contracting with a member of the local board; ~~or~~ a relative, as defined in s. 112.3143(1)(c), of a local board member; an organization or individual represented on the local board; or of an employee of the local board. Such contracts may not be executed before or without the prior approval of the department. Such contracts, as well as documentation demonstrating adherence to this section as specified by the department, must be submitted to the department for review and approval. Such a contract must be approved by a

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two-thirds vote of the local board, a quorum having been established; all conflicts of interest must be disclosed before the vote in a manner that is consistent with the procedures outlined in s. 112.3143(4); and any member who may benefit from the contract, or whose organization or relative may benefit from the contract, must abstain from the vote. A contract subject to the requirements of this subsection may not be included on a consent agenda.

(b) A contract under $10,000 ~~$25,000~~ between a local workforce development board and ~~a member of that board or between~~ a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board is not required to have the prior approval of the department, but must be approved by a two-thirds vote of the local board, a quorum having been established, and must be reported to the department and the state board within 30 days after approval.

(c) All contracts between a local board and a member of the local board; a relative, as defined in s. 112.3143(1)(c), of a local board member; an organization or individual represented on the local board; or an employee of the local board, approved on or after July 1, 2021, also must be published on the local board's website, or on the department's website if the local board does not maintain a website, within 10 days after approval by the local board or department, whichever is later. Such contracts must remain published on the website for at least 1 year after termination of the contract.

(d) In considering whether to approve a contract under this subsection, the department shall review and consider all documentation provided to the department by the local board,

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including the performance rating of the entity with which the local board is proposing to contract, if applicable, and the nature, size, and makeup of the business community served by the local board, including whether the entity with which the local board is proposing to contract is the only provider of the desired goods or services within the area served by the local board ~~If a contract cannot be approved by the department, a review of the decision to disapprove the contract may be requested by the local workforce development board or other parties to the disapproved contract~~.

(12) Each local workforce development board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official. Each local workforce development board shall submit its annual budget for review to the department no later than 2 weeks after the chair approves the budget. The local board shall publish the budget on its website, or the department's website if the local board does not maintain a website, within 10 days after approval by the department. The budget shall remain published on the website for the duration of the fiscal year for which it accounts for the expenditure of funds.

(13) Each local workforce development board annually, within 30 days after the end of the fiscal year, shall disclose to the department, in a manner determined by the department, the amount and nature of compensation paid to all executives, officers, directors, trustees, key employees, and highest compensated employees, as defined for purposes of the Internal Revenue Service Form 990, Return of Organization Exempt from

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Income Tax, including salary, bonuses, present value of vested benefits, including, but not limited to, retirement, accrued leave and paid time off, cashed-in leave, cash equivalents, severance pay, pension plan accruals and contributions, deferred compensation, real property gifts, and any other liability owed to such persons. The disclosure must be accompanied by a written declaration, as provided for under s. 92.525(2), from the Chief Financial Officer, or his or her designee, stating that he or she has read the foregoing document and the facts stated in it are true. Such information also must be published on the local board's website, or the department's website if the local board does not maintain a website, for a period of 3 years after it is first published.

(14) Each local workforce development board shall annually publish its most recent Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax, on its website, or the department's website if the local board does not maintain a website. The form must be posted on the local board's website within 60 calendar days after it is filed with the Internal Revenue Service and remain posted for 3 years after it is filed.

Section 5. Paragraphs (a) and (e) of subsection (8) of section 445.009, Florida Statutes, are amended to read:

445.009 One-stop delivery system.—

(8)(a) Individual Training Accounts must be expended on programs that prepare people to enter ~~high-wage~~ occupations identified by the Labor Market ~~Workforce~~ Estimating Conference created by s. 216.136, and on other programs recommended and approved by the state board following a review by the department to determine the program's compliance with federal law.

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(e) Training services provided through Individual Training Accounts must be performance-based, with successful job placement triggering final ~~full~~ payment of at least 10 percent.

Section 6. Section 445.038, Florida Statutes, is amended to read:

445.038 Digital media; job training.—CareerSource Florida, Inc., through the Department of Economic Opportunity, may use funds dedicated for incumbent worker training for the digital media industry. Training may be provided by public or private training providers for broadband digital media jobs listed on the ~~targeted~~ occupations list developed by the Labor Market ~~Workforce~~ Estimating Conference ~~or CareerSource Florida, Inc~~. Programs that operate outside the normal semester time periods and coordinate the use of industry and public resources should be given priority status for funding.

Section 7. Subsection (8) of section 446.021, Florida Statutes, is amended to read:

446.021 Definitions of terms used in ss. 446.011-446.092.—As used in ss. 446.011-446.092, the term:

(8) "~~Uniform minimum preapprenticeship~~ Standards" means the minimum requirements established uniformly for each occupation ~~craft~~ under which an apprenticeship or ~~a~~ preapprenticeship program is administered. The term ~~and~~ includes standards of admission, training goals, training objectives, curriculum outlines, objective standards to measure successful completion of the apprenticeship or preapprenticeship program, and the percentage of credit which may be given to an apprentice or a preapprentice ~~preapprenticeship graduates upon acceptance into the apprenticeship program~~.

Section 8. Subsections (1), (2), and (3) of section 446.032, Florida Statutes, are amended to read:

446.032 General duties of the department for apprenticeship training.—The department shall:

(1) Establish uniform minimum standards and policies governing apprenticeship ~~apprentice~~ programs and agreements which must require training providers to submit data necessary to determine program performance consistent with state and federal law. The standards and policies shall govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice for, but not limited to, such matters as ratios of apprentices to journeyworkers, safety, related instruction, and on-the-job training; but these standards and policies may not include rules, standards, or guidelines that require the use of apprentices and job trainees on state, county, or municipal contracts. The department shall ~~may~~ adopt rules necessary to administer the standards and policies.

(2) By September 1 of each year, publish an annual report on apprenticeship and preapprenticeship programs. The report must be published on the department's website and, at a minimum, include all of the following:

(a) A list of registered apprenticeship and preapprenticeship programs, sorted by local educational agency, as defined in s. 1004.02(18), and apprenticeship sponsor, under s. 446.071.

(b) A detailed summary of each local educational agency's expenditure of funds for apprenticeship and preapprenticeship programs, including:

1. The total amount of funds received for apprenticeship and preapprenticeship programs;

2. The total amount of funds allocated by training provider, program, and ~~to each trade or~~ occupation;

3. The total amount of funds expended for administrative costs by training provider, program, and ~~per trade or~~ occupation; and

4. The total amount of funds expended for instructional costs by training provider, program, ~~per trade~~ and occupation.

(c) The number of apprentices and preapprentices per trade and occupation.

(d) The percentage of apprentices and preapprentices who complete their respective programs in the appropriate timeframe.

(e) Information and resources related to applications for new apprenticeship programs and technical assistance and requirements for potential applicants.

(f) Documentation of activities conducted by the department to promote apprenticeship and preapprenticeship programs through public engagement, community-based partnerships, and other initiatives and the outcomes of such activities and their impact on establishing or expanding apprenticeship and preapprenticeship programs.

(g) Retention and completion rates of participants aggregated by training provider, program, and occupation.

(h) Wage progression of participants as demonstrated by starting, exit, and postapprenticeship wages.

(3) Provide assistance to district school boards, Florida College System institution boards of trustees, program sponsors, and local workforce development boards in notifying students,

parents, and members of the community of the availability of apprenticeship and preapprenticeship opportunities, including data provided in the economic security report under ~~pursuant to~~ s. 445.07 and other state career planning resources.

Section 9. Paragraph (b) of subsection (2) of section 446.045, Florida Statutes, is amended to read:

446.045 State Apprenticeship Advisory Council.—

(2)

(b) The Commissioner of Education or the commissioner's designee shall serve ex officio as chair of the State Apprenticeship Advisory Council, but may not vote. The state director of the Office of Apprenticeship of the United States Department of Labor shall serve ex officio as a nonvoting member of the council. The Governor shall appoint to the council four members representing employee organizations and four members representing employer organizations. Each of these eight members shall represent industries that have registered apprenticeship programs. The Governor shall also appoint two public members who are knowledgeable about registered apprenticeship and apprenticeable occupations and who are independent of any joint or nonjoint organization. Members shall be appointed for 4-year staggered terms. The Governor ~~A vacancy~~ shall fill any vacancy ~~be filled~~ for the remainder of the unexpired term.

Section 10. Paragraph (e) of subsection (1) of section 1003.4156, Florida Statutes, is amended to read:

1003.4156 General requirements for middle grades promotion.—

(1) In order for a student to be promoted to high school from a school that includes middle grades 6, 7, and 8, the

student must successfully complete the following courses:

(e) One course in career and education planning to be completed in grades 6, 7, or 8, which may be taught by any member of the instructional staff. The course must be Internet-based, customizable to each student, and include research-based assessments to assist students in determining educational and career options and goals. In addition, the course must result in a completed personalized academic and career plan for the student that may be revised as the student progresses through middle school and high school; must emphasize the importance of entrepreneurship and employability skills; and must include information from the Department of Economic Opportunity's economic security report under s. 445.07 and other state career planning resources. The required personalized academic and career plan must inform students of high school graduation requirements, including a detailed explanation of the requirements for earning a high school diploma designation under s. 1003.4285; the requirements for each scholarship in the Florida Bright Futures Scholarship Program; state university and Florida College System institution admission requirements; available opportunities to earn college credit in high school, including Advanced Placement courses; the International Baccalaureate Program; the Advanced International Certificate of Education Program; dual enrollment, including career dual enrollment; and career education courses, including career-themed courses, preapprenticeship and apprenticeship programs, and course sequences that lead to industry certification pursuant to s. 1003.492 or s. 1008.44. The course may be implemented as a stand-alone course or integrated into another

course or courses.

Section 11. Subsections (3) and (5) of section 1003.4203, Florida Statutes, are amended to read:

1003.4203 Digital materials, CAPE Digital Tool certificates, and technical assistance.—

(3) CAPE DIGITAL TOOL CERTIFICATES.—The department shall identify, in the CAPE Industry Certification Funding List under ss. 1003.492 and 1008.44 ~~by June 15 of each year~~, CAPE Digital Tool certificates that indicate a student's digital skills. The department shall notify each school district when the certificates are available. The certificates shall be made available to all public elementary and middle grades students.

(a) Targeted skills to be mastered for the certificate include digital skills that are necessary to the student's academic work and skills the student may need in future employment. ~~The skills must include, but are not limited to, word processing; spreadsheets; presentations, including sound, motion, and color presentations; digital arts; cybersecurity; and coding consistent with CAPE industry certifications that are listed on the CAPE Industry Certification Funding List, pursuant to ss. 1003.492 and 1008.44.~~ CAPE Digital Tool certificates earned by students are eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.a.

(b) The school district shall notify each middle school advisory council of the methods of delivery of the open-access content and assessments for the certificates. If there is no middle school advisory council, notification must be provided to the district advisory council.

(c) The Legislature intends that by July 1, 2018, on an

annual basis, at least 75 percent of public middle grades students earn at least one CAPE Digital Tool certificate.

(5) CAPE INNOVATION AND CAPE ACCELERATION.—

(a) *CAPE Innovation.*—~~Up to five~~ Courses, identified in the CAPE Industry Certification Funding List, which ~~annually approved by the commissioner that~~ combine academic and career content, and performance outcome expectations that, if achieved by a student, must ~~shall~~ articulate for college credit and be eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.c. Such approved courses must incorporate at least two third-party assessments that, if successfully completed by a student, must ~~shall~~ articulate for college credit. At least one of the two third-party assessments must be associated with an industry certification that is identified on the CAPE Industry Certification Funding List. Each course that is approved by the commissioner must be specifically identified in the Course Code Directory as a CAPE Innovation Course.

(b) *CAPE Acceleration.*—Industry certifications~~, annually approved by the commissioner,~~ that articulate for 15 or more college credit hours ~~and~~, if successfully completed, are ~~shall be~~ eligible for additional full-time equivalent membership under ~~pursuant to~~ s. 1011.62(1)(o)1.d. Each approved industry certification must be specifically identified in the CAPE Industry Certification Funding List as a CAPE Acceleration Industry Certification.

Section 12. Subsection (3) and paragraph (b) of subsection (5) of section 1003.491, Florida Statutes, are amended to read:

1003.491 Florida Career and Professional Education Act.—The

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Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(3) The strategic 3-year plan developed jointly by the local school district, local workforce development boards, economic development agencies, and state-approved postsecondary institutions shall be constructed and based on:

(a) Research conducted to objectively determine local and regional workforce needs for the ensuing 3 years, using labor projections as identified by the Labor Market Estimating Conference created in s. 216.136 ~~of the United States Department of Labor and the Department of Economic Opportunity~~;

(b) Strategies to develop and implement career academies or career-themed courses based on occupations identified by the Labor Market Estimating Conference created in s. 216.136 ~~those careers determined to be high-wage, high-skill, and high-demand~~;

(c) Strategies to provide shared, maximum use of private sector facilities and personnel;

(d) Strategies that ensure instruction by industry-certified faculty and standards and strategies to maintain current industry credentials and for recruiting and retaining faculty to meet those standards;

(e) Strategies to provide personalized student advisement, including a parent-participation component, and coordination with middle grades to promote and support career-themed courses and education planning;

(f) Alignment of requirements for middle school career

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planning, middle and high school career and professional academies or career-themed courses leading to industry certification or postsecondary credit, and high school graduation requirements;

(g) Provisions to ensure that career-themed courses and courses offered through career and professional academies are academically rigorous, meet or exceed appropriate state-adopted subject area standards, result in attainment of industry certification, and, when appropriate, result in postsecondary credit;

(h) Plans to sustain and improve career-themed courses and career and professional academies;

(i) Strategies to improve the passage rate for industry certification examinations if the rate falls below 50 percent;

(j) Strategies to recruit students into career-themed courses and career and professional academies which include opportunities for students who have been unsuccessful in traditional classrooms but who are interested in enrolling in career-themed courses or a career and professional academy. School boards shall provide opportunities for students who may be deemed as potential dropouts or whose cumulative grade point average drops below a 2.0 to enroll in career-themed courses or participate in career and professional academies. Such students must be provided in-person academic advising that includes information on career education programs by a certified school counselor or the school principal or his or her designee during any semester the students are at risk of dropping out or have a cumulative grade point average below a 2.0;

(k) Strategies to provide sufficient space within academies

to meet workforce needs and to provide access to all interested and qualified students;

(l) Strategies to implement career-themed courses or career and professional academy training that lead to industry certification in juvenile justice education programs;

(m) Opportunities for high school students to earn weighted or dual enrollment credit for higher-level career and technical courses;

(n) Promotion of the benefits of the Gold Seal Bright Futures Scholarship;

(o) Strategies to ensure the review of district pupil-progression plans and to amend such plans to include career-themed courses and career and professional academy courses and to include courses that may qualify as substitute courses for core graduation requirements and those that may be counted as elective courses;

(p) Strategies to provide professional development for secondary certified school counselors on the benefits of career and professional academies and career-themed courses that lead to industry certification; and

(q) Strategies to redirect appropriated career funding in secondary and postsecondary institutions to support career academies and career-themed courses that lead to industry certification.

(5)(b) Using the findings from the annual review required in paragraph (a), the commissioner shall phase out career and technical education offerings that are not aligned with the needs of the state ~~employers or do not provide program completers with a middle-wage or high-wage occupation~~ and

encourage school districts and Florida College System institutions to offer programs that are not ~~offered~~ currently offered.

Section 13. Subsections (2) and (3) of section 1003.4935, Florida Statutes, are amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(2) Each middle grades career and professional academy or career-themed course must be aligned with at least one high school career and professional academy or career-themed course offered in the district and maintain partnerships with local business and industry and economic development boards. Middle grades career and professional academies and career-themed courses must:

(a) Lead to careers in occupations aligned with ~~designated as high-skill, high-wage, and high-demand in~~ the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education;

(b) Integrate content from core subject areas;

(c) Integrate career and professional academy or career-themed course content with intensive reading, English Language Arts, and mathematics pursuant to s. 1003.4282;

(d) Coordinate with high schools to maximize opportunities for middle grades students to earn high school credit;

(e) Provide access to virtual instruction courses provided by virtual education providers legislatively authorized to provide part-time instruction to middle grades students. The virtual instruction courses must be aligned to state curriculum standards for middle grades career and professional academy

courses or career-themed courses, with priority given to students who have required course deficits;

(f) Provide instruction from highly skilled professionals who hold industry certificates in the career area in which they teach;

(g) Offer externships; and

(h) Provide personalized student advisement that includes a parent-participation component.

(3) Beginning with the 2012-2013 school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(3) ~~s. 1003.492(5)~~ for students enrolled in an academy or a career-themed course.

Section 14. Subsection (3) of section 1008.41, Florida Statutes, is amended to read:

1008.41 Workforce education; management information system.—

(3) Planning and evaluation of job-preparatory programs shall be based on standard sources of data and use standard occupational definitions and coding structures, including, but not limited to:

(a) The Florida Occupational Information System.~~;~~

(b) The Florida Education and Training Placement Information Program.~~;~~

(c) The Department of Economic Opportunity.~~;~~

(d) The United States Department of Labor.~~; and~~

(e) The Labor Market Estimating Conference created under s.

216.136.

(f) Other sources of data developed using statistically valid procedures.

Section 15. Paragraph (f) is added to subsection (1) of section 1008.44, Florida Statutes, to read:

1008.44 CAPE Industry Certification Funding List and CAPE Postsecondary Industry Certification Funding List.—

(1) Pursuant to ss. 1003.4203 and 1003.492, the Department of Education shall, at least annually, identify, under rules adopted by the State Board of Education, and the Commissioner of Education may at any time recommend adding the following certificates, certifications, and courses:

(f) The Commissioner of Education shall conduct a review of the methodology used to determine additional full-time equivalent membership weights assigned in s. 1011.62(1)(o) and, if necessary, recommend revised weights. The results of the review and the commissioner's recommendations must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 31, 2021.

Section 16. Subsection (3) of section 1011.801, Florida Statutes, is amended to read:

1011.801 Workforce Development Capitalization Incentive Grant Program.—The Legislature recognizes that the need for school districts and Florida College System institutions to be able to respond to emerging local or statewide economic development needs is critical to the workforce development system. The Workforce Development Capitalization Incentive Grant Program is created to provide grants to school districts and Florida College System institutions on a competitive basis to

fund some or all of the costs associated with the creation or expansion of workforce development programs that serve specific employment workforce needs.

(3) The State Board of Education shall give highest priority to programs that train people to enter high-skill, high-wage occupations identified by the Labor Market ~~Workforce~~ Estimating Conference and other programs approved by the state board as defined in s. 445.002, programs that train people to enter occupations under the welfare transition program, or programs that train for the workforce adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers. The State Board of Education shall consider the statewide geographic dispersion of grant funds in ranking the applications and shall give priority to applications from education agencies that are making maximum use of their workforce development funding by offering high-performing, high-demand programs.

Section 17. Subsection (3) of section 1011.802, Florida Statutes, is amended to read:

1011.802 Florida Pathways to Career Opportunities Grant Program.—

(3) The department shall give priority to apprenticeship programs with demonstrated regional demand identified by the Labor Market Estimating Conference, such as health care programs. Grant funds may be used for instructional equipment, supplies, personnel, student services, and other expenses associated with the creation or expansion of an apprenticeship program. The department may award grants to expand only those existing programs that exceed the median completion rate and

employment rate 1 year after completion for similar programs in the region, or in the state if there are no similar programs in the region. Grant funds may not be used for recurring instructional costs or for indirect costs. Grant recipients must submit quarterly reports in a format prescribed by the department.

Section 18. Paragraph (a) of subsection (1) of section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(1) The department, in consultation with the state board, shall implement, subject to legislative appropriation, automated information systems that are necessary for the efficient and effective operation and management of the workforce development system. These information systems shall include, but need not be limited to, the following:

(a) An integrated management system for the one-stop service delivery system, which includes, at a minimum, common registration and intake, screening for needs and benefits, case planning and tracking, training benefits management, service and training provider management, performance reporting, executive information and reporting, and customer-satisfaction tracking and reporting.

1. The system should report current budgeting, expenditure, and performance information for assessing performance related to outcomes, service delivery, and financial administration for workforce programs pursuant to s. 445.004(5) and (10) ~~(9)~~.

2. The information system should include auditable systems and controls to ensure financial integrity and valid and reliable performance information.

3. The system should support service integration and case management by providing for case tracking for participants in welfare transition programs.

Section 19. Paragraph (a) of subsection (9) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(9) The State Board of Education and the state board as defined in s. 445.002 shall provide the Legislature with recommended formulas, criteria, timeframes, and mechanisms for distributing performance funds. The commissioner shall consolidate the recommendations and develop a consensus proposal for funding. The Legislature shall adopt a formula and distribute the performance funds to the State Board of Education for Florida College System institutions and school districts through the General Appropriations Act. These recommendations shall be based on formulas that would discourage low-performing or low-demand programs and encourage through performance-funding awards:

(a) Programs that prepare people to enter high-wage occupations identified by the Labor Market ~~Workforce~~ Estimating Conference created by s. 216.136 and other programs as approved by the state board as defined in s. 445.002. At a minimum, performance incentives shall be calculated for adults who reach completion points or complete programs that lead to specified high-wage employment and to their placement in that employment.

Section 20. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 9, 2021

I respectfully request that **Senate Bill #98**, relating to Workforce Related Programs and Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 102
INTRODUCER:	Community Affairs Committee and Senator Burgess
SUBJECT:	Matters of Great Governmental Concern
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Dale	Sadberry	AP	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 102 creates section 16.65, Florida Statutes, which establishes a system wherein the Attorney General, as the state's chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern. The bill defines a "matter of great governmental concern" as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature.

Under the bill, the Attorney General may take any legal action he or she determines is in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern. When a matter is declared a matter of great governmental concern, the Attorney General is expressly provided the following procedural rights in state or federal court civil litigation:

- May institute or intervene in any legal proceeding, including any pending appeal;
- May consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest;

- A declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding; and
- Any statute of limitations under Florida law affecting a claim by a governmental entity is tolled for the declaration's pendency or one year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from section 120.57(3), Florida Statutes, for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Executive Branch and Cabinet

Like the federal system, Florida's state government is divided into three branches: the executive branch, the legislative branch, and the judicial branch. The governor of Florida is the chief executive of Florida and the State's chief administrative officer responsible for the planning and budgeting for the State and serves as chair when the governor and the Florida Cabinet sit as a decision-making body in various constitutional roles. The governor has the power to execute Florida's laws and to call out the state militia to preserve the public peace, being commander-in-chief of the State's military forces that are not in active service of the United States.[1]

Florida is unique among U.S. states in its cabinet-style government. Members of the Florida Cabinet are independently elected and have equal footing with the governor on issues under the Cabinet's jurisdiction. The Cabinet consists of the attorney general, the commissioner of agriculture, and the chief financial officer. Along with the governor, each member carries one vote in the cabinet decision-making process. In the event of a tie, the side of the governor is the prevailing side. Cabinet elections are held every four years, on even-numbered years not divisible by four (such as 2018, 2022, etc.).[2]

[1] Article IV, Sections 1 and 4, of the Florida Constitution.
[2] Article IV, Sections 1 and 4, of the Florida Constitution.

The State Attorney General

The Florida attorney general is the State's chief legal officer. The attorney general is responsible for and the head of the Department of Legal Affairs.[3] As with other elected statewide offices in Florida, the attorney general is limited to serving two consecutive four-year terms. The attorney general is second (behind the lieutenant governor) in the line of succession to the Governor of Florida's office.[4]

Roles and Functions of the Attorney General

The Attorney General has various roles and functions within Florida's government and legal system. These responsibilities are outlined in the Florida Constitution and state statute. The Attorney General performs the following responsibilities:[5]

- Defends the constitutionality of statutes duly enacted by the Legislature;
- Issues formal legal opinions at the request of various public officials on questions relating to the application of state law;
- Is responsible for protecting Florida consumers from various types of fraud and enforcing the state's antitrust laws;
- Protects Floridians in Medicaid fraud cases;
- Defends the state in civil litigation cases;
- Represents the people of Florida when criminals appeal their convictions in state and federal courts; and
- Administers programs to assist victims of crime.

The Office of the Attorney General also houses and oversees other officials and departments. The Solicitor General is a position within the Office of the Attorney General. The Solicitor General is appointed by and serves at the pleasure of the Attorney General. The Solicitor General oversees civil and criminal appeals involving the State and has the authority to decide whether the State should appeal a case to the Florida Supreme Court, United States Supreme Court, or the Eleventh Circuit Court of Appeal, as well as the authority to decide whether the State should file or join an amicus brief in state or federal court.[6]

Furthermore, the Attorney General appoints the Statewide Prosecution from a list of nominees selected by the Florida Supreme Court Judicial Nominating Commission. The Statewide Prosecutor serves four years terms and acts as the agency head for eight offices throughout the state that targets widespread criminal activities throughout Florida, including identity theft, drug trafficking, and gang activity.[7]

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[3] Article IV, Sections 10, of the Florida Constitution.
[4] Article IV, Sections 4, of the Florida Constitution.
[5] *See generally* Office of Attorney General Ashley Moody Website, *available at:* http://www.myfloridalegal.com/ (last visited Mar. 27, 2021).
[6] Office of Attorney General, Role of Solicitor General, *available at:* http://myfloridalegal.com/pages.nsf/main/a0cb91c5c403a0f385256cc6007a3808!OpenDocument (last visited Mar. 27, 2021).
[7] Office of Attorney General, Office of Statewide Prosecution, *available at:* http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693 (last visited Mar. 27, 2021).

The Office of the Attorney General also houses the Florida Commission on the Status of Women, the Council on the Social Status of Black Men and Boys, and the Office of Civil Rights, which investigates and takes legal action against civil rights violations.[8]

Attorney General Common Law Powers

In addition to the Attorney General's variety of constitutional and statutory powers, courts have ruled that state attorney generals have broad legal powers under common law. The common law provides the Attorney General with authority to intervene in matters of compelling public interest. Under common law, the Attorney General has the power and duty to prosecute all actions necessary to protect and defend the state's property and revenue.[9] Moreover, in Florida, the attorney general is in many respects judicial in character and is clothed with considerable discretion. This considerable discretion includes the Attorney General's power to institute litigation on his or her own initiative.[10]

In the case of *State of Fla. ex rel. Shevin v. Exxon Corp.*, the U.S. Court of Appeals for the Fifth Circuit ruled that the Attorney General of Florida retains common-law powers, and in the absence of an express legislative provision to the contrary, the Attorney General's common law powers prevail.[11]

The Doctrine of Parens Patriae[12]

The sovereign role of states and the exercise of police power is to promote the people's health, safety, and welfare. In service of this sovereign responsibility, states may vindicate their interest in the citizenships' welfare through a legal action referred to as *parens patriae*. The Latin phrase *Parens patriae* means "parent of the country." Under this legal action, states may recover costs or damages incurred because of behavior that threatens the state's citizenry's health, safety, and welfare.[13]

American courts have uniformly recognized a state's authority to sue as *parens patriae*. In this legal action, the state alleges that a defendant's misbehavior harmed the state's interest in protecting its citizens and its interest in enforcing civil and criminal law. More specifically, parens patriae actions have been ruled appropriate for suits seeking to abate public nuisances, maintain access to energy sources, halt price-fixing, and enforce state anti-trust laws. In the United States, *parens patriae* actions were greatly expanded over the 1900s and have been described as an increasingly popular vehicle for state attorneys general to vindicate their constituents' rights.[14]

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[8] Office of Attorney General Ashley Moody Website, *available at:* http://www.myfloridalegal.com/ (last visited Mar. 27, 2021).
[9] *See Thompson v. Wainwright*, 714 F.2d 1495, 1500–1501 (11th Cir.1983)
[10] *See State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).
[11] *See id.*
[12] *See generally* Richard P. Ieyoub & Theodore Eisenberg, *State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae*, 74 Tul. L.Rev. 1859 (2000).
[13] *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2014).
[14] *See Mississippi ex rel. Hood, 876 F.Supp.2d 758 (S.D.Miss. 2014).* .

A *parens patriae* action by a state is typically reserved for breaches of duty or inflictions of damages on a statewide scale, warranting civil state involvement in litigation. A state is not permitted to enter a controversy as a nominal party to forward individual citizens' claims. But it may act as the representative of its citizens in original actions where the injury alleged affects the general population of a state in a substantial way.[15] *Parens patriae* actions are disfavored where the injury falls "on a small group of citizens who are likely to challenge" the harm directly. But where "a great many citizens ... are faced with increased costs aggregating millions of dollars per year" and "cannot be expected to litigate [the issue] given that the amounts paid by each consumer are likely to be relatively small, *parens patriae* suits are appropriate. *Parens patriae* statutes are most common in the antitrust and consumer protection contexts.[16]

Procedural Limits to Attorney General Common Law Powers in Litigation

Although the Attorney General has broad authority to litigate matters in the public interest, courts have ruled that the Attorney General must still abide by relevant judicial procedures and rules. In the case of *Bondi v. Tucker*, Florida's First District Court of Appeal ruled that when the Attorney General does appear in court as a party litigant, he or she is subject to the same rules of judicial procedure which other litigants must observe. In this case, Attorney General Bondi failed to participate as a party in the lower tribunal proceedings and was denied the ability to invoke appellate proceedings individually. In its decision, the court expressly recognizes that courts maintain discretion to enforce judicial procedure even when the Attorney General is involved.[17]

Instances of State Involvement in Civil Litigation

Petroleum Products Overcharges

In *Hawaii v. Standard Oil*, the state of Hawaii brought a complaint against companies involved in the petroleum industry, alleging defendants violated the Sherman Act, 26 Stat. 209, 15 U.S.C. s 1, by entering into unlawful contracts; by conspiring and combining to restrain trade and commerce in the sale, marketing, and distribution of refined petroleum products; and by attempting to monopolize and actually monopolizing trade and commerce in the petroleum industry.[18]

The State sought to recover damages in three distinct capacities. First, the state claimed it suffered damages in its proprietary capacity for overcharges for petroleum products sold to the State itself. Second, as *parens patriae*, Hawaii sought similar damages for overcharges paid by the State's citizens. Third, the state looked to recover damages as the representative of all purchasers in Hawaii for the overcharges.[19]

In this case, the Supreme Court held that the State of Hawaii could seek damages for its citizens via a *parens patriae* suit alleging antitrust violations.[20]

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[15] *Maryland v. Louisiana*, 451 U.S. 725, 737, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981)
[16] *See id.*
[17] *Bondi v. Tucker*, 93 So.3d 1106 (Fla. 1st DCA 2012).
[18] *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251 (1972).
[19] *Id.*
[20] *Hawaii*, 405 U.S. 251 (1972). .

Liquid Crystal Display Price-fixing

In the case of *Mississippi ex rel. Hood v. AU Optronics Corp.*, the Attorney General of Mississippi filed a state court *parens patriae* suit on behalf of the State of Mississippi against manufacturers, marketers, sellers, and distributors of liquid crystal display (LCD) panels, alleging that defendants engaged in a price-fixing scheme in violation of Mississippi Consumer Protection Act (MCPA) and Mississippi Antitrust Act (MAA).[21]

The State sought the following relief: (1) a permanent injunction prohibiting the defendants from continuing to engage in anti-competitive behavior; (2) civil penalties of $10,000 per LCD panel product sold in Mississippi during the relevant time period, pursuant to the MCPA; (3) civil penalties of up to $2,000 per month, per defendant for violations of the MAA during the relevant time period; (4) restitution to the State for its own losses caused by purchasing LCD panel products during the relevant time period; (5) restitution to the State on behalf of its citizens and local governments who suffered losses by purchasing LCD panel products during the relevant time period; (6) punitive damages; and (7) other relief including costs of court, pre- and post-judgment interest, and attorney's fees.[22]

The ruling in this case mainly involved whether Mississippi's claims were subject to the Class Action Fairness Act provisions and must be brought in federal court or could be brought in state court. The court in this case ultimately ruled that Mississippi's Attorney General may maintain a *parens patriae* suit in state court, to enforce Mississippi's consumer protection and antitrust laws, for the economic well-being of Mississippi's consumers and governmental entities, and that the general public exception to Class Action Fairness Act applied to prevent removal to federal court.[23]

2010 Deepwater Horizon Oil Spill

On April 20, 2010, the Transocean offshore oil rig, Deepwater Horizon, under the operation of BP, exploded in the Gulf of Mexico, causing an estimated 4.9 million barrels of crude oil to spill into the ocean approximately 45 miles south of the Louisiana coast. Florida Governor Charlie Crist issued a state of emergency as a result of the spreading oil spill.[24]

On April 4, 2016, Florida, the four other affected Gulf States, the federal government, and BP entered into a Consent Decree, "In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010" (no. 2179, M.D.L, document no. 15), that awarded civil and criminal penalties in the amount of $20.8 billion to the United States and the five Gulf States to be paid by parties responsible for the oil spill. In a separate agreement, BP agreed to pay a total of $4.9 billion to the five Gulf States and up to $1 billion to local government entities for

[21] *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2012).
[22] *Id.*
[23] *Id.*
[24] Triumph Gulf Coast, Inc. Website, *Triumph Timeline, available at:* https://www.myfloridatriumph.com/about/triumph-timeline/ (last visited Mar. 29, 2021).

economic damage claims related to the Deepwater Horizon incident.[25] In July of 2016, Attorney General Pam Bondi received the first settlement payment from BP for $400 million.[26]

To administer the settlement funds paid by BP, the Florida Legislature established the Triumph Gulf Coast, Inc., a nonprofit corporation created pursuant to s. 288.8013, F.S. Under s. 288.8013(2), F.S., seventy-five percent of all payments to the state pursuant to the settlement agreement with BP are transferred immediately by the Chief Financial Officer from the General Revenue Fund to the Triumph Gulf Coast Trust Fund. Triumph Gulf Coast, Inc. is responsible for allocating settlement funds by providing awards for public and private projects within each disproportionately affected county's geographic boundaries.[27]

Opioid Epidemic

From 1999 to 2016, it is estimated 453,300 Americans have died from opioids.[28] The opioid epidemic was initially caused by the over-prescription of opioids in the 1990s, which led to them becoming the most prescribed class of medications in the United States. The U.S. Department of Justice has found that civil and criminal violations by opioid manufacturers substantially contributed to the opioid epidemic.[29]

In the aftermath of this epidemic, numerous state, county, and city governments have brought civil claims against opioid manufacturers to recoup damages related to the opioid epidemic. In 2019, opioid distributors McKesson Corp., AmerisourceBergen, Cardinal Health, and drug manufacturer Teva Pharmaceuticals agreed to a $260 million settlement with Cuyahoga and Summit counties in Ohio.[30] Also in 2019, an Oklahoma judge ruled that Johnson and Johnson must pay the state of Oklahoma $572 million as damages for actions that contributed to the opioid epidemic.[31]

In Florida, Broward County, Broward Health Hospital District, and 26 other governmental entities and institutions across the state have also joined civil litigation against Purdue Pharma, Johnson & Johnson, Abbott Laboratories, and others in the prescription opioid industry. The

[25] Triumph Gulf Coast, Inc. Website, *Triumph Timeline*, *available at:* https://www.myfloridatriumph.com/about/triumph-timeline/ (last visited Mar. 29, 2021).
[26] *Id.*
[27] Section 288.8013, F.S.
[28] "The Opioid Epidemic Might Be Much Worse Than We Thought". The Atlantic, February 27, 2020, *available at:* https://www.theatlantic.com/health/archive/2020/02/more-people-have-died-opioids-us-thought/607165/ (last visited Mar. 29, 2021); Mohamadi A, Chan JJ, Lian J, Wright CL, Marin AM, Rodriguez EK, von Keudell A, Nazarian A (August 2018), "Risk Factors and Pooled Rate of Prolonged Opioid Use Following Trauma or Surgery: A Systematic Review and Meta-(Regression) Analysis". The Journal of Bone and Joint Surgery. American Volume. 100 (15): 1332–1340.
[29] Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family, Oct. 21, 2020, *available at:* https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid (last visited Mar. 29, 2021).
[30] Government Lawsuits Against Opioid Distributors & Manufacturers, *available at:* https://www.levinlaw.com/government-opioid-lawsuit (last visited Mar. 29, 2021).
[31] "Oklahoma wins case against drugmaker in historic opioid trial," CNN, Aug. 27, 2019, *available at:* https://www.cnn.com/2019/08/26/health/oklahoma-opioid-trial-verdict-bn/index.html (last visited Mar. 29, 2021).

suits allege negligence, fraud, and civil conspiracy, seek millions of dollars in damages, and demand a jury trial.[32]

On February 4, 2021, Attorney General Ashley Moody announced that her office secured millions of dollars for Florida through efforts to hold accountable corporations responsible for helping fuel the deadly opioid epidemic. Florida joined a coalition of 47 states, the District of Columbia, and five U.S. territories in the $573 million action with one of the world's largest consulting firms, McKinsey & Company. The multistate action resolved investigations into the company's role in working for opioid companies to promote products that fueled the opioid epidemic. As a result, Florida will receive more than $40 million—a majority of which will be made available for allocation by Florida lawmakers.[33]

Similarly, on March 16, 2021, Attorney General Moody announced that her office secured additional funding for Florida communities from Purdue Pharma's bankruptcy plan, which is worth approximately $7 billion in total.[34]

III. Effect of Proposed Changes:

The bill creates s. 16.65, F.S., which establishes a system wherein the Attorney General, as the state's chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern.

The bill includes legislative findings that a single official representing governmental entities in civil proceedings in matters of great governmental concern will maximize recoveries and minimize costs. The bill states it is the intent of the Legislature to establish a procedure for use by the Attorney General in addressing matters of great governmental concern, and that the act is not intended to expand or change existing law with respect to the power and authority of the Attorney General.

The bill defines "governmental entity" to mean the state and any department, agency, political subdivision, unit of government, or school district thereof. A "matter of great governmental concern" is defined as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the

[32] "South Florida hospitals among 27 in state suing opioid makers and sellers, Broward lawsuit says," SunSentinel, Sep. 19, 2019, *available at:* https://www.sun-sentinel.com/local/broward/fl-ne-hospitals-florida-suing-opiod-makers-sellers-20190920-z6eefkmghrdshctc34xb3yngyy-story.html (last visited Mar. 29, 2021).
[33] Attorney General Moody Secures $40 Million for Florida from Company Marketing Opioid Medications, *available at:* http://www.myfloridalegal.com/newsrel.nsf/newsreleases/BB37C4F6FABF771D85258672005079E1 (last visited Mar. 29, 2021).
[34] Attorney General Moody Secures Billions for Opioid Abatement Funds from Purdue Pharma Bankruptcy Plan, *available at:* http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D6A7FC7B1D9774808525869A004BCDE5 (last visited Mar. 29, 2021).

Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature. Under the bill, when a matter is declared a matter of great governmental concern, the Attorney General may institute or intervene in any governmental entity legal proceeding, including any pending appeal, and may consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest, as long as such action is not inconsistent with the terms of the Legislature's resolution. The Legislature's declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding. A declaration by the Legislature also tolls any statute of limitations under Florida law affecting a claim by a governmental entity for the declaration's pendency or 1 year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from s. 120.57(3), F.S., for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees to include the following:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the attorney;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitation imposed by the governmental entity or the circumstances;
- The nature and length of the professional relationship with the governmental entity;
- The experience, reputation, and ability of the attorney performing the legal services; and
- Whether the fee is fixed or contingent.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article V, s. 2(a) of the Florida Constitution, grants the Florida Supreme Court the exclusive authority to adopt rules of judicial practice and procedure for actions filed in Florida.[35] Generally, the Legislature is empowered to enact substantive law while the Florida Supreme Court has the authority to enact procedural law.[36] Accordingly, a statute that creates or modifies a procedural rule of the Florida Supreme Court violates Art. II, s. 3 of the Florida Constitution, which prohibits one branch of government from exercising any powers appertaining to either of the other branches unless expressly permitted by the constitution.[37]

The bill may implicate these constitutional provisions by containing procedural dictates that fall exclusively within the Florida Supreme Court's constitutional powers and, thus, violate the constitutional separation of powers. The bill's constitutionality likely depends on whether a court considers the bill's provisions "clearly substantive" with "incidental" procedural aspects. If so, the bill may be constitutional.[38]

The bill also may implicate Art. I, s. 10 of the United States Constitution and Art. I, s. 10 of the Florida Constitution. Both of these constitutional provisions prohibit any law that impairs the obligation of contracts. The bill may violate these constitutional restrictions by impairing existing contractual relationships between governmental entities and private attorneys that may be affected if the Attorney General declares that a matter is a great governmental concern.[39]

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[35] *See Se. Floating Docks, Inc. v. Auto–Owners Ins. Co.*, 82 So.3d 73, 78 (Fla.2012).
[36] *Massey v. David*, 979 So.2d 931, 936 (Fla.2008)
[37] *See State v. Raymond*, 906 So.2d 1045, 1048 (Fla.2005)
[38] "If a statute is clearly substantive and operates in an area of legitimate legislative concern, this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed incidental, and that statute is unconstitutional. Moreover, where this Court has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict. Finally, where a statute has some substantive aspects, but the procedural requirements of the statute conflict with or interfere with the procedural mechanisms of the court system, those requirements are unconstitutional." *Massey v. David*, 979 So.2d 931, 937 (Fla.2008)(citation and quotations omitted).
[39] *See Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So.3d 118 (Fla.2017)(claims bill's limitation on payment of attorney fees impermissibly impaired family's preexisting contingency fee contract with law firm).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

The bill may increase state revenue as it would direct all recovery obtained in litigation on a matter of great governmental concern, with the exception of local government attorney fees in specified circumstances, to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill's current definition of a "matter of great governmental concern" appears to only apply to situations where a governmental entity suffers substantial economic loss or harm. This definition may exclude certain *parens patriae* legal actions related to the economic loss or harm suffered by the citizenry of a governmental entity and not the governmental entity itself.

VIII. Statutes Affected:

This bill creates section 16.65 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 30, 2021:
The committee substitute makes the following revisions:

- Redefines "matter of great governmental concern" to mean situations where 15 or more counties suffer economic loss or other harm, as opposed to 5 or more counties;
- Provides that the Legislature has the authority to declare, amend, or rescind a declaration for a matter of great governmental concern by concurrent resolution, as opposed to the Attorney General;
- Provides that the Attorney General may take legal action in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern;

- Requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern be subject to full appropriation by the Legislature; and
- Removes the statement that a declaration of a matter is a matter of great governmental concern does not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Community Affairs; and Senator Burgess

578-03605-21 2021102c1

A bill to be entitled

An act relating to matters of great governmental concern; creating s. 16.65, F.S.; providing legislative findings; defining terms; authorizing the Legislature to declare, by concurrent resolution, that a circumstance or conduct that has caused substantial economic loss or other similar harm to governmental entities in at least a specified number of counties is a matter of great governmental concern; providing that the Attorney General has the sole authority to file certain civil proceedings; authorizing the Attorney General to investigate certain matters; authorizing the Attorney General to institute or intervene in certain civil proceedings; authorizing the Attorney General to take certain actions in certain civil proceedings; providing that any award, excluding attorney fees, are subject to full appropriation by the Legislature; prohibiting such award to be appropriated, expended, or encumbered by the Attorney General or any settlement agreement; providing that a declaration by the Legislature that a matter is a matter of great governmental concern abates or stays certain civil proceedings; providing for the tolling of certain statutes of limitations; requiring certain entities to provide notice to the Attorney General; providing that certain settlements and resolutions are void; providing that the Department of Legal Affairs is exempt from certain requirements related to protests to contract solicitation or award;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03605-21 2021102c1

authorizing a governmental entity or its attorneys to apply to a court for recovery of attorney fees and costs; requiring a court to consider certain factors in calculating the amount of attorney fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 16.65, Florida Statutes, is created to read:

16.65 Matters of great governmental concern.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Several events have led to extensive litigation by multiple governmental entities in this state arising from the same facts, circumstances, or conduct or similar causes of action. This litigation has been difficult to resolve in a timely and expeditious manner because of the number and different types of governmental entities involved.

(b) It is in the interest of this state that a single official represent governmental entities in civil proceedings in matters of great governmental concern to maximize recoveries and minimize costs.

(c) The Attorney General is the state's chief legal officer and is the official who should be responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern.

(d) The failure to have a single official responsible in matters of great governmental concern undermines fairness and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

efficiency and risks inconsistent or incongruent results, which will delay recovery and undermine governmental entities' ability to respond to such matters of great governmental concern.

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a) "Governmental entity" means the state and any department, agency, political subdivision, unit of government, or school district thereof.

(b) "Matter of great governmental concern" means any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in 15 or more counties in this state.

(3) AUTHORITY.—

(a) The Legislature by concurrent resolution may declare a matter to be a matter of great governmental concern. Upon such declaration, the Attorney General has the sole authority to file a civil proceeding on behalf of the affected governmental entities in this state until the Legislature by concurrent resolution invalidates, rescinds, or amends that declaration.

(b) The Attorney General may investigate a matter before and after the Legislature declares that the matter is a matter of great governmental concern. In any investigation and civil proceeding commenced pursuant to this section, it is the duty of all public officers and their deputies, assistants, clerks, subordinates, and employees to render and furnish to the Attorney General, when so requested, assistance and all information available in their official capacity.

(c) The Attorney General may institute or intervene in any civil proceeding in state or federal court, including any

pending appeal, on behalf of a governmental entity to seek any relief afforded at law or in equity, under state or federal law, pertaining to a matter of great governmental concern.

(d) The Attorney General may consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest in any civil proceeding in state or federal court pertaining to a matter of great governmental concern, provided that such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern.

(e) Any award for damages or monetary payment arising from a civil proceeding, compromise, or settlement of any claim or litigation pertaining to a matter of great governmental concern, excluding attorney fees described in subsection (4), is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms or provisions of any settlement agreement.

(f) A declaration by the Legislature that a matter is a matter of great governmental concern operates to abate or stay any civil proceeding in state or federal court pertaining to the matter of great governmental concern filed by a governmental entity until the Attorney General takes an action in such proceeding.

(g) Any statute of limitations under the laws of this state affecting a claim by a governmental entity is tolled for the pendency of a declaration that a matter is a matter of great governmental concern or for 1 year, whichever is earlier.

(h) Upon learning of a declaration that a matter is a matter of great governmental concern, all governmental entities

then a party to any affected civil proceeding shall provide notice to the Attorney General of the existence of any such civil proceeding, including the style of the action, the case number, and the court where such proceeding is pending. Any settlement or resolution of the civil proceeding by a governmental entity taken after a declaration without the consent of the Attorney General is void.

(i) For purposes of this subsection, the Department of Legal Affairs is exempt from s. 120.57(3).

(4) ATTORNEY FEES.—

(a) If a governmental entity retains attorneys to represent it before a matter is declared to be a matter of great governmental concern, the governmental entity or its attorneys may apply to the court where the civil proceeding is being prosecuted by the Attorney General or, if no such proceeding exists, in the circuit court in and for Leon County to receive from any recovery its reasonable attorney fees and costs incurred in connection with such representation.

(b) In calculating the amount of any reasonable attorney fees, the court shall consider all of the following factors:

1. The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

2. The likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the attorney.

3. The fee customarily charged in the locality for similar legal services.

4. The amount involved and the results obtained.

5. The time limitation imposed by the governmental entity or the circumstances.

6. The nature and length of the professional relationship with the governmental entity.

7. The experience, reputation, and ability of the attorney performing the legal services.

8. Whether the fee is fixed or contingent.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

102
Bill Number (if applicable)

Topic Matters of Great Gov't Concern

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222 9684

Talla. FL 32301
City *State* *Zip*

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Fla. League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

April 18, 2021
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

102
Bill Number (if applicable)

Topic Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street
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Phone 850-222-0170

Tallahassee FL 32301
City *State* *Zip*

Email William@fljustice.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

SB 102
Bill Number (if applicable)

Topic Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name Former Attorney General Bill McCollum

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Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing US Chamber - Institute for Legal Reform

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

102
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Matters of Great Government Concern

Name Bill Cotterall

Job Title General Counsel

Address 218 S Monroe Street
Street

Phone 850-224-9403

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 130 (154204)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Rouson and others
SUBJECT:	Mental Health and Substance Use Disorders
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Sneed	Kidd	AHS	**Recommend: Fav/CS**
3.	Sneed	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 130 promotes the use of peer specialists to assist an individual's recovery from substance use disorder (SUD) or mental illness. Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness.

Specifically, the bill:

- Adds the use of peer specialists as an essential element of a coordinated system of care;
- Provides legislative findings and intent related to the use of peer specialists in the provision of behavioral health care;
- Requires the Department of Children and Families (the DCF) to develop a training program for peer specialists, giving preference to trainers who are certified peer specialists;
- Requires the DCF to certify peer specialists, directly or through the use of a third-party credentialing entity;
- Revises background screening requirements and codifies existing training and certification requirements for peer specialists;
- Adds offenses for which individuals seeking certification as a peer specialist may seek an exemption from eligibility disqualification;

- Allows peer specialists to work with adults with mental health disorders, in addition to SUDs and co-occurring disorders, while a request for an exemption from a background check disqualification is pending.
- Expands the statutory limit for the number of days during which a service provider can work while a request for exemption from a background check disqualification is pending to 180 days from the current 90 days.
- Allows for recovery support services to be reimbursed as a recovery service through the DCF, a behavioral health managing entity, or the Medicaid program.
- Provides that individuals certified as peer specialists by July 1, 2021, will be deemed to have met the requirements for certification under the bill.

The bill is expected to have an insignificant negative fiscal impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).[1] According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.[6] The most

[1] The *World Health Organization, Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 21, 2021).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited February 21, 2021).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited February 21, 2021).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 21, 2021).
[5] *Id*.
[6] The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited February 23, 2021).

common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[8] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[9] Each of these laws governed different aspects of addiction, and thus had different rules adopted by the state to fully implement the respective pieces of legislation.[10] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[11] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[12]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[13] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[14] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[15]

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[16] The DCF provides treatment for SUD through a community-based provider system offering detoxification,[17] treatment

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[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited February 23, 2021).
[8] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Chapter 93-39, s. 2, Laws of Fla., codifying current ch. 397, F.S.
[13] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[14] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited February 23, 2021).
[15] *Id*.
[16] *See* chs. 394 and 397, F.S.
[17] Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.

services[18] and recovery support[19] for individuals affected by substance misuse, abuse or dependence.[20]

Peer Specialists

Research has shown that social support provided by peers is beneficial to those in recovery from a SUD or mental illness.[21] Section 397.311, F.S., defines a peer specialist as "a person who has been in recovery from a SUD or mental illness for at least 2 years who uses his or her personal experience to provide services in behavioral health settings to support others in their recovery, or a person who has at least 2 years of experience as a family member or caregiver of an individual who has a SUD or mental illness. The term does not include a qualified professional or a person otherwise certified under ch. 394 or ch. 397."[22]

There are four primary types of social support provided by peers:

- Emotional: where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. (i.e., peer mentoring or peer-led support groups).
- Informational: where a peer shares knowledge and information to provide life or vocational skills training. (i.e., parenting classes, job readiness training, or wellness seminars).
- Instrumental: where a peer provides concrete assistance to help others accomplish tasks. (i.e., child care, transportation, and help accessing health and human services).
- Affiliational: where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).[23]

In Florida, DCF and Medicaid both allow reimbursement for peer support services, but only if provided by certified peer specialists.[24]

An individual seeking to become a certified peer specialist must have either been in recovery from a SUD or mental illness for at least two years, or must have at least two years of experience as a family member or caregiver of an individual suffering from a substance use disorder or mental illness.[25] The DCF must approve one or more third-party credentialing entities for the

[18] Treatment services include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.
[19] Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.
[20] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited February 21, 2021).
[21] Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, available at https://store.samhsa.gov/system/files/sma09-4454.pdf (last visited February 23, 2021).
[22] Section 397.311(30), F.S.
[23] The DCF, *Florida Peer Services Handbook* at p. 4-5, 2016, available at https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf (last visited February 23, 2021).
[24] The DCF, *Agency Analysis for 2019 HB 369*, p. 2 February 8, 2019 (on file with the Senate Children, Families, and Elder Affairs Committee staff). Florida's Medicaid program currently covers peer recovery services; the DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.
[25] Section 397.417(1), F.S.

purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification.[26] To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.[27] All individuals providing DCF-funded recovery support services as a peer specialist must be certified, however an individual who is not currently certified may work as a peer specialist for a maximum of one year if they are working toward certification and are supervised by a qualified professional or by a certified peer specialist with at least three years of full-time experience as a peer specialist at a licensed behavioral health organization.[28]

The Florida Certification Board (FCB) is currently the only credentialing entity approved by the DCF for certifying peer specialists in the state.[29] The FCB credentials Certified Recovery Peer Specialist (CRPS), which assist in providing client directed care by helping individuals develop skills, and relationships that will allow them to achieve and maintain recovery from SUDs and mental illness.[30] CRPS applicants must attest to having been in recovery for a minimum of two years.[31] The CRPS must also have demonstrated competency through training and experience in the performance domains of: Recovery Support, Advocacy, Mentoring and Professional Responsibilities.[32] As of June 2020, 630 individuals maintain active CRPS certifications statewide.[33]

Individuals seeking certification must adhere to the CRPS credentialing standards and requirements, complete a background screening, and have completed all court-ordered sanctions related to any prior crimes committed for at least three years.[34] Prospective CRPS must also successfully complete training and a competency exam demonstrating proficiency in certain educational areas.[35]

Background Screening

Substance Use Disorder and Criminal History

Certain individuals receiving substance abuse treatment may have a criminal or violent history: about 54 percent of state prisoners and 61 percent of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.[36] Additionally, individuals who use illicit drugs

[26] Section 397.417(2), F.S.
[27] *Id*.
[28] Section 397.417(3), F.S.
[29] The DCF, *Agency Analysis for SB 130*, p. 2, December 10, 2020 (on file with the Senate Children, Families, and Elder Affairs Committee staff) (hereinafter cited as, "The DCF Analysis").
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at p. 1, June 2017, available at https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf (last visited February 23, 2021).

are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.[37] As a result, individuals who have recovered from a SUD or mental illness often have a criminal history that may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[38] and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[39]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[40] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.[41]

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.[42] Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.[43] For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[44] For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[45]

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[46]

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[37] National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* at p. 12, available at https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited February 23, 2021).
[38] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at https://www.nsopw.gov/ (last visited February 23, 2021).
[39] Section 435.04, F.S.
[40] Section 435.05(1)(a), F.S.
[41] Sections 435.03(1) and 435.04(1)(a), F.S.
[42] Section 435.05(1)(b)-(c), F.S.
[43] *Id*.
[44] Section 435.05(1)(b), F.S.
[45] Section 435.05(1)(c), F.S.
[46] Section 435.05(1)(d), F.S.

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.

- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.[47]

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, the DCF) to exempt applicants from disqualification under certain circumstances.[48]

[47] Section 435.04(2), F.S.
[48] *See* Section 435.07(1), F.S.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[49] career offender,[50] or sexual offender (unless not required to register)[51] cannot ever be exempted from disqualification.[52]

Additionally, individuals (including peer specialists) employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain crimes may be exempted from disqualification from employment, without applying the 3-year waiting period.[53] These crimes include certain offenses related to:

- Prostitution;
- Unarmed burglary of a structure;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.[54]

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.[55]

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[56] Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[57] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.[58] This evidence must create a firm belief and conviction of the truth of the facts presented and,

[49] Section 775.261, F.S.
[50] Section 775.261, F.S.
[51] Section 943.0435, F.S.
[52] Section 435.07(4)(b), F.S.
[53] Section 435.07(2), F.S.
[54] *Id*.
[55] Section 397.4073(1)(f), F.S.
[56] Section 435.07(3)(a), F.S.
[57] The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf (last visited February 23, 2021) (hereinafter, "The DCF Operating Procedure").
[58] *Id*.

considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.[59] Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.[60]

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.[61] These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[62]

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor and, after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted.[63] The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency. The criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.[64]

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.[65] After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.[66]

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.[67] However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address

[59] *Id*.
[60] *Id*. at 3-4.
[61] *Id*. at 5.
[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] *Id*.
[66] *Id*. at 5.
[67] *Id*. at 6.

and a separate letter of denial is sent by regular mail to the facility or employer.[68] If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.[69] It must also inform the denied applicant of the availability of an administrative review[70] pursuant to ch. 120, F.S.[71]

Individuals Requiring Background Screening Under Ch. 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires peer specialists who have direct contact[72] with individuals receiving services must undergo a level 2 background screening as provided under s. 408.809 and ch. 435.[73] Applicant peer specialists are required to pay the costs associated with such screenings.[74] Similarly, all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services must also undergo level 2 background screening.

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. The DCF may grant exemptions from disqualification for an individual seeking certification as a peer specialist if at least three years have passed since the individual has completed, or been lawfully released from, any confinement, supervision, or nonmonetary condition imposed by a court for the individual's most recent disqualifying offense.[75] Similar to the conditional employment granted to other select applicants in s. 397.4073, certified peer specialists may work with adults with SUD for up to 90 days after being notified of his or her disqualification or until the DCF makes a final determination regarding the request for an exemption from disqualification if three years or more have elapsed since the most recent disqualifying offense, whichever is earlier.[76]

III. Effect of Proposed Changes:

Coordinated System of Care

The bill amends s. 394.4573, F.S., relating to coordinated systems of care, to add the use of peer specialists to assist in an individual's recovery from a substance use disorder or mental illness to the list of essential elements of a coordinated system of behavioral health care.

[68] *Id*.
[69] *Id*.
[70] All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.
[71] The DCF Operating Procedure at 6.
[72] Direct contact is not defined in ch. 397, F.S.
[73] Section 397.4073(a)3., F.S.
[74] Section 408.809(5), F.S.
[75] Section 397.4073(4)(b)1.a., F.S.
[76] Section 397.4073(1)(g), F.S.

Legislative Findings and Intent

The bill provides legislative findings and intent, as follows:

- The Legislature finds that the ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.
- The Legislature finds that the state is experiencing an increase in opioid addictions, many of which prove fatal.
- The Legislature finds that peer specialists provide effective support services because they share common life experiences with the persons they assist.
- The Legislature finds that peer specialists promote a sense of community among those in recovery.
- The Legislature finds that research has shown that peer support facilitates recovery and reduces health care costs.
- The Legislature finds that persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.
- It is the intent of the Legislature that the use of peer specialists be expanded as a cost-effective means of providing services.
- It is the intent of the Legislature to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

Criteria for Becoming a Certified Peer Specialist

The bill codifies a number of criteria currently used by the Florida Certification Board (FCB) in the process of certifying peer specialists. Specifically, the bill requires that persons seeking certification as peer specialists:

- Be in recovery from a substance use disorder (SUD) or mental illness for the past two years, or be a family member or caregiver of an individual with a history of SUD or mental illness;
- Pass a competency exam developed under the bill by the Department of Children and Families (DCF); and
- Undergo background screening as provided under the bill.

Duties of the Department of Children and Families (DCF)

Currently, the FCB provides training and administers a competency exam for peer specialists seeking certification. Under the bill, the DCF is made statutorily responsible for:

- Creating a training program for peer specialists, giving preference to trainers who are certified peer specialists. The training program must coincide with a competency exam and be based on current practice standards; and
- Mandating that all individuals providing recovery support services become certified.

Individuals may practice as a peer specialist prior to becoming certified for up to one year if the individual is actively working toward certification and is supervised by a qualified professional[77]

[77] Section 397.311(35) defines "qualified professional" to mean "a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse licensed

or a certified peer specialist with at least two years of full-time experience as a peer specialist at a licensed behavioral health organization.

Background Screening

The bill specifies revised background screening requirements, requiring applicants to submit a full set of fingerprints to the DCF, or to a vendor, entity, or agency[78] that has entered into an agreement with the Florida Department of Law Enforcement (FDLE). Fingerprints must then be forwarded to the FDLE for state processing and retention, and to the FBI for national processing and retention. This will enable the FDLE to conduct ongoing, fingerprint-based, state and national background checks on certified peer specialists. The bill mandates any arrest record discovered be reported to the DCF. The bill requires the DCF to screen results in order to ensure an applicant meets the requirements of certification, and it provides that the applicant peer specialist is to pay all fees charged in connection with state and federal fingerprint processing and retention.[79]

The bill authorizes the DCF or the Agency for Health Care Administration (the AHCA) to contract with vendors for electronic fingerprinting, provided that such contracts ensure the integrity and security of all personal identifying information obtained. Vendors who submit fingerprints on behalf of employees must:

- Meet the requirements of s. 943.053, F.S.;[80]
- Be capable of communicating electronically with the state agency accepting screening results from the FDLE; and
- Be capable of providing the applicant's:
  - Full first name, middle initial, and last name;
  - Social security number or individual taxpayer identification number;
  - Date of birth;
  - Mailing address;
  - Sex; and
  - Race.

The bill provides that a background screening of a peer specialist must ensure that a prospective peer specialist has not been arrested for and awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony within the past three

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under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree." A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

[78] Section 943.053(13), F.S., provides criteria which must be followed in order for the FDLE to accept fingerprint submissions from private vendors, entities, or agencies.

[79] This cost is already borne by the applicant under current law requiring level 2 background screening for certified peer specialists. *See* ss. 397.4073(1)(a)3. and 408.809(5), F.S.

[80] Section 943.053, F.S., provides, among other things, standards for vendors meant to ensure that all persons having direct or indirect responsibility for verifying identification, taking fingerprints, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

years. The bill also requires that background screening ensure the applicant has not, at any time, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, the following laws or similar laws of other jurisdictions:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.
- Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.
- Any offense that constitutes domestic violence as defined in s. 741.28, F.S.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
- Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 794.08, relating to female genital mutilation.
- Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary, if the offense was a felony of the first degree.
- Section 810.14, relating to voyeurism, if the offense was a felony.
- Section 810.145, relating to video voyeurism, if the offense was a felony.

- Section 812.13, relating to robbery.
- Section 812.131, relating to robbery by sudden snatching.
- Section 812.133, relating to carjacking.
- Section 812.135, relating to home-invasion robbery.
- Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.
- Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.
- Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.
- Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.
- Chapter 847, relating to obscenity.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
- Section 895.03, relating to racketeering and collection of unlawful debts.
- Section 896.101, relating to the Florida Money Laundering Act.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

- Section 944.47, relating to introduction of contraband into a correctional institution.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to introduction of contraband into a detention facility.

The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:
- Misdemeanor assault, or battery (Ch. 784, F.S.).
- Prostitution (Ch. 796, F.S.), with the exception of those offenses listed in s. 796.07, F.S., which have not been expunged.
- Lower level burglary offenses (s. 810.02, F.S.).
- Lower level theft and robbery offenses (Ch. 812, F.S.).
- Lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.).
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.).
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

The bill allows individuals who wish to become peer specialists, but have a disqualifying offense in their background, to request an exemption from disqualification pursuant to s. 435.07, F.S., from the DCF or the AHCA, as applicable.

The bill also allows service provider personnel, including peer specialists, to work with adults with mental health disorders (in addition to the current allowance to work with adults suffering from SUDs or co-occurring disorders) while an exemption request is pending, and extends the time limit for such work from 90 days to 180 days.

The bill grandfathers in all peer specialists certified as of July 1, 2021, by stating they are recognized as having met the requirements of the bill.

Deleted Provisions of s. 397.417, F.S.

The bill eliminates and replaces all of the current provisions of s. 397.417, F.S. Specifically, the bill:
- Eliminates the requirement that a family member or caregiver of an individual with a SUD or mental illness have at least two years of experience in order to attain certification as a peer specialist;
- Requires the DCF to develop a peer specialist training program rather than a third-party credentialing entity;
- Allows the DCF the option of certifying peer specialists directly or approving third party credentialing entities to do so;
- Permits an individual with two years of full-time experience as a peer specialist to supervise an individual providing recovery support services and working toward certification (supervisory certified peer specialists currently must have at least three years of experience).

Effective Date

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 130 eliminates several disqualifying criminal offenses that often result in disqualification from certification eligibility, and as a result the DCF predicts that there may be additional revenues generated for certification providers from fees paid by a greater number of individuals seeking certification.[81]

C. Government Sector Impact:

The DCF estimates there may be a negative impact to state government due to a potential increase in background screenings being conducted, and a possible increase in the number of exemptions from disqualification requested, leading to a heavier workload for the department's Background Screening Office.[82] However, any additional workload will likely be absorbed within existing department resources.

VI. Technical Deficiencies:

None.

[81] The DCF Analysis at p. 6.
[82] *Id* at p. 5.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4573, 397.4073, and 397.417.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on March 17, 2021:
The committee substitute clarifies that third party credentialing entities are prohibited from conducting background screenings of peer specialists.

CS by Children, Families, and Elder Affairs on March 2, 2021:
The committee substitute:

- Amends s. 397.4073, F.S., to allow peer specialists to work with adults with mental health disorders while a request for an exemption from a background check disqualification is pending.
- Expands the statutory limit for the number of days during which a peer specialist can work while a request for an exemption from a background check disqualification is pending to 180 days from the current 90 days.
- Requires the DCF to screen results of applicant peer specialist background checks in order to ensure each applicant meets the requirements of certification.
- Requires state agencies, rather than vendors under contract with the DCF or the AHCA, to accept screening results from the FDLE.
- Provides that vendors under contract with the DCF or the AHCA must be capable of communicating electronically with state agencies that receive screening results.
- Clarifies that offenses related to domestic violence, as defined in s. 741.28, F.S., are added to the list of disqualifying offenses for applicant peer specialists, rather than offenses delineated in s. 741.28, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Rouson) recommended the following:

Senate Amendment (with title amendment)

Between lines 102 and 103
insert:

Section 2. Based on recommendations in the Third Interim Report of the 20th Statewide Grand Jury, submitted December 10, 2020, regarding the state's mental health system, it is the intent of the Legislature to establish a commission to examine the state's current policies and procedures for providing mental health and substance abuse services and to make recommendations

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to improve and facilitate the delivery of mental health and substance abuse services throughout the state.

Section 3. Section 394.9086, Florida Statutes, is created to read:

394.9086 Commission on Mental Health and Substance Abuse.—

(1) CREATION.—The Commission on Mental Health and Substance Abuse, a commission as defined in s. 20.03(10), is created adjunct to the Department of Children and Families. The department shall provide administrative and staff support services relating to the functions of the commission.

(2) PURPOSES.—The purposes of the commission are to examine the current methods of providing mental health and substance abuse services in the state and to improve the effectiveness of current practices, procedures, programs, and initiatives in providing such services; identify any barriers or deficiencies in the delivery of such services; and recommend changes to existing laws, rules, and policies necessary to implement the commission's recommendations.

(3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

(a) The commission shall be composed of 19 members as follows:

1. A member of the Senate, appointed by the President of the Senate.

2. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. The Secretary of Children and Families or his or her designee.

4. The Secretary of the Agency for Health Care Administration or his or her designee.

5. A person living with a mental health disorder appointed by the President of the Senate.

6. A family member of a consumer of publicly funded mental health, appointed by the President of the Senate.

7. A representative of the Louis de la Parte Florida Mental Health Institute within the University of South Florida, appointed by the President of the Senate.

8. A representative of a county school district, appointed by the President of the Senate.

9. A representative of mental health courts, appointed by the Governor.

10. A representative of a treatment facility, as defined in s. 394.455, appointed by the Speaker of the House of Representatives.

11. A representative of a managing entity as defined in s. 394.9082(2), appointed by the Speaker of the House of Representatives.

12. A representative of a community substance abuse provider, appointed by the Speaker of the House of Representatives.

13. A psychiatrist licensed under chapter 458 or chapter 459 practicing within the mental health delivery system, appointed by the Speaker of the House of Representatives.

14. A psychologist licensed under chapter 490 practicing within the mental health delivery system, appointed by the Governor.

15. A mental health professional licensed under chapter 491, appointed by the Governor.

16. An emergency room physician, appointed by the Governor.

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17. A representative from the field of law enforcement, appointed by the Governor.

18. A representative from the criminal justice system, appointed by the Governor.

19. A representative of a child welfare agency involved in the delivery of behavioral health services, appointed by the Governor.

(b) The Governor shall appoint the chair from the members of the commission. Appointments to the commission must be made by August 1, 2021. Members shall be appointed to serve at the pleasure of the officer who appointed the member. A vacancy on the commission shall be filled in the same manner as the original appointment.

(c) The commission shall convene no later than September 1, 2021. The commission shall meet quarterly or upon the call of the chair. The commission shall hold its meetings via teleconference or other electronic means.

(4) DUTIES.—

(a) The duties of the Commission on Mental Health and Substance Abuse include the following:

1. Conducting a review and evaluation of the management and functioning of the existing publicly supported mental health and substance abuse systems and services in the Department of Children and Families, the Agency for Health Care Administration, and all other departments which administer mental health and substance abuse services. Such review shall include, at a minimum, a review of current goals and objectives, current planning, services strategies, coordination management, purchasing, contracting, financing, local government funding

responsibility, and accountability mechanisms.

2. Considering the unique needs of persons who are dually diagnosed.

3. Addressing access to, and financing of, and scope of responsibility in the delivery of emergency behavioral health care services.

4. Addressing the quality and effectiveness of current mental health and substance abuse services delivery systems, and professional staffing and clinical structure of services, roles, and responsibilities of public and private providers, such as community mental health centers, community substance abuse agencies, hospitals, including emergency services departments, law enforcement agencies, and the judicial system.

5. Addressing priority population groups for publicly funded mental health and substance abuse services, identifying the comprehensive mental health and substance abuse services delivery systems, mental health and substance abuse needs assessment and planning activities, and local government funding responsibilities for mental health and substance abuse services.

6. Reviewing the implementation of chapter 2020-107, Laws of Florida.

7. Identifying any gaps in the provision of mental health and substance use disorder services.

8. Providing recommendations on how behavioral health managing entities may fulfill their purpose of promoting service continuity.

9. Making recommendations regarding the mission and objectives of state-supported mental health and substance abuse services and the planning, management, staffing, financing,

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contracting, coordination, and accountability mechanisms which will best foster the recommended mission and objectives.

10. Evaluating and making recommendations regarding the establishment of a permanent, agency-level entity to manage mental health, substance abuse, and related services statewide. At a minimum, the evaluation must consider and describe the:

a. Specific duties and organizational structure proposed for the entity;

b. Resource needs of the entity and possible sources of funding;

c. Estimated impact on access to and quality of services;

d. Impact on individuals with behavioral health needs and their families, both those currently served through the affected systems providing behavioral health services and those in need of services; and

e. Relation to, integration with, and impact on providers, managing entities, communities, state agencies, and systems which provide mental health and substance abuse services in this state. Such recommendations must ensure that the ability of such other agencies and systems to carry out their missions and responsibilities is not impaired.

(b) The commission may call upon appropriate departments and agencies of state government for such professional assistance as may be needed in the discharge of its duties, and such departments and agencies shall provide such assistance in a timely manner.

(5) REPORTS.—By September 1, 2022, the commission shall submit an interim report to the President of the Senate, the Speaker of the House of Representatives, and the Governor

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containing its findings and recommendations on how to best provide and facilitate mental health and substance abuse services in the state. The commission shall submit its final report by September 1, 2023.

(6) REPEAL.—This section is repealed September 1, 2023, unless saved from repeal through reenactment by the Legislature.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 7

and insert:

technical change; providing legislative intent; creating s. 394.9086, F.S.; creating the Commission on Mental Health and Substance Abuse adjunct to the Department of Children and Families; requiring the department to provide administrative and staff support services to the commission; providing purposes of the commission; providing for membership, term limits, meetings, and duties of the commission; requiring the commission to submit reports of its findings and recommendations to the Legislature and Governor by a specified date; providing for future repeal unless saved by the Legislature through reenactment; amending s. 397.4073, F.S.; revising

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576-03000-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to mental health and substance use disorders; amending s. 394.4573, F.S.; providing that the use of peer specialists is an essential element of a coordinated system of care in recovery from a substance use disorder or mental illness; making a technical change; amending s. 397.4073, F.S.; revising background screening requirements for certain peer specialists; revising authorizations relating to work by applicants who have committed disqualifying offenses; amending s. 397.417, F.S.; providing legislative findings and intent; revising requirements for certification as a peer specialist; requiring the Department of Children and Families to develop a training program for peer specialists and to give preference to trainers who are certified peer specialists; requiring the training program to coincide with a competency exam and to be based on current practice standards; requiring the department to certify peer specialists, either directly or by approving a third-party credentialing entity; prohibiting third-party credentialing entities from conducting background screenings for peer specialists; requiring that a person providing recovery support services be certified or be supervised by a licensed behavioral health care professional or a certified peer specialist; authorizing the department, a

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576-03000-21

behavioral health managing entity, or the Medicaid program to reimburse a peer specialist service as a recovery service; encouraging Medicaid managed care plans to use peer specialists in providing recovery services; requiring peer specialists and certain persons to meet the requirements of a background screening as a condition of employment and continued employment; requiring certain entities to forward fingerprints to specified entities; requiring the department to screen results to determine if the peer specialist meets the certification requirements; requiring that fees for state and federal fingerprint processing be borne by the peer specialist applying for employment; requiring that any arrest record identified through background screening be reported to the department; authorizing the department or certain other agencies to contract with certain vendors for fingerprinting; specifying requirements for vendors; specifying disqualifying offenses for a peer specialist who applies for certification; authorizing a person who does not meet background screening requirements to request an exemption from disqualification from the department or the agency; providing that a peer specialist certified as of the effective date of this act is deemed to satisfy the requirements of this act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (l) of subsection (2) and subsection (3) of section 394.4573, Florida Statutes, are amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements; measures of performance; system improvement grants; reports.—On or before December 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state. The assessment shall consider, at a minimum, the extent to which designated receiving systems function as no-wrong-door models, the availability of treatment and recovery services that use recovery-oriented and peer-involved approaches, the availability of less-restrictive services, and the use of evidence-informed practices. The assessment shall also consider the availability of and access to coordinated specialty care programs and identify any gaps in the availability of and access to such programs in the state. The department's assessment shall consider, at a minimum, the needs assessments conducted by the managing entities pursuant to s. 394.9082(5). Beginning in 2017, the department shall compile and include in the report all plans submitted by managing entities pursuant to s. 394.9082(8) and the department's evaluation of each plan.

(2) The essential elements of a coordinated system of care include:

(l) Recovery support, including, but not limited to, the use of peer specialists to assist in the individual's recovery from a substance use disorder or mental illness; support for competitive employment, educational attainment, independent living skills development, family support and education,

wellness management, and self-care; ~~,~~ and assistance in obtaining housing that meets the individual's needs. Such housing may include mental health residential treatment facilities, limited mental health assisted living facilities, adult family care homes, and supportive housing. Housing provided using state funds must provide a safe and decent environment free from abuse and neglect.

(3) ~~SYSTEM IMPROVEMENT GRANTS.—~~Subject to a specific appropriation by the Legislature, the department may award system improvement grants to managing entities based on a detailed plan to enhance services in accordance with the no-wrong-door model as defined in subsection (1) and to address specific needs identified in the assessment prepared by the department pursuant to this section. Such a grant must be awarded through a performance-based contract that links payments to the documented and measurable achievement of system improvements.

Section 2. Paragraphs (a) and (g) of subsection (1) of section 397.4073, Florida Statutes, are amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(a) For all individuals screened on or after July 1, 2021 ~~2019~~, background checks shall apply as follows:

1. All owners, directors, chief financial officers, and clinical supervisors of service providers are subject to level 2 background screening as provided under s. 408.809 and chapter 435. Inmate substance abuse programs operated directly or under contract with the Department of Corrections are exempt from this

requirement.

2. All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under s. 408.809 and chapter 435.

3. All peer specialists who have direct contact with individuals receiving services are subject to a background screening as provided in s. 397.417(5) ~~level 2 background screening as provided under s. 408.809 and chapter 435~~.

(g) If 5 years or more, or 3 years or more in the case of a certified peer specialist or an individual seeking certification as a peer specialist pursuant to s. 397.417, have elapsed since an applicant for an exemption from disqualification has completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by a court for the applicant's most recent disqualifying offense, the applicant may work with adults with substance use disorders, mental health disorders, or co-occurring disorders under the supervision of persons who meet all personnel requirements of this chapter for up to 180 ~~90~~ days after being notified of his or her disqualification or until the department makes a final determination regarding his or her request for an exemption from disqualification, whichever is earlier.

Section 3. Section 397.417, Florida Statutes, is amended to read:

397.417 Peer specialists.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. The ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.

2. The state is experiencing an increase in opioid addictions, many of which prove fatal.

3. Peer specialists provide effective support services because they share common life experiences with the persons they assist.

4. Peer specialists promote a sense of community among those in recovery.

5. Research has shown that peer support facilitates recovery and reduces health care costs.

6. Persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.

(b) The Legislature intends to expand the use of peer specialists as a cost-effective means of providing services. The Legislature also intends to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

(2) QUALIFICATIONS.—

(a) A person may seek certification as a peer specialist if he or she has been in recovery from a substance use disorder or mental illness for the past 2 years or if he or she is a family member or caregiver of a person with a substance use disorder or mental illness.

(b) To obtain certification as a peer specialist, a person must complete the training program developed under subsection (3), achieve a passing score on the competency exam described in

paragraph (3)(a), and meet the background screening requirements specified in subsection (5).

(3) DUTIES OF THE DEPARTMENT.—

(a) The department shall develop a training program for persons seeking certification as peer specialists. The department must give preference to trainers who are certified peer specialists. The training program must coincide with a competency exam and be based on current practice standards.

(b) The department may certify peer specialists directly or may approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards applicants must meet to maintain certification. Background screening required for achieving certification must be conducted as provided in subsection (5) and may not be conducted by third-party credentialing entities.

(c) The department shall require that a person providing recovery support services be certified; however, an individual who is not certified may provide recovery support services as a peer specialist for up to 1 year if he or she is working toward certification and is supervised by a qualified professional or by a certified peer specialist who has at least 2 years of full-time experience as a peer specialist at a licensed behavioral health organization.

(4) PAYMENT.—Recovery support services may be reimbursed as a recovery service through the department, a behavioral health managing entity, or the Medicaid program. Medicaid managed care

plans are encouraged to use peer specialists in providing recovery services.

(5) BACKGROUND SCREENING.—

(a) A peer specialist, or an individual who is working toward certification and providing recovery support services as provided in subsection (3), must have completed or have been lawfully released from confinement, supervision, or any nonmonetary condition imposed by the court for any felony and must undergo a background screening as a condition of initial and continued employment. The applicant must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency that enters into an agreement with the Department of Law Enforcement as provided in s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The department shall screen the results to determine if a peer specialist meets certification requirements. The applicant is responsible for all fees charged in connection with state and federal fingerprint processing and retention. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein. Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained as provided in s. 435.12 and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained fingerprint arrest notification program, as provided in s.

943.05(4). Any arrest record identified must be reported to the department.

(b) The department or the Agency for Health Care Administration, as applicable, may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal identifying information.

(c) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and

2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide the applicant's full first name, middle initial, and last name; social security number or individual taxpayer identification number; date of birth; mailing address; sex; and race.

(d) The background screening conducted under this subsection must ensure that a peer specialist has not, during the previous 3 years, been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony.

(e) The background screening conducted under this subsection must ensure that a peer specialist has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the

record has not been sealed or expunged for, any offense prohibited under any of the following state laws or similar laws of another jurisdiction:

1. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

2. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

3. Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.

4. Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.

5. Any offense that constitutes domestic violence as defined in s. 741.28.

6. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.

7. Section 782.04, relating to murder.

8. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

9. Section 782.071, relating to vehicular homicide.

10. Section 782.09, relating to killing an unborn child by injury to the mother.

11. Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

12. Section 787.01, relating to kidnapping.

13. Section 787.02, relating to false imprisonment.

14. Section 787.025, relating to luring or enticing a child.

15. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

16. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

17. Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

18. Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.

19. Section 794.011, relating to sexual battery.

20. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

21. Section 794.05, relating to unlawful sexual activity with certain minors.

22. Section 794.08, relating to female genital mutilation.

23. Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.

24. Section 798.02, relating to lewd and lascivious behavior.

25. Chapter 800, relating to lewdness and indecent

exposure.

26. Section 806.01, relating to arson.

27. Section 810.02, relating to burglary, if the offense was a felony of the first degree.

28. Section 810.14, relating to voyeurism, if the offense was a felony.

29. Section 810.145, relating to video voyeurism, if the offense was a felony.

30. Section 812.13, relating to robbery.

31. Section 812.131, relating to robbery by sudden snatching.

32. Section 812.133, relating to carjacking.

33. Section 812.135, relating to home-invasion robbery.

34. Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.

35. Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.

36. Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.

37. Section 817.505, relating to patient brokering.

38. Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.

39. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.

40. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person

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or a disabled person.

41. Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.

42. Section 826.04, relating to incest.

43. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

44. Section 827.04, relating to contributing to the delinquency or dependency of a child.

45. Former s. 827.05, relating to negligent treatment of children.

46. Section 827.071, relating to sexual performance by a child.

47. Section 831.30, relating to fraud in obtaining medicinal drugs.

48. Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.

49. Section 843.01, relating to resisting arrest with violence.

50. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.

51. Section 843.12, relating to aiding in an escape.

52. Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.

53. Chapter 847, relating to obscenity.

54. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

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55. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

56. Section 895.03, relating to racketeering and collection of unlawful debts.

57. Section 896.101, relating to the Florida Money Laundering Act.

58. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

59. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

60. Section 944.40, relating to escape.

61. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

62. Section 944.47, relating to introduction of contraband into a correctional institution.

63. Section 985.701, relating to sexual misconduct in juvenile justice programs.

64. Section 985.711, relating to introduction of contraband into a detention facility.

(6) EXEMPTION REQUESTS.—A person who wishes to become a peer specialist and is disqualified under subsection (5) may request an exemption from disqualification pursuant to s. 435.07 from the department or the Agency for Health Care Administration, as applicable.

(7) GRANDFATHER CLAUSE.—A peer specialist certified as of the effective date of this act is deemed to satisfy the requirements of this act

~~(1) An individual may seek certification as a peer specialist if he or she has been in recovery from a substance use disorder or mental illness for at least 2 years, or if he or she has at least 2 years of experience as a family member or caregiver of a person with a substance use disorder or mental illness~~.

~~(2) The department shall approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification. To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.~~

~~(3) An individual providing department-funded recovery support services as a peer specialist shall be certified pursuant to subsection (2). An individual who is not certified may provide recovery support services as a peer specialist for up to 1 year if he or she is working toward certification and is supervised by a qualified professional or by a certified peer specialist who has at least 3 years of full-time experience as a peer specialist at a licensed behavioral health organization.~~

Section 4. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 130
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senator Rouson and others
SUBJECT:	Mental Health and Substance Use Disorders
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Sneed	Kidd	AHS	**Recommend: Fav/CS**
3.	Sneed	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 130 promotes the use of peer specialists to assist an individual's recovery from substance use disorder (SUD) or mental illness. Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness.

Specifically, the bill:

- Adds the use of peer specialists as an essential element of a coordinated system of care;
- Provides legislative findings and intent related to the use of peer specialists in the provision of behavioral health care;
- Requires the Department of Children and Families (the DCF) to develop a training program for peer specialists, giving preference to trainers who are certified peer specialists;
- Requires the DCF to certify peer specialists, directly or through the use of a third-party credentialing entity;
- Revises background screening requirements and codifies existing training and certification requirements for peer specialists;
- Adds offenses for which individuals seeking certification as a peer specialist may seek an exemption from eligibility disqualification;

- Allows peer specialists to work with adults with mental health disorders, in addition to SUDs and co-occurring disorders, while a request for an exemption from a background check disqualification is pending.
- Expands the statutory limit for the number of days during which a service provider can work while a request for exemption from a background check disqualification is pending to 180 days from the current 90 days.
- Allows for recovery support services to be reimbursed as a recovery service through the DCF, a behavioral health managing entity, or the Medicaid program.
- Provides that individuals certified as peer specialists by July 1, 2021, will be deemed to have met the requirements for certification under the bill.

The bill is expected to have an insignificant negative fiscal impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).[1] According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.[6] The most

[1] The *World Health Organization, Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 21, 2021).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited February 21, 2021).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited February 21, 2021).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 21, 2021).
[5] *Id*.
[6] The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited February 23, 2021).

common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[8] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[9] Each of these laws governed different aspects of addiction, and thus had different rules adopted by the state to fully implement the respective pieces of legislation.[10] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[11] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[12]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[13] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[14] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[15]

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[16] The DCF provides treatment for SUD through a community-based provider system offering detoxification,[17] treatment

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[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited February 23, 2021).
[8] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Chapter 93-39, s. 2, Laws of Fla., codifying current ch. 397, F.S.
[13] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[14] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited February 23, 2021).
[15] *Id*.
[16] *See* chs. 394 and 397, F.S.
[17] Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.

services[18] and recovery support[19] for individuals affected by substance misuse, abuse or dependence.[20]

Peer Specialists

Research has shown that social support provided by peers is beneficial to those in recovery from a SUD or mental illness.[21] Section 397.311, F.S., defines a peer specialist as "a person who has been in recovery from a SUD or mental illness for at least 2 years who uses his or her personal experience to provide services in behavioral health settings to support others in their recovery, or a person who has at least 2 years of experience as a family member or caregiver of an individual who has a SUD or mental illness. The term does not include a qualified professional or a person otherwise certified under ch. 394 or ch. 397."[22]

There are four primary types of social support provided by peers:

- Emotional: where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. (i.e., peer mentoring or peer-led support groups).
- Informational: where a peer shares knowledge and information to provide life or vocational skills training. (i.e., parenting classes, job readiness training, or wellness seminars).
- Instrumental: where a peer provides concrete assistance to help others accomplish tasks. (i.e., child care, transportation, and help accessing health and human services).
- Affiliational: where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).[23]

In Florida, DCF and Medicaid both allow reimbursement for peer support services, but only if provided by certified peer specialists.[24]

An individual seeking to become a certified peer specialist either must have been in recovery from a SUD or mental illness for at least two years, or must have at least two years of experience as a family member or caregiver of an individual suffering from a substance use disorder or mental illness.[25] The DCF must approve one or more third-party credentialing entities for the

[18] Treatment services include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.
[19] Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.
[20] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited February 21, 2021).
[21] Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, available at https://store.samhsa.gov/system/files/sma09-4454.pdf (last visited February 23, 2021).
[22] Section 397.311(30), F.S.
[23] The DCF, *Florida Peer Services Handbook* at p. 4-5, 2016, available at https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf (last visited February 23, 2021).
[24] The DCF, *Agency Analysis for 2019 HB 369*, p. 2 February 8, 2019 (on file with the Senate Children, Families, and Elder Affairs Committee staff). Florida's Medicaid program currently covers peer recovery services; the DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.
[25] Section 397.417(1), F.S.

purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification.[26] To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.[27] All individuals providing DCF-funded recovery support services as a peer specialist must be certified, however an individual who is not currently certified may work as a peer specialist for a maximum of one year if they are working toward certification and are supervised by a qualified professional or by a certified peer specialist with at least three years of full-time experience as a peer specialist at a licensed behavioral health organization.[28]

The Florida Certification Board (FCB) is currently the only credentialing entity approved by the DCF for certifying peer specialists in the state.[29] The FCB credentials Certified Recovery Peer Specialist (CRPS), which assist in providing client directed care by helping individuals develop skills, and relationships that will allow them to achieve and maintain recovery from SUDs and mental illness.[30] CRPS applicants must attest to having been in recovery for a minimum of two years.[31] The CRPS must also have demonstrated competency through training and experience in the performance domains of: Recovery Support, Advocacy, Mentoring and Professional Responsibilities.[32] As of June 2020, 630 individuals maintain active CRPS certifications statewide.[33]

Individuals seeking certification must adhere to the CRPS credentialing standards and requirements, complete a background screening, and have completed all court-ordered sanctions related to any prior crimes committed for at least three years.[34] Prospective CRPS must also successfully complete training and a competency exam demonstrating proficiency in certain educational areas.[35]

Background Screening

Substance Use Disorder and Criminal History

Certain individuals receiving substance abuse treatment may have a criminal or violent history: about 54 percent of state prisoners and 61 percent of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.[36] Additionally, individuals who use illicit drugs

[26] Section 397.417(2), F.S.
[27] *Id*.
[28] Section 397.417(3), F.S.
[29] The DCF, *Agency Analysis for SB 130*, p. 2, December 10, 2020 (on file with the Senate Children, Families, and Elder Affairs Committee staff) (hereinafter cited as, "The DCF Analysis").
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at p. 1, June 2017, available at https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf (last visited February 23, 2021).

are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.[37] As a result, individuals who have recovered from a SUD or mental illness often have a criminal history that may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[38] and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[39]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[40] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.[41]

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.[42] Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.[43] For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[44] For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[45]

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[46]

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[37] National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* at p. 12, available at https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited February 23, 2021).
[38] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at https://www.nsopw.gov/ (last visited February 23, 2021).
[39] Section 435.04, F.S.
[40] Section 435.05(1)(a), F.S.
[41] Sections 435.03(1) and 435.04(1)(a), F.S.
[42] Section 435.05(1)(b)-(c), F.S.
[43] *Id*.
[44] Section 435.05(1)(b), F.S.
[45] Section 435.05(1)(c), F.S.
[46] Section 435.05(1)(d), F.S.

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.

- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.[47]

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, the DCF) to exempt applicants from disqualification under certain circumstances.[48]

[47] Section 435.04(2), F.S.
[48] *See* Section 435.07(1), F.S.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[49] career offender,[50] or sexual offender (unless not required to register)[51] cannot ever be exempted from disqualification.[52]

Additionally, individuals (including peer specialists) employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain crimes may be exempted from disqualification from employment, without applying the 3-year waiting period.[53] These crimes include certain offenses related to:

- Prostitution;
- Unarmed burglary of a structure;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.[54]

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.[55]

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[56] Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[57] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.[58] This evidence must create a firm belief and conviction of the truth of the facts presented and,

[49] Section 775.261, F.S.
[50] Section 775.261, F.S.
[51] Section 943.0435, F.S.
[52] Section 435.07(4)(b), F.S.
[53] Section 435.07(2), F.S.
[54] *Id*.
[55] Section 397.4073(1)(f), F.S.
[56] Section 435.07(3)(a), F.S.
[57] The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf (last visited February 23, 2021) (hereinafter, "The DCF Operating Procedure").
[58] *Id*.

considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.[59] Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.[60]

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.[61] These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[62]

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor and, after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted.[63] The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency. The criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.[64]

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.[65] After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.[66]

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.[67] However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address

[59] *Id*.
[60] *Id*. at 3-4.
[61] *Id*. at 5.
[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] *Id*.
[66] *Id*. at 5.
[67] *Id*. at 6.

and a separate letter of denial is sent by regular mail to the facility or employer.[68] If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.[69] It must also inform the denied applicant of the availability of an administrative review[70] pursuant to ch. 120, F.S.[71]

Individuals Requiring Background Screening Under Ch. 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires peer specialists who have direct contact[72] with individuals receiving services must undergo a level 2 background screening as provided under s. 408.809 and ch. 435.[73] Applicant peer specialists are required to pay the costs associated with such screenings.[74] Similarly, all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services must also undergo level 2 background screening.

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. The DCF may grant exemptions from disqualification for an individual seeking certification as a peer specialist if at least three years have passed since the individual has completed, or been lawfully released from, any confinement, supervision, or nonmonetary condition imposed by a court for the individual's most recent disqualifying offense.[75] Similar to the conditional employment granted to other select applicants in s. 397.4073, certified peer specialists may work with adults with SUD for up to 90 days after being notified of his or her disqualification or until the DCF makes a final determination regarding the request for an exemption from disqualification if three years or more have elapsed since the most recent disqualifying offense, whichever is earlier.[76]

III. Effect of Proposed Changes:

Coordinated System of Care

The bill amends s. 394.4573, F.S., relating to coordinated systems of care, to add the use of peer specialists to assist in an individual's recovery from a substance use disorder or mental illness to the list of essential elements of a coordinated system of behavioral health care.

[68] *Id*.
[69] *Id*.
[70] All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.
[71] The DCF Operating Procedure at 6.
[72] Direct contact is not defined in ch. 397, F.S.
[73] Section 397.4073(a)3., F.S.
[74] Section 408.809(5), F.S.
[75] Section 397.4073(4)(b)1.a., F.S.
[76] Section 397.4073(1)(g), F.S.

Legislative Findings and Intent

The bill provides legislative findings and intent, as follows:

- The Legislature finds that the ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.
- The Legislature finds that the state is experiencing an increase in opioid addictions, many of which prove fatal.
- The Legislature finds that peer specialists provide effective support services because they share common life experiences with the persons they assist.
- The Legislature finds that peer specialists promote a sense of community among those in recovery.
- The Legislature finds that research has shown that peer support facilitates recovery and reduces health care costs.
- The Legislature finds that persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.
- It is the intent of the Legislature that the use of peer specialists be expanded as a cost-effective means of providing services.
- It is the intent of the Legislature to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

Criteria for Becoming a Certified Peer Specialist

The bill codifies a number of criteria currently used by the Florida Certification Board (FCB) in the process of certifying peer specialists. Specifically, the bill requires that persons seeking certification as peer specialists:

- Be in recovery from a substance use disorder (SUD) or mental illness for the past two years, or be a family member or caregiver of an individual with a history of SUD or mental illness;
- Pass a competency exam developed under the bill by the Department of Children and Families (DCF); and
- Undergo background screening as provided under the bill.

Duties of the Department of Children and Families (DCF)

Currently, the FCB provides training and administers a competency exam for peer specialists seeking certification. Under the bill, the DCF is made statutorily responsible for:

- Creating a training program for peer specialists, giving preference to trainers who are certified peer specialists. The training program must coincide with a competency exam and be based on current practice standards; and
- Mandating that all individuals providing recovery support services become certified.

Individuals may practice as a peer specialist prior to becoming certified for up to one year if the individual is actively working toward certification and is supervised by a qualified professional[77]

[77] Section 397.311(35) defines "qualified professional" to mean "a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse licensed

or a certified peer specialist with at least two years of full-time experience as a peer specialist at a licensed behavioral health organization.

Background Screening

The bill specifies revised background screening requirements, requiring applicants to submit a full set of fingerprints to the DCF, or to a vendor, entity, or agency[78] that has entered into an agreement with the Florida Department of Law Enforcement (FDLE). Fingerprints must then be forwarded to the FDLE for state processing and retention, and to the FBI for national processing and retention. This will enable the FDLE to conduct ongoing, fingerprint-based, state and national background checks on certified peer specialists. The bill mandates any arrest record discovered be reported to the DCF. The bill requires the DCF to screen results in order to ensure an applicant meets the requirements of certification, and it provides that the applicant peer specialist is to pay all fees charged in connection with state and federal fingerprint processing and retention.[79]

The bill authorizes the DCF or the Agency for Health Care Administration (the AHCA) to contract with vendors for electronic fingerprinting, provided that such contracts ensure the integrity and security of all personal identifying information obtained. Vendors who submit fingerprints on behalf of employees must:

- Meet the requirements of s. 943.053, F.S.;[80]
- Be capable of communicating electronically with the state agency accepting screening results from the FDLE; and
- Be capable of providing the applicant's:
  - Full first name, middle initial, and last name;
  - Social security number or individual taxpayer identification number;
  - Date of birth;
  - Mailing address;
  - Sex; and
  - Race.

The bill provides that a background screening of a peer specialist must ensure that a prospective peer specialist has not been arrested for and awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony within the past three

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under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree." A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

[78] Section 943.053(13), F.S., provides criteria which must be followed in order for the FDLE to accept fingerprint submissions from private vendors, entities, or agencies.

[79] This cost is already borne by the applicant under current law requiring level 2 background screening for certified peer specialists. *See* ss. 397.4073(1)(a)3. and 408.809(5), F.S.

[80] Section 943.053, F.S., provides, among other things, standards for vendors meant to ensure that all persons having direct or indirect responsibility for verifying identification, taking fingerprints, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

years. The bill also requires that background screening ensure the applicant has not, at any time, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, the following laws or similar laws of other jurisdictions:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.
- Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.
- Any offense that constitutes domestic violence as defined in s. 741.28, F.S.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
- Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 794.08, relating to female genital mutilation.
- Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary, if the offense was a felony of the first degree.
- Section 810.14, relating to voyeurism, if the offense was a felony.
- Section 810.145, relating to video voyeurism, if the offense was a felony.

- Section 812.13, relating to robbery.
- Section 812.131, relating to robbery by sudden snatching.
- Section 812.133, relating to carjacking.
- Section 812.135, relating to home-invasion robbery.
- Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.
- Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.
- Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.
- Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.
- Chapter 847, relating to obscenity.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
- Section 895.03, relating to racketeering and collection of unlawful debts.
- Section 896.101, relating to the Florida Money Laundering Act.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

- Section 944.47, relating to introduction of contraband into a correctional institution.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to introduction of contraband into a detention facility.

The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:
- Misdemeanor assault, or battery (Ch. 784, F.S.).
- Prostitution (Ch. 796, F.S.), with the exception of those offenses listed in s. 796.07, F.S., which have not been expunged.
- Lower level burglary offenses (s. 810.02, F.S.).
- Lower level theft and robbery offenses (Ch. 812, F.S.).
- Lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.).
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.).
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

The bill allows individuals who wish to become peer specialists, but have a disqualifying offense in their background, to request an exemption from disqualification pursuant to s. 435.07, F.S., from the DCF or the AHCA, as applicable.

The bill also allows service provider personnel, including peer specialists, to work with adults with mental health disorders (in addition to the current allowance to work with adults suffering from SUDs or co-occurring disorders) while an exemption request is pending, and extends the time limit for such work from 90 days to 180 days.

The bill grandfathers in all peer specialists certified as of July 1, 2021, by stating they are recognized as having met the requirements of the bill.

Deleted Provisions of s. 397.417, F.S.

The bill eliminates and replaces all of the current provisions of s. 397.417, F.S. Specifically, the bill:
- Eliminates the requirement that a family member or caregiver of an individual with a SUD or mental illness have at least two years of experience in order to attain certification as a peer specialist;
- Requires the DCF to develop a peer specialist training program rather than a third-party credentialing entity;
- Allows the DCF the option of certifying peer specialists directly or approving third party credentialing entities to do so;
- Permits an individual with two years of full-time experience as a peer specialist to supervise an individual providing recovery support services and working toward certification (supervisory certified peer specialists currently must have at least three years of experience).

Effective Date

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 130 eliminates several disqualifying criminal offenses that often result in disqualification from certification eligibility, and as a result the DCF predicts that there may be additional revenues generated for certification providers from fees paid by a greater number of individuals seeking certification.[81]

C. Government Sector Impact:

The DCF estimates there may be a negative impact to state government due to a potential increase in background screenings being conducted, and a possible increase in the number of exemptions from disqualification requested, leading to a heavier workload for the department's Background Screening Office.[82] However, any additional workload will likely be absorbed within existing department resources.

VI. Technical Deficiencies:

None.

[81] The DCF Analysis at p. 6.
[82] *Id* at p. 5.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4573, 397.4073, and 397.417.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute clarifies that third party credentialing entities are prohibited from conducting background screenings of peer specialists.

CS by Children, Families, and Elder Affairs on March 2, 2021:
The committee substitute:

- Amends s. 397.4073, F.S., to allow peer specialists to work with adults with mental health disorders while a request for an exemption from a background check disqualification is pending.
- Expands the statutory limit for the number of days during which a peer specialist can work while a request for an exemption from a background check disqualification is pending to 180 days from the current 90 days.
- Requires the DCF to screen results of applicant peer specialist background checks in order to ensure each applicant meets the requirements of certification.
- Requires state agencies, rather than vendors under contract with the DCF or the AHCA, to accept screening results from the FDLE.
- Provides that vendors under contract with the DCF or the AHCA must be capable of communicating electronically with state agencies that receive screening results.
- Clarifies that offenses related to domestic violence, as defined in s. 741.28, F.S., are added to the list of disqualifying offenses for applicant peer specialists, rather than offenses delineated in s. 741.28, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Children, Families, and Elder Affairs; and Senators Rouson and Harrell

586-02353-21 2021130c1

A bill to be entitled

An act relating to mental health and substance use disorders; amending s. 394.4573, F.S.; providing that the use of peer specialists is an essential element of a coordinated system of care in recovery from a substance use disorder or mental illness; making a technical change; amending s. 397.4073, F.S.; revising background screening requirements for certain peer specialists; revising authorizations relating to work by applicants who have committed disqualifying offenses; amending s. 397.417, F.S.; providing legislative findings and intent; revising requirements for certification as a peer specialist; requiring the Department of Children and Families to develop a training program for peer specialists and to give preference to trainers who are certified peer specialists; requiring the training program to coincide with a competency exam and to be based on current practice standards; requiring the department to certify peer specialists, either directly or by approving a third-party credentialing entity; requiring that a person providing recovery support services be certified or be supervised by a licensed behavioral health care professional or a certified peer specialist; authorizing the department, a behavioral health managing entity, or the Medicaid program to reimburse a peer specialist service as a recovery service; encouraging Medicaid managed care plans to use peer specialists in providing recovery

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02353-21 2021130c1

services; requiring peer specialists and certain persons to meet the requirements of a background screening as a condition of employment and continued employment; requiring certain entities to forward fingerprints to specified entities; requiring the department to screen results to determine if the peer specialist meets the certification requirements; requiring that fees for state and federal fingerprint processing be borne by the peer specialist applying for employment; requiring that any arrest record identified through background screening be reported to the department; authorizing the department or certain other agencies to contract with certain vendors for fingerprinting; specifying requirements for vendors; specifying disqualifying offenses for a peer specialist who applies for certification; authorizing a person who does not meet background screening requirements to request an exemption from disqualification from the department or the agency; providing that a peer specialist certified as of the effective date of this act is deemed to satisfy the requirements of this act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (l) of subsection (2) and subsection (3) of section 394.4573, Florida Statutes, are amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements; measures of performance; system improvement

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grants; reports.—On or before December 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state. The assessment shall consider, at a minimum, the extent to which designated receiving systems function as no-wrong-door models, the availability of treatment and recovery services that use recovery-oriented and peer-involved approaches, the availability of less-restrictive services, and the use of evidence-informed practices. The assessment shall also consider the availability of and access to coordinated specialty care programs and identify any gaps in the availability of and access to such programs in the state. The department's assessment shall consider, at a minimum, the needs assessments conducted by the managing entities pursuant to s. 394.9082(5). Beginning in 2017, the department shall compile and include in the report all plans submitted by managing entities pursuant to s. 394.9082(8) and the department's evaluation of each plan.

(2) The essential elements of a coordinated system of care include:

(l) Recovery support, including, but not limited to, the use of peer specialists to assist in the individual's recovery from a substance use disorder or mental illness; support for competitive employment, educational attainment, independent living skills development, family support and education, wellness management, and self-care; and assistance in obtaining housing that meets the individual's needs. Such housing may include mental health residential treatment facilities, limited mental health assisted living facilities, adult family care

homes, and supportive housing. Housing provided using state funds must provide a safe and decent environment free from abuse and neglect.

(3) SYSTEM IMPROVEMENT GRANTS.—Subject to a specific appropriation by the Legislature, the department may award system improvement grants to managing entities based on a detailed plan to enhance services in accordance with the no-wrong-door model as defined in subsection (1) and to address specific needs identified in the assessment prepared by the department pursuant to this section. Such a grant must be awarded through a performance-based contract that links payments to the documented and measurable achievement of system improvements.

Section 2. Paragraphs (a) and (g) of subsection (1) of section 397.4073, Florida Statutes, are amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(a) For all individuals screened on or after July 1, 2021 2019, background checks shall apply as follows:

1. All owners, directors, chief financial officers, and clinical supervisors of service providers are subject to level 2 background screening as provided under s. 408.809 and chapter 435. Inmate substance abuse programs operated directly or under contract with the Department of Corrections are exempt from this requirement.

2. All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level

2 background screening as provided under s. 408.809 and chapter 435.

3. All peer specialists who have direct contact with individuals receiving services are subject to a background screening as provided in s. 397.417(5) ~~level 2 background screening as provided under s. 408.809 and chapter 435~~.

(g) If 5 years or more, or 3 years or more in the case of a certified peer specialist or an individual seeking certification as a peer specialist pursuant to s. 397.417, have elapsed since an applicant for an exemption from disqualification has completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by a court for the applicant's most recent disqualifying offense, the applicant may work with adults with substance use disorders, mental health disorders, or co-occurring disorders under the supervision of persons who meet all personnel requirements of this chapter for up to 180 ~~90~~ days after being notified of his or her disqualification or until the department makes a final determination regarding his or her request for an exemption from disqualification, whichever is earlier.

Section 3. Section 397.417, Florida Statutes, is amended to read:

397.417 Peer specialists.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. The ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.

2. The state is experiencing an increase in opioid

addictions, many of which prove fatal.

3. Peer specialists provide effective support services because they share common life experiences with the persons they assist.

4. Peer specialists promote a sense of community among those in recovery.

5. Research has shown that peer support facilitates recovery and reduces health care costs.

6. Persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.

(b) The Legislature intends to expand the use of peer specialists as a cost-effective means of providing services. The Legislature also intends to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

(2) QUALIFICATIONS.—

(a) A person may seek certification as a peer specialist if he or she has been in recovery from a substance use disorder or mental illness for the past 2 years or if he or she is a family member or caregiver of a person with a substance use disorder or mental illness.

(b) To obtain certification as a peer specialist, a person must complete the training program developed under subsection (3), achieve a passing score on the competency exam described in paragraph (3)(a), and meet the background screening requirements specified in subsection (5).

(3) DUTIES OF THE DEPARTMENT.—

(a) The department shall develop a training program for

persons seeking certification as peer specialists. The department must give preference to trainers who are certified peer specialists. The training program must coincide with a competency exam and be based on current practice standards.

(b) The department may certify peer specialists directly or may approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards applicants must meet to maintain certification.

(c) The department shall require that a person providing recovery support services be certified; however, an individual who is not certified may provide recovery support services as a peer specialist for up to 1 year if he or she is working toward certification and is supervised by a qualified professional or by a certified peer specialist who has at least 2 years of full-time experience as a peer specialist at a licensed behavioral health organization.

(4) PAYMENT.—Recovery support services may be reimbursed as a recovery service through the department, a behavioral health managing entity, or the Medicaid program. Medicaid managed care plans are encouraged to use peer specialists in providing recovery services.

(5) BACKGROUND SCREENING.—

(a) A peer specialist, or an individual who is working toward certification and providing recovery support services as provided in subsection (3), must have completed or have been lawfully released from confinement, supervision, or any

nonmonetary condition imposed by the court for any felony and must undergo a background screening as a condition of initial and continued employment. The applicant must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency that enters into an agreement with the Department of Law Enforcement as provided in s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The department shall screen the results to determine if a peer specialist meets certification requirements. The applicant is responsible for all fees charged in connection with state and federal fingerprint processing and retention. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein. Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained as provided in s. 435.12 and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained fingerprint arrest notification program, as provided in s. 943.05(4). Any arrest record identified must be reported to the department.

(b) The department or the Agency for Health Care Administration, as applicable, may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic

fingerprinting are qualified and will ensure the integrity and security of all personal identifying information.

(c) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and

2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide the applicant's full first name, middle initial, and last name; social security number or individual taxpayer identification number; date of birth; mailing address; sex; and race.

(d) The background screening conducted under this subsection must ensure that a peer specialist has not, during the previous 3 years, been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony.

(e) The background screening conducted under this subsection must ensure that a peer specialist has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following state laws or similar laws of another jurisdiction:

1. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

2. Section 394.4593, relating to sexual misconduct with

certain mental health patients and reporting of such sexual misconduct.

3. Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.

4. Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.

5. Any offense that constitutes domestic violence as defined in s. 741.28.

6. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.

7. Section 782.04, relating to murder.

8. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

9. Section 782.071, relating to vehicular homicide.

10. Section 782.09, relating to killing an unborn child by injury to the mother.

11. Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

12. Section 787.01, relating to kidnapping.

13. Section 787.02, relating to false imprisonment.

14. Section 787.025, relating to luring or enticing a child.

15. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

16. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

17. Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

18. Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.

19. Section 794.011, relating to sexual battery.

20. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

21. Section 794.05, relating to unlawful sexual activity with certain minors.

22. Section 794.08, relating to female genital mutilation.

23. Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.

24. Section 798.02, relating to lewd and lascivious behavior.

25. Chapter 800, relating to lewdness and indecent exposure.

26. Section 806.01, relating to arson.

27. Section 810.02, relating to burglary, if the offense was a felony of the first degree.

28. Section 810.14, relating to voyeurism, if the offense was a felony.

29. Section 810.145, relating to video voyeurism, if the

offense was a felony.

30. Section 812.13, relating to robbery.

31. Section 812.131, relating to robbery by sudden snatching.

32. Section 812.133, relating to carjacking.

33. Section 812.135, relating to home-invasion robbery.

34. Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.

35. Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.

36. Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.

37. Section 817.505, relating to patient brokering.

38. Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.

39. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.

40. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.

41. Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.

42. Section 826.04, relating to incest.

43. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

44. Section 827.04, relating to contributing to the

delinquency or dependency of a child.

45. Former s. 827.05, relating to negligent treatment of children.

46. Section 827.071, relating to sexual performance by a child.

47. Section 831.30, relating to fraud in obtaining medicinal drugs.

48. Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.

49. Section 843.01, relating to resisting arrest with violence.

50. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.

51. Section 843.12, relating to aiding in an escape.

52. Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.

53. Chapter 847, relating to obscenity.

54. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

55. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

56. Section 895.03, relating to racketeering and collection of unlawful debts.

57. Section 896.101, relating to the Florida Money Laundering Act.

58. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

59. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

60. Section 944.40, relating to escape.

61. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

62. Section 944.47, relating to introduction of contraband into a correctional institution.

63. Section 985.701, relating to sexual misconduct in juvenile justice programs.

64. Section 985.711, relating to introduction of contraband into a detention facility.

(6) EXEMPTION REQUESTS.—A person who wishes to become a peer specialist and is disqualified under subsection (5) may request an exemption from disqualification pursuant to s. 435.07 from the department or the Agency for Health Care Administration, as applicable.

(7) GRANDFATHER CLAUSE.—A peer specialist certified as of the effective date of this act is deemed to satisfy the requirements of this act

~~(1) An individual may seek certification as a peer specialist if he or she has been in recovery from a substance use disorder or mental illness for at least 2 years, or if he or she has at least 2 years of experience as a family member or caregiver of a person with a substance use disorder or mental illness~~.

~~(2) The department shall approve one or more third-party~~

~~credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification. To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.~~

~~(3) An individual providing department-funded recovery support services as a peer specialist shall be certified pursuant to subsection (2). An individual who is not certified may provide recovery support services as a peer specialist for up to 1 year if he or she is working toward certification and is supervised by a qualified professional or by a certified peer specialist who has at least 3 years of full-time experience as a peer specialist at a licensed behavioral health organization.~~

Section 4. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #130**, relating to Mental Health and Substance Use Disorders, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Darryl Ervin Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 130
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____
Street

_____
City *State* *Zip*

Phone 682-276-5245

Email claym@fha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 168
INTRODUCER:	Banking and Insurance Committee and Senator Hooper
SUBJECT:	Hurricane Loss Mitigation Program
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Favorable**
3.	McAuliffe	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 168 extends the Hurricane Loss Mitigation Program within Division of Emergency Management until June 30, 2031. The Hurricane Loss Mitigation Program funds programs that improve the wind resistance of residences and public hurricane shelters. The program is funded through an annual appropriation of $10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The Hurricane Loss Mitigation Program is set to expire on June 30, 2021.

The bill takes effect upon becoming a law.

II. Present Situation:

In the years following Hurricane Andrew, the Legislature created a series of programs to stabilize the economy and insurance industry.[1] These programs include the creation of Citizens Property Insurance Corporation, a state-administered insurance for those unable to obtain a conventional homeowners insurance policy; the Florida Hurricane Catastrophe Fund, a reinsurance fund established to limit residential insurers' exposure after a storm; and mitigation funding, which eventually became the Hurricane Loss Mitigation Program.[2]

[1] Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2020 Annual Report* (January 1, 2021), https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited March 12, 2021).
[2] *Id*. *See also* The Florida Senate, Committee on Comprehensive Planning, Local, and Military Affairs, *Funding for the Hurricane Loss Mitigation Program*, Interim Project Report 2000-22 (September 1999),

Hurricane Loss Mitigation Program (HLMP)

In 1999, the Legislature created the HLMP within the Division of Emergency Management (DEM) to fund programs for improving the wind resistance of residences and mobile homes.[3] The HLMP is funded by an annual appropriation of $10 million from the Florida Hurricane Catastrophe Fund.[4] Specifically, current law requires the funds to be used as follows:

- $3 million must be directed toward retrofitting existing facilities used as public hurricane shelters.[5]
- $7 million must be directed toward programs that improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code; and other efforts to prevent or reduce losses or reduce the cost of building after a disaster.[6]

Of the $7 million allocated to improve the wind resistance of residences and mobile homes, provide education regarding Florida Building Code cooperative programs, and reduce the cost of rebuilding after a disaster:

- 50 percent ($3.5 million) is directed to grant funding for governmental entities, nonprofit organizations, and qualified for-profit organizations to improve the resiliency of residential, community, and government structures within their communities (Hurricane Loss Mitigation Program Retrofit Grant).
- 40 percent ($2.8 million) must be directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program) to mitigate future losses for mobile homes and inspect and improve tie-downs for mobile homes. The program is administered by Tallahassee Community College (TCC).[7]
- 10 percent ($700,000) must be directed to the Florida International University (FIU) for hurricane research at the International Hurricane Research Center.[8]

On January 1 of each year, DEM submits an annual report and accounting of activities under the HLMP and an evaluation of the activities.[9] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation must review the report and make recommendations to the insurance industry as deemed appropriate.[10]

The HLMP expires on June 30, 2021.[11]

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https://www.flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2000/pdf/00-22ca.pdf (last visited March 13, 2021).

[3] Chapter 99-305, Laws of Fla.

[4] Section 215.559(1), F.S. *See* ch. 2020-111, s. 6., Specific Appropriations 2639 and 2446, Laws of Fla.

[5] Section 215.559(1)(b), F.S.

[6] Section 215.559(1)(a), F.S.

[7] Section 215.559(2), F.S.

[8] Section 215.559(3), F.S.

[9] Hurricane Loss Mitigation Reports reside on the DEM website: https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last accessed March 12, 2021).

[10] Section 215.559(6), F.S.

[11] Section 215.559(7), F.S.

Shelter Retrofit Program

Of the funds dedicated to the Shelter Retrofit Program, the DEM must prioritize the use of the funds for projects included in the annual Shelter Retrofit Report.[12] The DEM must similarly prioritize these funds to projects in regional planning council regions with shelter deficits and projects that maximize the use of state funds.[13]

In Fiscal Year 2019-2020, the DEM reports that 14 new shelter retrofit agreements were executed and 16 projects were completed. At the end of the fiscal year, 19 projects were active in communities across the state; of the total, nine projects were opened in previous fiscal years. The funds in the program that have not been expended in previous fiscal years are made available in following years for new projects.[14]

Hurricane Loss Mitigation Program Retrofit Grant

Governmental entities, nonprofit organizations, and qualified for-profit organizations can submit a proposal for the HLMP Retrofit Grant. Each submitted proposal is reviewed through a cost-benefit analysis to ensure that the recommended mitigation retrofits remain cost effective. A review panel selects eligible applicants based on priority, need, benefit, and alignment with local mitigation strategy projects.[15]

In Fiscal Year 2019-2020, the DEM reports that 16 new wind mitigation retrofits to homes were awarded and 7 grants were awarded that involved other mitigation strategies, such as stormwater drainage, flood mitigation, and public wind retrofit activities. Due to projects being halted and supply chain bottlenecks for construction equipment and materials because of COVID-19 impacts, the projects were granted an extension for completion. Typically projects must be complete at the end of the fiscal year; however, the 2019-2020 fiscal year projects were granted an extension through December 31, 2020. Similar to the Shelter Retrofit Grant, funds in the program that have not been expended in previous fiscal years are made available in following years for new projects.[16]

Mobile Home Tie-Down Program

The purpose of the Mobile Home Tie-Down Program is to mitigate future losses and inspect and improve tie-downs for mobile homes built before 1999 to meet the current standards.[17] Mitigation under the program includes addressing problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions, such as porches or carports; tie-down systems; and any additional issues deemed appropriate by TCC, the Federation of Manufactured Home Owners of Florida, the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles (DHSMV).[18]

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[12] The Shelter Retrofit Report is prepared annually and submitted to the Governor and the Legislature. *See* s. 252.385, F.S.
[13] Section 215.559(1)(b), F.S.
[14] *Supra* at note 1.
[15] *Id*.
[16] *Id*.
[17] The standards are established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.
[18] Section 215.559(2)(b)1., F.S.

The Mobile Home Tie-Down Program is funded by a direct $2.8 million allocation under the HLMP to TCC, which serves as program administrator.[19] The Mobile Home Tie-Down Program does not, and mobile homes are ineligible to, receive federal mitigation funds under Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Grant, Building Resilient Infrastructure and Communities, or Hazard Mitigation Grant programs.

Since 1999, the Mobile Home Tie-Down Program has served over 40,000 mobile homes in over 278 mobile home communities.[20] Activities during the 2019-2020 fiscal year included 1,702 completed mobile homes in 14 mobile home communities.[21] COVID-19 travel, inspection, and community access restrictions prevented the Mobile Home Tie-Down Program from expensing 100% of the allocated funds.[22]

Third-party studies of the Mobile Home Tie-Down Program report improved wind resistance following participation in the program. In 2005, a FEMA Mitigation Branch Technical Services Division study of impacted mobile home communities during the 2004 hurricane season reported 4 percent to 5 percent of inspected mobile homes with retrofitted tie-downs were substantially damaged.[23] The same study reported that the primary cause of damage to mobile homes was caused by roof failure associated with the destruction of carports and sunrooms not constructed to code.[24]

As of December 2020, the Mobile Home Tie-Down Program reported a current waiting list of seven years.[25] TCC is not accepting new applications until the waiting list shortens to three years.[26]

Hurricane Research

FIU conducts research to support hurricane loss reduction devices and techniques as identified by the International Hurricane Research Center. The center's mission is to reduce hurricane damage and loss of life through more effective mitigation. The center has four laboratories focused on different aspects of hurricane impact: Laboratory for Coastal Research; Laboratory for Social and Behavioral Research; Laboratory for Insurance, Financial, and Economic Research; and Laboratory for Wind Engineering Research.[27]

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[19] Section 215.559(2)(a), F.S.
[20] Florida Housing Coalition, *Hurricane Member Update Webinar* (August 28, 2020), https://www.flhousing.org/wp-content/uploads/2020/09/FHC-Hurricane-Member-Update-8-28-20.pdf (last visited March 12, 2021).
[21] Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2020 Annual Report* (January 1, 2021), https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited March 12, 2021).
[22] *Id*.
[23] Federal Emergency Management Agency, Mitigation Section, Technical Services Branch, *Third Party Analysis of Manufactured Home Retrofit Tie Downs* (June 2005) at p.3. On file with the Senate Committee on Banking and Insurance.
[24] *Id*. at p. 5.
[25] Telephone conversation between Senate Banking and Insurance Committee staff and Amy Bradbury, Director of Financial Planning and Sponsored Programs, Tallahassee Community College, in Tallahassee, Fla. (December 14, 2020).
[26] Tallahassee Community College, *Mobile Home Tie-Down Program*, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited March 12, 2021).
[27] Florida International University, International Hurricane Research Center, *About* and *History*, http://www.ihrc.fiu.edu/about/ (last visited March 13, 2021).

For Fiscal Year 2019-2020, the International Hurricane Research Center is researching several topics, including experimental and analytical assessments of effects of leakage around residential building openings; investigation to codify wind pressure distribution of elevated homes; continued development of an integrated storm tide and freshwater flooding model; and education and outreach programs to convey the benefits of various hurricane loss mitigation devices and techniques. Due to the impacts of COVID-19, the center was granted an extension to finish its research. Final reports will be delivered to the state in April 2021.[28]

Florida Hurricane Catastrophe Fund (Cat Fund)

The Cat Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[29] The Cat Fund is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). [30] The fund provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the Cat Fund.[31] Because of the low cost of coverage from the Cat fund, the fund acts to lower residential property insurance premiums for consumers.

When the moneys in the Cat Fund are or will be insufficient to cover losses, the fund is authorized to issue revenue bonds funded by emergency assessments on all lines of insurance, except medical malpractice and workers compensation.[32] Through private letter ruling the U.S. Internal Revenue Service authorized the Cat Fund to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, and in 2008 another private letter ruling held that the prior exemption could continue to be relied upon on a permanent basis.[33]

The private letter ruling "includes a requirement that a certain amount of [Cat Fund] funds be devoted to hurricane mitigation purposes."[34] "The allocation of a portion of [Cat Fund] funds to the broad public purpose of hurricane loss mitigation was one of the factors that the US Internal Revenue Service relied on in determining the tax-exempt status of the [fund]."[35]

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[28] *Supra* note 1.
[29] Section 215.555(1)(f), F.S. *See also* ch. 93-409, Laws of Fla, relating to creation of the fund.
[30] Section 215.555(2)(e), F.S.
[31] Section 215.555(4)(a), F.S.
[32] Section 215.555(6), F.S.
[33] State Board of Administration, Florida Hurricane Catastrophe Fund, *Fiscal Year 2014-2015 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20160330_FHCF_AnnualRpt2014_15.pdf?ver=2016-06-08-121801-380 (last visited March 13, 2021).
[34] *Id*.
[35] State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, *2019 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20200617_2019_FHCFAnnualReport.pdf?ver=2020-06-17-123729-280 (last visited March 13, 2021).

Section 215.555(7)(c), F.S., specifies that the appropriation is for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to:

- Support programs intended to improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Educate or inform the public as to means to reduce hurricane losses;
- Assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades; or
- Protect local infrastructure from potential damage from a hurricane.

Statute requires an annual appropriation of at least $10 million, but no more than 35 percent of yearly investment income. Annually $13.5 million is appropriated from the Cat Fund to DEM, including a recurring $3.5 million for the statewide emergency and mass notification system (Alert System) and a recurring $10 million for the HLMP as discussed above.

Obsolete Reference

Section 215.559(2)(b)3., F.S., contains an obsolete reference regarding competitive rates for the Manufactured Housing and Mobile home Mitigation and Enhancement Program. The reference is to a defunct rate standard that has not applied to mobile home insurance policies issued by Citizens Property Insurance Corporation since 2007.[36]

III. Effect of Proposed Changes:

Section 1 extends until June 30, 2031, the Hurricane Loss Mitigation Program (HLMP) within the Division of Emergency Management. Without the bill, the HLMP is set to expire on June 30, 2021.

The bill also removes an obsolete reference in s. 215.559(2)(b)3., F.S.

Section 2 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[36] Chapter 2007-1, Laws of Fla.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate with respect to insurance premiums. A reduction in wind loss attributable to retrofitted tie-downs may be offset by wind loss attributable to carports and sunrooms not constructed to code, which FEMA has concluded as being the primary causes of damage to mobile homes from a wind event.

Nonprofit organizations, qualified for-profit organizations, and property owners benefit from the extension of the mitigation retrofit grant program, which provides for hazard mitigation retrofitting to residential and commercial properties.

C. Government Sector Impact:

The Legislature needs to ensure the continuation of appropriations of at least $10 million from the Cat Fund are made to hurricane mitigation programs as provided under s. 215.555(7)(c), F.S., to maintain the tax exempt status of the Cat Fund. The extension of the HLMP under the bill provides continued direction for use of these funds. Local housing authorities, local governments, TCC, and FIU benefit from the extension of the shelter retrofit program, the mitigation retrofit grant program, the Mobile Home Tie-Down Program, and the hurricane research at FIU.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.559 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 2, 2021:
The committee substitute removes a cross-reference to a defunct rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Hooper

597-01967-21 2021168c1

A bill to be entitled

An act relating to the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (7) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(2)

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01967-21 2021168c1

Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

(7) This section is repealed June 30, 2031 ~~2021~~.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

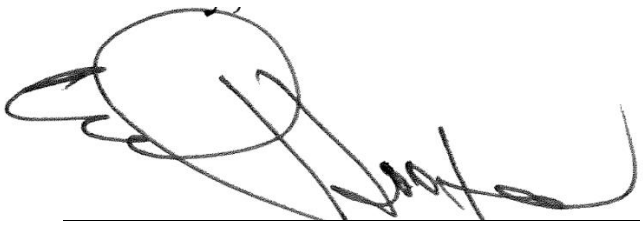
Subject: Committee Agenda Request

Date: March 11, 2021

I respectfully request that **Senate Bill # 168**, relating to Hurricane Loss Mitigation Program, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

April 19, 2021
Meeting Date

SB 168
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic Hurricane Loss Mitigation Program

Name Tonnette Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street
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Tallahassee FL 32301
City *State* *Zip*

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 184
INTRODUCER:	Transportation Committee and Senator Berman
SUBJECT:	Purple Alert
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Delia	Cox	CF	**Favorable**
3.	Dale	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 184 requires the Division of Emergency Management to identify and maintain an inventory of available digitally displayed automatic changeable facing signs capable of providing the immediate distribution of critical information to the public in times of declared emergency and regarding missing endangered persons.

It also establishes criteria and processes for issuing Purple Alerts to assist in finding missing adults with developmental disabilities, brain injuries, or other disabilities not related to substance abuse.

The bill provides the FDLE with budget authority of $199,901 ($92,790 nonrecurring) in the Operating Trust Fund and 2 FTE in order to accommodate increased workload and make technology improvements. See Section V. Fiscal Impact Statement for additional information.

The bill takes effect July 1, 2021, but the alert system is effective July 1, 2022.

II. Present Situation:

Florida Statutory Alerts

Section 937.021, F.S., requires law enforcement agencies (LEAs) in this state to adopt written policies that specify the procedures to be used to investigate reports of missing children and

missing adults. Section 937.022, F.S., creates the Missing Endangered Persons Information Clearinghouse (MEPIC) within the Florida Department of Law Enforcement (FDLE) "to serve as a central repository of information regarding missing endangered persons." Every state, county, or municipal LEA must submit information on missing endangered persons to the clearinghouse and the FDLE must collect and disseminate the information to assist in the location of missing endangered persons.[1]

A Missing Child Alert is intended to enable law enforcement to quickly disseminate information when a child is missing and believed to be in life-threatening danger, but there is no indication that the child has been abducted.[2] A Missing Child Alert may result in an AMBER Alert if investigation produces an indication that the child has been abducted.[3] A state Silver Alert is intended to aid law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties[4] and becomes lost while driving a vehicle.[5]

Generally, in each case, the local LEA with jurisdiction contacts the FDLE's MEPIC. The FDLE works with the local LEA to determine whether information will be broadcast on a regional or statewide basis and prepares information for public distribution through the Emergency Alert System, wireless emergency alerts, the Department of Transportation's (FDOT) 511 traveler information system[6] and dynamic message signs, lottery machines, and email, as appropriate.[7]

With respect to use of the FDOT's dynamic message signs, after contact from the FDLE, the appropriate FDOT Regional Transportation Management Center is ultimately responsible for displaying alert messages on those signs. If the alert message is:

- A Missing Child Alert or a Silver Alert, the message is displayed for a maximum of six hours and is re-activated if the FDLE requests it, but only in the specific area the law enforcement believes the child may be located.
- An AMBER Alert, the message is displayed until the child is recovered or for a maximum of 24 hours, again re-activated upon the FDLE's request only in the specific area law enforcement believes the child may be located.[8]

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[1] Section 937.022(3)(b), F.S.
[2] The Florida Department of Law Enforcement (the FDLE) Missing Endangered Persons Information Clearinghouse, *Florida's Missing Child Alert*, available at http://www.fdle.state.fl.us/mcicsearch/MCApage.asp (last visited February 10, 2021).
[3] The FDLE Missing Endangered Persons Information Clearinghouse, *AMBER Alerts*, available at http://www.fdle.state.fl.us/mcicsearch/Amber.asp (last visited February 10, 2021).
[4] The FDLE Missing Endangered Persons Information Clearinghouse, *Florida's Silver Alert Plan,* available at http://www.fdle.state.fl.us/mcicsearch/SilverAlerts.asp (last visited February 10, 2021).
[5] *See Florida Missing Persons and Blue Alert Plans*, The FDLE and The Florida Department of Transportation, p. 1. (On file in the Senate Committee on Transportation)(hereinafter cited as "Missing Persons and Blue Alert Plans"). *See also* FDLE, *Florida's Silver Alert Plan*, available at http://www.fdle.state.fl.us/Silver-Alert-Plan/Silver-Alert-Plan (last visited February 10, 2021).
[6] *See* s. 334.044(31) and s. 334.60, F.S. The 511 System is used only while dynamic message signs are displayed. *See also* Missing Persons and Blue Alert Plans, p. 4.
[7] Missing Persons and Blue Alert Plans, pp. 1-5.
[8] Missing Persons and Blue Alert Plans, pp. 4-5.

Section 937.021(5), F.S., provides immunity from civil liability for complying in good faith with a request to record, report, transmit, display, or release Missing Child, AMBER, and Silver Alert information.

Section 784.071, F.S., authorizes Blue Alerts and the FDLE will issue a Blue Alert if a law enforcement officer has been killed, suffered serious bodily injury, or been assaulted with a deadly weapon; or is missing while in the line of duty or under circumstances indicating concern for an officer's safety; and the suspect has fled the scene and poses an imminent threat to the public or to other law enforcement officers.

The FDLE, in conjunction with the Florida Highway Patrol, the FDOT, and the Department of Lottery, broadcasts information to the public through the Emergency Alert System on television and radio when information about an offender would help avert further harm or assist in apprehending a suspect in connection with killing or harming a law enforcement officer.[9] In such cases, dynamic message signs are also used to display Blue Alerts.[10] These alerts use the technologies employed for Amber Alerts.[11] At the request of a local LEA, the FDLE Intelligence Watch and Warning Regional Special Agency Supervisor works with the investigating agency to prepare information for public release, include suspect and/or vehicle information. The FDLE works with the FDOT's Regional Transportation Management Center, which is ultimately responsible for displaying Blue Alert messages on the dynamic message signs. Again, the alert is displayed for a maximum of six hours, with re-activation upon FDLE request in the specific area that law enforcement believes the person may be located.[12]

The FDOT observes the following orders of priority with respect to these alert messages on dynamic message signs:

- If there are multiple alerts activated during the same time: AMBER, Missing Child, Blue, and Silver.
- If there are multiple AMBER, Missing Child, or Blue Alerts activated during the same time, each one is displayed on every other dynamic message sign.[13]

Missing Endangered Persons

Section 937.0201(4), F.S., defines the term "missing endangered person" for purposes of missing person investigations to mean:

- A missing child;
- A missing adult younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by an LEA of being endangered or the victim of criminal activity; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan[14] of the FDLE.

[9] Missing Persons and Blue Alert Plans.
[10] Section 784.071(2)(a), F.S.
[11] FDLE, *Florida Blue Alert Notification System*, available at http://floridabluealert.com/ (last visited February 10, 2021).
[12] Missing Persons and Blue Alert Plans, pp. 4-5.
[13] *Id.* at p. 5.
[14] Both local (missing on foot) and state (missing in vehicle) Silver Alerts are currently used to locate missing persons suffering from an irreversible deterioration of intellectual faculties. *See* FDLE, *Silver Activation Steps*, available at

Alzheimer's Participants

Section 429.918, F.S., relating to licensure designation as a specialized Alzheimer's services adult day care center, requires a number of requirements for such day centers to operate, including, among other requirements that:

- Employees hired to provide direct care to ADRD participants[15] must receive and review an orientation plan that includes information on the Silver Alert Plan; and
- ADRD participants (or caregivers) must be provided a copy of the participant's plan of care and information regarding resources to assist in ensuring the safety and security of a participant, which must include (among other items) information on the Silver Alert Plan.

Civil Immunity

Florida law provides civil immunity to certain individuals in specified circumstances who, acting in good faith, attempt to render aid to others.[16] Section 937.021, F.S., currently provides civil immunity for specified entities requested by law enforcement to record, report, transmit, display, or release information pertaining to a missing person if such entity complied with the request in good faith.[17] These entities include:

- The FDLE, a state or local law enforcement agency, and agency personnel;
- A radio or television network, broadcaster, or other media representative; or
- A dealer of communications services as defined in s. 202.11, F.S.[18]

Entities who report, transmit, display, or release information pertaining to a missing person are presumed to have acted in good faith.[19] The presumption of good faith is not overcome if a technical or clerical error is made by an agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the missing person information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.[20]

III. Effect of Proposed Changes:

The bill establishes criteria and processes for Purple Alerts.

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http://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps (last visited February 11, 2021)(hereinafter cited as "Silver Activation Steps"). This site lists the criteria for both local and state Silver Alerts.

[15] Section 429.918, F.S., defines the term "ADRD participant" to mean a participant who has a documented diagnosis of Alzheimer's disease or a dementia-related disorder (ADRD) from a licensed physician, licensed physician assistant, or a licensed advanced practice registered nurse.

[16] For example, Section 768.13, F.S. (also known as Florida's Good Samaritan Act (GSA)) provides immunity from civil liability for persons acting in good faith who render emergency care and treatment to individuals in need of assistance. Under the GSA, immunity from civil liability is available to any person who gratuitously and in good faith renders emergency assistance without the objection of a victim, if the person acts as a reasonably prudent person would act under similar circumstances.

[17] Section 937.021(5)(a), F.S.

[18] Examples of a dealer of communications services include a cable or satellite television service provider, a telephone service provider, or a mobile communication service provider. s. 937.021, F.S.

[19] Section 937.021(5)(c), F.S.

[20] *Id.*

Section 1 amends s. 252.35, F.S., relating to duties of the Division of Emergency Management, to add a requirement that the division identify and maintain an inventory of available digitally displayed automatic changeable facing signs capable of providing the immediate distribution of critical information to the public in times of declared emergency and regarding missing endangered persons.

Section 2 amends s. 937.0201, F.S., relating to definitions for purposes of missing person investigations. The bill includes in the definition of "missing endangered person" a missing adult who meets the criteria for the FDLE's activation of the Purple Alert pursuant to s. 937.0205, F.S., created by the bill.

Section 3 creates s. 937.0205, entitled *Purple Alert.* The bill expresses the following Legislative findings:

- A standardized state system is necessary to aid in the search of certain missing adults (identified and discussed below).
- A coordinated local law enforcement and state agency response with prompt and widespread sharing of information will improve the chances of finding the person.

The bill also recites the Legislature's intent to establish the Purple Alert, implemented in a manner that, to the extent practicable, safeguards the privacy rights and related health diagnostic information of such missing adults.

The bill directs the FDLE, in cooperation with the FDOT, the Department of Highway Safety and Motor Vehicles (DHSMV), the Department of the Lottery, and local LEAs, to establish and implement the Purple Alert. At a minimum, the Purple Alert must:

- Be the only viable means by which the missing adult is likely to be returned to safety;
- Provide, to the greatest extent possible, for the protection of the privacy, dignity, and independence of the missing adult by including standards aimed at safeguarding these civil liberties by preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information;
- Provide that the broadcasting and dissemination of alerts and related information be limited to the geographic areas where the missing adult could reasonably be, considering his or her circumstances and physical and mental condition, the potential modes of transportation available to him or her or suspected to be involved, and the known or suspected circumstances of his or her disappearance; and
- Be activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance to indicate that activating the alert is likely to help locate the missing adult.

The bill authorizes (but does not require) a local LEA, under a Purple Alert, to broadcast to the media and to persons who subscribe to receive alert notifications information concerning a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or a development disability, as those terms are defined in s.

393.063, F.S.;[21] a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local LEA;
- Who cannot be returned to safety without law enforcement intervention; and,
- Who does not meet the criteria for activation of a local Silver Alert or the Silver Alert Plan of the FDLE.[22]

If a Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction must notify the media and subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located. The local law enforcement agency having jurisdiction may also request that the Purple Alert notification be broadcast on lottery terminals within the geographic regions where the missing adult may reasonably be, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets.

The local jurisdictional LEA is also authorized to request that a case be opened with the FDLE's MEPIC. To enhance local or regional efforts when the investigation indicates that an identifiable vehicle is involved, the MEPIC is required to coordinate with the FDOT and the DHSMV for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.

The bill requires the Purple Alert process to include procedures to monitor the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and other stakeholders concerning the alert. Lastly, this section of the bill authorizes the FDLE to adopt rules to implement and administer the new section of law.

Missing adults who meet the criteria for activation of a Purple Alert, their caregivers and families, as well as the general public may benefit from improved communication of emergency information through Purple Alerts. However, to receive Purple Alerts, individuals must be subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located, see the alerts on lottery terminals in gas stations, convenience stores, or supermarkets or on dynamic message signs along the State Highway System, or otherwise gain knowledge of a Purple Alert following notification of the media by the local jurisdictional LEA.

Section 4 amends s. 937.021, F.S., relating to missing child and missing adult reports, to include Purple Alerts in the existing provisions relating to immunity from civil liability for law enforcement agencies, broadcasters, and other entities acting in good faith when involved in issuing Missing Child Alerts, AMBER Alerts, and Silver Alerts.

[21] That section defines "intellectual disability" to mean significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term: (a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. (b) "Significantly sub-average general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

[22] *See* Silver Activation Steps. *See also* FDLE Missing Endangered Persons Information Clearinghouse, *Florida's Silver Alert Plan*, available at http://www.fdle.state.fl.us/mcicsearch/SilverAlerts.asp (last visited February 11, 2021).

Section 5 amends s. 937.022, F.S., relating to the MEPIC, to include Purple Alerts in this provision. This will limit the activation of the Purple Alerts to only allow the LEA having jurisdiction over a case to make a request to the MEPIC for activation of a Purple Alert if the criteria for issuance are met. This is the same limitation for the activation of Silver Alert Plan discussed above.

Section 6 provides $107,111 in recurring and $92,790 in nonrecurring budget authority from the Operating Trust Fund to the Department of Law Enforcement, and two full-time equivalent positions with associated salary rate of 55,853 for the purpose of accommodating increased workload and implementing required technology improvements.

Section 7 provides that except as otherwise expressly provided in the act and except for this section, which shall take effect July 1, 2021, the act shall take effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE):

The FDLE estimates that the bill's provision will result in an additional 146 alerts added to the alert system yearly or, on average, one Purple Alert every 2.5 days. To address this workload, the FDLE is requesting three Crime Intelligence Analyst I FTE positions totaling $165,735 ($155,262 recurring). Additionally, the FDLE indicates that the cost of necessary modifications to existing information technology will total $170,000 and take approximately 12 months to complete. The FDLE will be required to create policies and procedures on how to activate and cancel Purple Alerts but the department did not estimate the cost of such activities.[23]

The bill provides $107,111 in recurring and $92,790 in nonrecurring budget authority from the Operating Trust Fund to the Department of Law Enforcement, and two full-time equivalent positions with associated salary rate of 55,853 for the purpose of accommodating increased workload and implementing required technology improvements.

The Florida Department of Transportation (FDOT):

The fiscal impact to the FDOT relating to display of Purple Alerts on dynamic message signs is indeterminate, as the potential increase in volume of alerts cannot be determined.

The Florida Department of Highway Safety and Motor Vehicles (DHSMV):

The DHSMV notes the bill will result in a significant workload increase for the Florida Highway Patrol, especially the regional communications center ultimately assigned to coordinate Purple Alerts. At this time, the workload increase is expected to be absorbed within existing resources. However, the DHSMV states that it will monitor the workload increase to determine if additional staff may be necessary at a future time to address the workload.[24]

Local Law Enforcement Agencies:

Local jurisdictional LEAs will incur indeterminate expenses associated with notifying the media and subscribers as authorized under the bill, and with developing any necessary policies and training and establishing or enhancing necessary infrastructure and systems.

VI. Technical Deficiencies:

None.

[23] *See* the FDLE 2021 Legislative Bill Analysis for SB 184 on file with the Senate Committee on Transportation.
[24] *See* the DHSMV 2021 Legislative Bill Analysis for SB 184 on file with the Senate Committee on Transportation.

VII. Related Issues:

The FDLE noted that the language in the bill omitting an adult who has Alzheimer's disease or a dementia-related disorder from the alert may significantly complicate the required investigative and verification steps necessary for local law enforcement agencies to assess and confirm a potential alert subject's medical diagnoses. Similarly, the language may complicate details of training criteria and necessitate the FDLE to run through longer and multiple checklists with local agencies requesting an alert, especially if they are unsure of the subject's exact medical history. These complexities could lengthen the time it takes law enforcement to issue the alert, whatever the type. According to the FDLE, timely public notification is crucial for improving the chances of a successful, safe recovery and this language may have the unintended consequence of making both the existing and the new alert types less successful.[25]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 252.35, 937.0201, 937.021, and 937.022.

This bill creates section 937.0205 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Clarifies that an individual with Alzheimer's disease or a dementia-related disorder is not included under the Purple Alert as such individuals are included for alerts under the Silver Alert;
- Removes the Purple Alert training requirement for licensed specialized Alzheimer's services adult day care centers; and
- Provides the Department of Law Enforcement with two FTE, salary rate of 55,853, and $199,901 in budget authority in the Operating Trust Fund to implement the bill.

CS by Transportation on February 2, 2021:

- Removes the appropriation of $152,836 in recurring funds and $170,000 in nonrecurring funds from the General Revenue Fund, and the three full-time equivalent positions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[25] *See* the FDLE 2021 Legislative Bill Analysis for CS/CS/HB 79 (*Revised on April 7, 2021*) on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 117 - 252

and insert:

1. Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or a developmental disability, as those terms are defined in s. 393.063; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;

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2. Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;

3. Who cannot be returned to safety without law enforcement intervention; and

4. Who does not meet the criteria for activation of a local Silver Alert or the Silver Alert Plan of the Department of Law Enforcement.

(b) If a Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction must notify the media and subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located. The local law enforcement agency having jurisdiction may also request that the Purple Alert notification be broadcast on lottery terminals within the geographic regions where the missing adult may reasonably be, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets.

(c) Under the Purple Alert, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement’s Missing Endangered Persons Information Clearinghouse. To enhance local or regional efforts when the investigation indicates that an identifiable vehicle is involved, the clearinghouse must coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.

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(5) The Purple Alert process must include procedures to monitor the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and other stakeholders concerning the alert.

(6) The Department of Law Enforcement may adopt rules to implement and administer this section.

Section 4. Paragraphs (c), (d), and (e) of subsection (5) of section 937.021, Florida Statutes, are amended to read:

937.021 Missing child and missing adult reports.—

(5)

(c) Upon receiving a request to record, report, transmit, display, or release Silver Alert or Purple Alert information from the law enforcement agency having jurisdiction over the missing adult, the Department of Law Enforcement as the state Silver Alert and Purple Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert or Purple Alert information pertaining to the missing adult.

(d) The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Amber Alert, Missing Child Alert, missing child information, missing adult

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information, or Silver Alert or Purple Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.

(e) Neither this subsection nor any other ~~provision of~~ law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, missing child information, missing adult information, or Silver Alert or Purple Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

Section 5. Paragraph (b) of subsection (3) of section 937.022, Florida Statutes, is amended to read:

937.022 Missing Endangered Persons Information Clearinghouse.—

(3) The clearinghouse shall:

(b) Provide a centralized file for the exchange of information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency shall submit to the clearinghouse information concerning missing endangered persons.

2. Any person having knowledge may submit a missing endangered person report to the clearinghouse concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, subsequent to reporting such child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became missing, and subsequent to entry by the law enforcement

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agency of the child or person into the Florida Crime Information Center and the National Crime Information Center databases. The missing endangered person report shall be included in the clearinghouse database.

3. Only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report to the clearinghouse involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert or a Purple Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan or the Purple Alert.

Section 6. Effective July 1, 2021, for the 2021-2022 fiscal year, the sums of $107,111 in recurring funds and $92,790 in nonrecurring funds are appropriated from the Operating Trust Fund to the Department of Law Enforcement, and two full-time equivalent positions with associated salary rate of 55,853 are authorized, for the purpose of implementing this act.

Section 7. Except as otherwise expressly provided in this act and except for this section, which shall take effect July 1, 2021, this act shall take effect July 1, 2022.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 45 - 46

and insert:

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providing an appropriation; providing effective dates.

By the Committee on Transportation; and Senator Berman

596-01961-21 2021184c1

A bill to be entitled

An act relating to the Purple Alert; amending s. 252.35, F.S.; requiring the Division of Emergency Management to identify and maintain an inventory of certain digitally displayed automatic changeable facing signs; amending s. 937.0201, F.S.; redefining the term "missing endangered person"; creating s. 937.0205, F.S.; providing legislative findings and intent; requiring the Department of Law Enforcement, in cooperation with the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, to establish and implement the Purple Alert; specifying minimum requirements for the Purple Alert; authorizing local law enforcement agencies to broadcast information concerning certain missing adults; requiring the local law enforcement agency having jurisdiction to notify media and alert subscribers if a Purple Alert is determined to be necessary and appropriate; authorizing the local law enforcement agency having jurisdiction to request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse; requiring the clearinghouse to coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles in the activation of dynamic message signs on state highways and the immediate distribution of certain critical information under certain circumstances;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

596-01961-21 2021184c1

requiring the Purple Alert process to include certain procedures and an information and education strategy; authorizing the Department of Law Enforcement to adopt rules; amending s. 937.021, F.S.; providing that the Department of Law Enforcement, as the Purple Alert coordinator, and certain agencies, employees, individuals, and entities are immune from civil liability for damages when performing certain actions in good faith; providing that the presumption of good faith is not overcome under certain circumstances; providing construction; amending s. 937.022, F.S.; authorizing only the law enforcement agency having jurisdiction over a case to make a request to the clearinghouse for the activation of a Purple Alert involving a missing adult under certain circumstances; amending s. 429.918, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (z) is added to subsection (2) of section 252.35, Florida Statutes, to read:

252.35 Emergency management powers; Division of Emergency Management.—

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties, the division shall:

(z) Identify and maintain an inventory of available digitally displayed automatic changeable facing signs capable of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

providing the immediate distribution of critical information to the public in times of declared emergency and regarding missing endangered persons.

Section 2. Subsection (4) of section 937.0201, Florida Statutes, is amended to read:

937.0201 Definitions.—As used in this chapter, the term:

(4) "Missing endangered person" means any of the following:

(a) A missing child.~~;~~

(b) A missing adult younger than 26 years of age.~~;~~

(c) A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.~~; or~~

(d) A missing adult who meets the criteria for activation of the Silver Alert Plan of the Department of Law Enforcement.

(e) A missing adult who meets the criteria for activation of the Purple Alert of the Department of Law Enforcement pursuant to s. 937.0205.

Section 3. Section 937.0205, Florida Statutes, is created to read:

937.0205 Purple Alert.—

(1) The Legislature finds that a standardized state system is necessary to aid in the search for a missing adult identified in paragraph (4)(a). The Legislature also finds that a coordinated local law enforcement and state agency response with prompt and widespread sharing of information will improve the chances of finding the person.

(2) It is the intent of the Legislature to establish the Purple Alert, to be implemented in a manner that, to the extent practicable, safeguards the privacy rights and related health

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

and diagnostic information of such missing adults.

(3) The Department of Law Enforcement, in cooperation with the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, shall establish and implement the Purple Alert. At a minimum, the Purple Alert must:

(a) Be the only viable means by which the missing adult is likely to be returned to safety;

(b) Provide, to the greatest extent possible, for the protection of the privacy, dignity, and independence of the missing adult by including standards aimed at safeguarding these civil liberties by preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information;

(c) Limit the broadcasting and dissemination of alerts and related information to the geographic areas where the missing adult could reasonably be, considering his or her circumstances and physical and mental condition, the potential modes of transportation available to him or her or suspected to be involved, and the known or suspected circumstances of his or her disappearance; and

(d) Be activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance to indicate that activating the alert is likely to help locate the missing adult.

(4)(a) Under a Purple Alert, a local law enforcement agency may broadcast to the media and to persons who subscribe to receive alert notifications under this section information concerning a missing adult:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1. Who has a mental or cognitive disability; an intellectual disability or a developmental disability, as those terms are defined in s. 393.063; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;

2. Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;

3. Who cannot be returned to safety without law enforcement intervention; and

4. Who does not meet the criteria for activation of a local Silver Alert or the Silver Alert Plan of the Department of Law Enforcement.

(b) If a Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction must notify the media and subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located. The local law enforcement agency having jurisdiction may also request that the Purple Alert notification be broadcast on lottery terminals within the geographic regions where the missing adult may reasonably be, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets.

(c) Under the Purple Alert, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse. To enhance local or regional efforts when the investigation indicates that an identifiable vehicle is involved, the clearinghouse must

coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.

(5) The Purple Alert process must include procedures to monitor the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and other stakeholders concerning the alert.

(6) The Department of Law Enforcement may adopt rules to implement and administer this section.

Section 4. Paragraphs (c), (d), and (e) of subsection (5) of section 937.021, Florida Statutes, are amended to read:

937.021 Missing child and missing adult reports.—

(5)

(c) Upon receiving a request to record, report, transmit, display, or release Silver Alert or Purple Alert information from the law enforcement agency having jurisdiction over the missing adult, the Department of Law Enforcement as the state Silver Alert and Purple Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert or Purple Alert information pertaining to the missing adult.

(d) The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Amber Alert, Missing Child Alert, missing child information, missing adult information, or Silver Alert or Purple Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.

(e) Neither this subsection nor any other ~~provision of~~ law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, missing child information, missing adult information, or Silver Alert or Purple Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

Section 5. Paragraph (b) of subsection (3) of section 937.022, Florida Statutes, is amended to read:

937.022 Missing Endangered Persons Information Clearinghouse.—

(3) The clearinghouse shall:

(b) Provide a centralized file for the exchange of information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency shall submit to the clearinghouse information concerning missing endangered persons.

2. Any person having knowledge may submit a missing endangered person report to the clearinghouse concerning a child

or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, subsequent to reporting such child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became missing, and subsequent to entry by the law enforcement agency of the child or person into the Florida Crime Information Center and the National Crime Information Center databases. The missing endangered person report shall be included in the clearinghouse database.

3. Only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report to the clearinghouse involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert or a Purple Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan or the Purple Alert.

Section 6. Paragraph (d) of subsection (6) and subsection (9) of section 429.918, Florida Statutes, are amended to read:

429.918 Licensure designation as a specialized Alzheimer's services adult day care center.—

(6)

(d) Each employee hired on or after July 1, 2012, who provides direct care to ADRD participants, must receive and review an orientation plan that includes, at a minimum:

1. Procedures to locate an ADRD participant who has

wandered from the center. These procedures shall be reviewed regularly with all direct care staff.

2. Information on the Silver Alert program and the Purple Alert in this state.

3. Information regarding available products or programs used to identify ADRD participants or prevent them from wandering away from the center, their home, or other locations.

(9) An adult day care center having a license designated under this section must give to each person who enrolls as an ADRD participant in the center, or the caregiver, a copy of the ADRD participant's plan of care, as well as information regarding resources to assist in ensuring the safety and security of the ADRD participant, which must include, but need not be limited to, information pertaining to driving for those persons affected by dementia, available technology on wandering-prevention devices and identification devices, the Silver Alert program and the Purple Alert in this state, and dementia-specific safety interventions and strategies that can be used in the home setting.

Section 7. This act shall take effect July 1, 2022.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-14-21
Meeting Date

84
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Purple Heart

Name Barbara DeVane

Job Title

Address 125 E Brevard St
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 251-4280

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Alliance for Retired Americans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 260
INTRODUCER:	Appropriations Committee; and Senator Harrell and others
SUBJECT:	Services for Veterans and Their Families
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Favorable**
2.	Delia	Cox	CF	**Favorable**
3.	Gerbrandt	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 260 creates the Florida Veterans' Care Coordination Program (Program), to provide veterans and their families dedicated behavioral health care referral services, primarily for mental health and substance abuse. Through the Program, a veteran may call a separate veteran-dedicated support line to receive assistance and support from a fellow veteran who is trained to respond to the calls for assistance.

The bill authorizes the Florida Department of Veterans' Affairs (FDVA) to establish the Program. To provide services, the FDVA may contract with a nonprofit entity that has statewide phone capacity to serve veterans and is accredited by the Council on Accreditation and fully accredited by the Alliance of Information and Referral Services. The contracting entity must enter into agreements with Florida 211 Network participants to provide services to veterans.

The FDVA must compile data collected by the Florida 211 Network into a report for the Governor, President of the Senate, and Speaker of the House of Representatives by December 15, 2022.

Current federal funding for the program is set to expire September 30, 2021. Should the funding not be extended, annual recurring costs to operate the statewide program have been estimated at $4.5 million from General Revenue. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Veterans and Mental Health and/or Substance Abuse

More than 1.5 million veterans currently live in Florida, making the state's veteran population the third largest nationally.[1] Veterans face unique challenges, and some struggle with mental health and substance abuse.

Post-traumatic Stress Disorder (PTSD) is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event, including war or combat.[2]

The National Center for PTSD, U.S. Department of Veterans Affairs (VA), lists the percentage of veterans with PTSD by service era:

- Between 11 and 20 percent of veterans who served in Operations Iraqi Freedom and Enduring Freedom have PTSD in a given year.
- About 12 percent of veterans who served in the Gulf War have PTSD in a given year.
- About 15 percent of veterans of the Vietnam War were diagnosed with PTSD at the time of the most recent study in the late 1980's. However, it is estimated that about 30 percent of veterans of the Vietnam War have had PTSD in their lifetimes.[3]

A strong association exists between PTSD and substance use disorders (SUD) amongst veterans. Statistics show:

- More than two in 10 veterans with PTSD also have SUD;
- Almost one in three veterans seeking treatment for SUD also have PTSD;
- About one in 10 veterans returning from the wars in Iraq and Afghanistan seen at the VA have problems with alcohol or other drugs.[4]

Suicide rates for veterans continue to be a cause of national concern:

- More than 6,000 veterans committed suicide each year from 2008 to 2016.
- In 2016, the suicide rate was 1.5 times greater for veterans than for non-veteran adults, after adjusting for age and gender.[5]

From 2005 to 2016, the increase in suicide rate among veterans in Veterans Hospital Administration (VHA) care was lower than among veterans not in VHA care.[6]

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[1] Florida Department of Veterans' Affairs, *Our Veterans*, available at http://floridavets.org/our-veterans/ (last visited February 25, 2021).
[2] American Psychiatric Association, *What is Posttraumatic Stress Disorder?*, available at https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited February 25, 2021).
[3] National Center for PTSD, U.S. Dep't of Veterans Affairs, *How Common is PTSD in Veterans?*, available at https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited February 25, 2021).
[4] National Center for PTSD, U.S. Dep't of Veterans Affairs, *PTSD and Substance Abuse in Veterans*, available at https://www.ptsd.va.gov/understand/related/substance_abuse_vet.asp (last visited February 25, 2021).
[5] Office of Mental Health and Suicide Prevention, U.S. Dep't of Veterans Affairs, *VA National Suicide Data Report 2005-2016*, pg. 3, available at https://www.mentalhealth.va.gov/docs/data-sheets/OMHSP_National_Suicide_Data_Report_2005-2016_508.pdf (last visited February 25, 2021).
[6] *Id*.

Florida Alliance of Information and Referral Services (FLAIRS)

Each year, 16 million people in the United States call 2-1-1 for help with basic needs like food and shelter, and emergency needs, such as mental health, addiction, and suicide intervention.[7] The Florida Alliance of Information and Referral Services (FLAIRS) is the 211 collaborative organization for the state responsible for designing, studying, and implementing the Florida 211 Network.[8] The mission of the FLAIRS is to strengthen the health and human service information and referral provider network in the state through advocacy, coordination, and education.[9]

The Florida 211 Network, established in s. 408.918, F.S., operates as the single point of coordination for information and referral of health and human services.[10] As of February 20, 2017, 22 Florida 211 Network providers operated across the state.[11]

To participate in the Florida 211 Network, a 211 provider must be fully accredited by the National Alliance of Information and Referral Services or have received approval to operate, pending accreditation from its affiliate, the FLAIRS.[12]

The Council on Accreditation

The Council on Accreditation (COA) is an international accrediting entity that accredits private and public organizations and programs that provide human services.[13] The COA specifically accredits entities providing child welfare, behavioral health, and community-based social services.[14]

Pilot Program and Statewide Expansion

Pilot Program

In 2014, the Crisis Center of Tampa Bay launched a pilot program through its existing 211 Network to offer a separate dedicated phone line for state veterans in need of support, known as the Florida Veterans Support Line. The pilot program expanded existing 211 services, including

[7] *See* The Florida Alliance of Information and Referral Services (FLAIRS), *211 Counts.org*, available at http://www.flairs.org/211counts/ (last visited Jan. 14, 2021). For a breakdown of needs by center on the FLAIRS website, see *What are the Most Pressing Needs for Your Community?*, available at https://211counts.org/home/index (last visited February 25, 2021).
[8] Section 408.918(3), F.S.
[9] The Florida Alliance of Information and Referral Services (FLAIRS), *Mission*, available at http://www.flairs.org/mission/ (last visited February 25, 2021).
[10] Section 408.918(1), F.S.
[11] The Florida Alliance of Information and Referral Services (FLAIRS), *Florida 2-1-1 Network Map*, available at http://www.flairs.org/wp-content/uploads/sites/13/2017/03/FL-211-providers-and-coverage-areas-022717.pdf (last visited February 25, 2021).
[12] Section 408.918(2), F.S.; The full accreditation process requires a remote database review, consultation component, on-site review, and demonstration of a call handling component, as well as payment of a membership fee, more information is available at https://www.airs.org/i4a/pages/index.cfm?pageid=3286 (last visited February 25, 2021).
[13] Council on Accreditation, *Home*, available at http://coanet.org/home/ (last visited February 25, 2021).
[14] Council on Accreditation, *Frequently Asked Questions*, available at http://coanet.org/faq/ (last visited February 25, 2021).

crisis intervention and peer-to-peer care coordination, to veterans and their families in Hillsborough, Pasco, Pinellas, Polk, and Manatee counties.[15]

Under the Crisis Center's Peer-to-Peer Care Coordination model, callers to the support line talk to a fellow veteran who will provide emotional support and referral to VA and non-VA services, including for medical care, housing, counseling, legal, and employment assistance.[16]

History of Funding for the Pilot Program

Since the launch of the pilot program, funding has been provided as follows:

- 2014 - 2015
  The Legislature provided $150,000 in nonrecurring general revenue funds to the FDVA to contract with the Crisis Center of Tampa Bay to establish a pilot program to expand 2-1-1-services to veterans.[17] With the appropriation, in August 2014, the Crisis Center of Tampa Bay expanded its services to veterans and hired veterans to answer crisis calls. In November 2014, the Crisis Center launched the Florida Veterans Support Line.
- 2016 - 2021
  The Department of Children and Families (DCF) has continued to fund the Crisis Center of Tampa Bay's pilot program with an annual appropriation of approximately $150,000.[18]
- 2017 - 2018
  The Legislature provided $400,000 in nonrecurring general revenue funds to the FDVA to contract with the Crisis Center of Tampa Bay to fund local call centers statewide with the purpose of connecting veterans with resources available in their community.[19]
- 2018 - 2019
  The U.S. Department of Veteran Affairs (USDVA) agreed to partially fund the implementation of statewide peer-to-peer coordination and provided $1 million in funding for the statewide program.[20] To ensure full statewide implementation, the DCF provided $538,000 in federal funds provided through the State Opioid Response Grant (SOR Grant).[21]
- 2019 - 2020
  The USDVA provided $1 million in funding, matched in full with the DCF SOR Grant for total funding of $2 million.[22]

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[15] Specific Appropriation 595, ch. 2014-51, L.O.F., available at http://laws.flrules.org/2014/51 (last visited February 25, 2021).
[16] Crisis Center of Tampa Bay, *Florida Veterans Support Line, What we offer*, available at https://www.myflvet.com/about-1 (last visited February 25, 2021).
[17] Specific Appropriation 595, ch. 2014-51, L.O.F., available at http://laws.flrules.org/2014/51 (last visited February 25, 2021).
[18] Crisis Center of Tampa Bay, *Overview of Current Funding* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security). *See* Florida Accountability Contract Tracking System, *Agency Contract ID LH294*, available at https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=LH294 (last visited April 9, 2021).
[19] Specific Appropriation 575 of ch. 2017-70, L.O.F., available at http://laws.flrules.org/2017/70 (last visited February 25, 2021).
[20] Crisis Center of Tampa Bay, *Overview of Current Funding* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[21] *See* Florida Accountability Contract Tracking System, Agency Contract ID LD994, available at https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=LH294 (last visited April 9, 2021).
[22] *Id.*; Crisis Center of Tampa Bay, *Overview of the 1-844-MYFLVET Support Line* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security); Department of Veterans Affairs, 2021 Agency Legislative Bill

- 2020 - 2021
  The USDVA provided $1 million in funding, matched in full with the DCF SOR Grant for total funding of $2 million.[23]
- 2021 - 2022
  The Senate's Fiscal Year 2021-2022 proposed budget includes $1.1 million in funding through the DCF's Community Mental Health Block Grant for the Crisis Center of Tampa Bay's Veteran Support Line.[24]

Both of the federal sources of funding provided for the last three fiscal years are set to expire September 30, 2021, though may possibly be extended to September 2024, pending a funding allocation.[25]

Use of the Program by Veterans

Since the Crisis Center implemented the pilot program in 2014, veteran and veteran family participation has steadily increased.

Region Served	Fiscal Year	Veterans Served	Services Referred	Suicide Concerns	Peer-to-Peer Care Coordination - Crisis Center of Tampa Bay Only
5 Counties	2014-2015	1,135	925	179	626[26]
5 Counties	2015-2016	1,315	1,478	207	750[27]
5 Counties	2016-2017	3,420	3,641	538	768[28]
Statewide	2017-2018	28,962	49,932	396[29]	880[30]
Statewide	2018-2019	17,699	35,150	431	2,274[31]
Statewide	2019-2020	25,800	55,012	201	5,639[32]
Statewide	2020-2021	6,890	19,707	67	1,658[33]

Analysis, SB 260, p. 5. (Jan. 25, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security) (hereinafter cited as "FDVA Analysis").

[23] *Id*.

[24] Specific Appropriation 362 of SB 2500, First Engrossed (2021 Session).

[25] Crisis Center of Tampa Bay, *Florida Veterans Support Line, Current Funding* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

[26] Crisis Center of Tampa Bay, *Overview of the 1-844-MYFLVET Support Line* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

[27] *Id*.

[28] *Id*.

[29] This number is reflected for the Crisis Center of Tampa Bay only.

[30] Crisis Center of Tampa Bay, *Overview of the 1-844-MYFLVET Support Line* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

[31] Crisis Center of Tampa Bay, *Florida Veterans Support Line, Statewide Data, Fiscal Year 2019, Fiscal Year 2020, Fiscal Year 2021 - Q1* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

[32] *Id*.

[33] *Id*. The totals for the most recent fiscal year reflect the first quarter of the 2020-2021 fiscal year, October through December 2020.

III. Effect of Proposed Changes:

This bill creates the Florida Veterans' Care Coordination Program (Program) as a statewide program, to provide veterans and their families dedicated behavioral health care referral services, primarily for mental health and substance abuse. Through the Program, a veteran who calls a dedicated support line receives assistance and support from a trained fellow veteran.

The bill authorizes the Florida Department of Veterans' Affairs (FDVA) to establish the Program. To provide services, the FDVA may contract with a nonprofit entity that has statewide phone capacity to serve veterans and is accredited by the Council on Accreditation and fully accredited by the National Alliance of Information and Referral Services. The entity must enter into agreements with Florida 211 Network participants to provide services to veterans.

The bill models the Program after the pilot program established in 2014 by the Crisis Center of Tampa Bay and the FDVA in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.

Program Goals and Services

Program goals are to prevent suicide by a veteran and increase veteran participation in programs and services provided by the VA and community-based programs and services.

Florida 211 Network participants in the Program must provide an array of specific services, including all of the following:

- Telephonic peer support, crisis intervention, and information on referral resources.
- Treatment coordination, including coordination of follow-up care.
- Assessment of suicide risk.
- Immediate needs assessments, including safety planning and support.
- Promotion of the safety and wellness of veterans and their families, including continuous safety planning and support.
- Resource coordination, including data analysis, to facilitate acceptance, enrollment, and attendance of veterans and their families in programs and services provided by the VA and other available community-based programs and services.

The bill requires program teams to:

- Document all incoming calls and capture data needed to reach a greater number of veterans and their families;
- Track the number and nature of requests from veterans and family members;
- Follow up with callers to determine if they have pursued referrals and whether additional help is needed; and
- Implement communication strategies[34] to educate veterans and their families about programs and services provided by the VA and other community-based programs and services.

To educate others about the Program:

[34] Examples of communication strategies provided by the bill include media promotions, public service announcements, print and Internet articles, and community presentations.

- Florida 211 network participants must collect data on the program and establish and maintain a database of services available locally.
- Both the FDVA and its contractor must work with managing entities to educate service providers about the Florida Veterans Support Line and the Program.

Data Collection and Report

Florida 211 Network participants must provide all collected data to the FDVA, as directed by the FDVA. By December 15, 2022, the FDVA must then submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives.

The report must include:
- The total number of calls received by the Program;
- Demographic information on each caller, including military affiliation, veteran status, and whether they are receiving services provided by the VA or other available community-based programs and services;
- The nature of each call, including any concerns prompting the call and any services requested by the caller;
- The outcome of each call, including referrals for services and any organizations to which the caller was referred;
- Services received as a result of each call;
- Information regarding follow-up by the Program team, including the percentage of calls receiving follow-up and the outcome of such follow-up;
- Information regarding the Program's impact on each caller's quality of life and avoidance of negative outcomes; and
- Each caller's level of satisfaction with services received.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

CS/SB 260 authorizes the FDVA to establish the Veterans Care Coordination Program and provide statewide referral and care coordination services to veterans and their families through Florida's 211 Network. The program is currently funded by federal grants that are scheduled to expire September 30, 2021, unless the grants are extended.[35] According to the Crisis Center of Tampa Bay, the cost to implement the Florida Veterans Support Line program statewide is $4.5 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 394.9087 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute authorizes, rather than requires the Department of Veterans' Affairs to establish a Florida Veterans' Care Coordination Program. The amendment also makes stylistic changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[35] FDVA Analysis, p. 4.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 118

and insert:

(1) The Department of Veterans' Affairs may establish the Florida Veterans' Care Coordination Program. If the Department of Veterans' Affairs establishes the program, it may contract with a nonprofit entity that is accredited by the Council on Accreditation, is fully accredited by the National Alliance of Information and Referral Services, and has statewide phone

491526

capacity to serve veterans to enter into agreements with Florida 211 Network participants to provide veterans and their families in this state with dedicated behavioral health care referral services, especially mental health and substance abuse services. The Department of Veterans' Affairs shall model the program after the proof-of-concept pilot program established in 2014 by the Crisis Center of Tampa Bay and the Department of Veterans' Affairs in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.

(2) The goals of the program are to:

(a) Prevent suicides by veterans.

(b) Increase veterans' use of programs and services provided by the United States Department of Veterans Affairs.

(c) Increase the number of veterans who use other available community-based programs and services.

(3) The program must be available statewide. Program services must be provided by program teams operated by Florida 211 Network participants as authorized by s. 408.918. A Florida 211 Network participant may provide services in more than one geographic area under a single contract.

(4) The program teams shall provide referral and care coordination services to veterans and their families and expand the existing Florida 211 Network to include the optimal range of veterans' service organizations and programs. Florida 211 Network participants in the Florida Veterans' Care Coordination Program must include all of the following:

(a) Telephonic peer support, crisis intervention, and the communication of information on referral resources.

(b) Treatment coordination, including coordination of

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followup care.

(c) Suicide risk assessment.

(d) Promotion of the safety and wellness of veterans and their families, including continuous safety planning and support.

(e) Resource coordination, including data analysis, to facilitate acceptance, enrollment, and attendance of veterans and their families in programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(f) Immediate needs assessments, including safety planning and support.

(5) To enhance program services, program teams shall:

(a) Track the number of requests from callers who are veterans or members of a veteran's family.

(b) Follow up with callers who are veterans or members of a veteran's family to determine whether they have acted on the referrals or received the assistance needed and whether additional referral or advocacy is needed.

(c) Develop and implement communication strategies, such as media promotions, public service announcements, print and Internet articles, and community presentations, to inform veterans and their families about available programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(d) Document all calls and capture all necessary data to improve outreach to veterans and their families and report such data to the contracted entity.

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(6) Florida 211 Network participants in the Florida Veterans' Care Coordination Program shall maintain a database of veteran-specific services available in the communities served by the programs. The Department of Veterans' Affairs and its selected contractor shall work with managing entities as defined in s. 394.9082(2) to educate service providers about the Florida Veterans Support Line and the Florida Veterans' Care Coordination Program.

(7) Florida 211 Network participants shall collect data on the program and submit such data to the Department of Veterans' Affairs in the format prescribed by the Department of Veterans' Affairs. The Department of Veterans' Affairs shall use such data to prepare a report for submittal to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2022. The report must include all of the following:

(a) The number of calls received.

(b) Demographic information for each caller, including, but not limited to, the caller's military affiliation, the caller's veteran status, and whether the caller is receiving services provided by the United States Department of Veterans Affairs or other available community-based programs and services.

(c) The nature of each call, including, but not limited to, the concerns prompting the call and the services requested.

(d) The outcome of each call, including, but not limited to, the services for which referrals were made and the organizations to which the caller was referred.

(e) Services received as a result of each call.

(f) Information regarding followup by the program team,

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including, but not limited to, the percentage of calls receiving followup and the outcome of followup.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 3 - 16

and insert:

families; creating s. 394.9087, F.S.; authorizing the Department of Veterans' Affairs to establish the Florida Veterans' Care Coordination Program to provide veterans and their families with behavioral health care referral and care coordination services; authorizing the department to contract with a certain nonprofit entity to enter into agreements with Florida 211 Network participants to provide such services; providing program goals; providing for the statewide delivery of specified services by program teams; requiring Florida 211 Network participants to collect program implementation data and to submit such data to the department; requiring the department to submit a report to the Governor and Legislature by a

By Senator Harrell

25-00487-21 2021260__

A bill to be entitled

An act relating to services for veterans and their families; creating s. 394.9087, F.S.; requiring the Department of Veterans' Affairs to establish the Florida Veterans' Care Coordination Program to provide behavioral health care referral and care coordination services for veterans and their families; requiring the department to contract with a certain nonprofit entity to enter into agreements with Florida 211 Network participants to provide such services; providing program goals; providing for the statewide delivery of specified services by program teams; requiring Florida 211 Network participants to collect program implementation data and to submit such data to the department; requiring the department to submit a report to the Governor and the Legislature by a specified date; providing requirements for the report; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 394.9087, Florida Statutes, is created to read:

394.9087 Florida Veterans' Care Coordination Program.—

(1) The Department of Veterans' Affairs shall establish the Florida Veterans' Care Coordination Program. The Department of Veterans' Affairs shall contract with a nonprofit entity that is accredited by the Council on Accreditation, is fully accredited by the National Alliance of Information and Referral Services,

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25-00487-21 2021260__

and has statewide phone capacity to serve veterans to enter into agreements with Florida 211 Network participants to provide veterans and their families in this state with dedicated behavioral health care referral services, especially mental health and substance abuse services. The Department of Veterans' Affairs shall model the program after the proof-of-concept pilot program established in 2014 by the Crisis Center of Tampa Bay and the Department of Veterans' Affairs in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.

(2) The goals of the program are to:

(a) Prevent suicides by veterans.

(b) Increase veterans' use of programs and services provided by the United States Department of Veterans Affairs.

(c) Increase the number of veterans who use other available community-based programs and services.

(3) The program must be available statewide. Program services must be provided by program teams operated by Florida 211 Network participants as authorized by s. 408.918. A Florida 211 Network participant may provide services in more than one geographic area under a single contract.

(4) The program teams shall provide referral and care coordination services to veterans and their families and expand the existing Florida 211 Network to include the optimal range of veterans' service organizations and programs. Florida 211 Network participants in the Florida Veterans' Care Coordination Program must include all of the following:

(a) Telephonic peer support, crisis intervention, and the communication of information on referral resources.

(b) Treatment coordination, including coordination of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

followup care.

(c) Suicide risk assessment.

(d) Promotion of the safety and wellness of veterans and their families, including continuous safety planning and support.

(e) Resource coordination, including data analysis, to facilitate acceptance, enrollment, and attendance of veterans and their families in programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(f) Immediate needs assessments, including safety planning and support.

(5) To enhance program services, program teams shall:

(a) Track the number of requests from callers who are veterans or members of a veteran's family.

(b) Follow up with callers who are veterans or members of a veteran's family to determine whether they have acted on the referrals or received the assistance needed and whether additional referral or advocacy is needed.

(c) Develop and implement communication strategies, such as media promotions, public service announcements, print and Internet articles, and community presentations, to inform veterans and their families about available programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(d) Document all calls and capture all necessary data to improve outreach to veterans and their families and report such data to the contracted entity.

(6) Florida 211 Network participants in the Florida Veterans' Care Coordination Program shall maintain a database of veteran-specific services available in the communities served by the program. The Department of Veterans' Affairs and its selected contractor shall work with managing entities as defined in s. 394.9082(2)(e) to educate service providers about the Florida Veterans Support Line and the Florida Veterans' Care Coordination Program.

(7) Florida 211 Network participants shall collect data on the program and submit such data to the Department of Veterans' Affairs in the format prescribed by the Department of Veterans' Affairs. The Department of Veterans' Affairs shall use such data to prepare a report for submittal to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2022. The report must include all of the following:

(a) The number of calls received.

(b) Demographic information for each caller, including, but not limited to, the caller's military affiliation, the caller's veteran status, and whether the caller is receiving services provided by the United States Department of Veterans Affairs or other available community-based programs and services.

(c) The nature of each call, including, but not limited to, the concerns prompting the call and the services requested.

(d) The outcome of each call, including, but not limited to, the services for which referrals were made and the organizations to which the caller was referred.

(e) Services received as a result of each call.

(f) Information regarding followup by the program team,

including, but not limited to, the percentage of calls receiving followup and the outcome of such followup.

(g) Information regarding the program's impact on each caller's quality of life and on the avoidance of negative outcomes, including arrest and suicide.

(h) Each caller's level of satisfaction with program services.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 3, 2021

Senator Kelli Stargel
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 260 – Services for Veterans** be placed on the next available agenda for the Appropriations Committee Meeting. SB 260 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

260
Bill Number (if applicable)

Topic Services for Veterans and their Families

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

260
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Kaitlyn Bailey

Job Title

Address 113 E College Avenue
Street
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing United Way Suncoast

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

S-001 (10/14/14)

This form is part of the public record for this meeting.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 366 (441292)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Hutson and others
SUBJECT:	Educational Opportunities Leading to Employment
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 366 modifies Florida's statutes to provide support for students in work-based learning programs, modify assessment requirements for initial student eligibility in dual enrollment programs, and provide relevant mathematics pathways. Specifically, the bill:

- Specifies that students in a preapprenticeship program or courses with a work-based component are deemed to be employees of the state for workers' compensation purposes for medically necessary care only.
- Clarifies that eligibility for initial enrollment in dual enrollment courses requires a student to demonstrate a level of achievement of college-level communication and computation skills through an approved common placement test or alternative method, to be approved by the State Board of Education.
- Eases plan development and reporting requirements for the implementation of developmental education strategies by Florida College System (FCS) institutions for potential students entering dual enrollment courses.
- Requires a representative committee of State University System, district career centers, and FCS faculty to identify mathematics pathways aligned to programs, meta-majors, and careers.

The fiscal impact is discussed in section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Work-based Learning

Present Situation

Federal legislation defines work-based learning (WBL) as "sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction."[1] Learning set in the real-world context of work not only makes academic learning more accessible to many students but also increases their engagement in schooling. WBL can play a crucial role in improving outcomes for at-risk students by increasing their engagement in learning, whether in or out of school.[2]

WBL takes many forms, such as internships, job shadowing, service learning, or preapprenticeships, and is defined by activities and experiences that occur when a student or worker:[3]

- Goes to a workplace or works with an employer; and
- Does meaningful job tasks that develop his or her skills, knowledge, and readiness for work and support entry or advancement in a particular career field.

WBL is comprised of identified courses that involve OJT, which is an instructional method whereby students acquire knowledge and skills exclusively on-site with a business or industry partner instead of a traditional classroom setting. WBL may also be delivered through utilization of the cooperative method of instruction which is delivered through formal classroom instruction and on-the-job learning, on-site, with a business or industry partner.[4]

Recent research, policy literature, and federal legislation suggest that comprehensive WBL programs contain three key components: the alignment of classroom and workplace learning; application of academic, technical, and employability skills in a work setting; and support from classroom or workplace mentors.[5]

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[1] 20 U.S.C. s. 2302; Perkins V (The Strengthening Career and Technical Education for the 21st Century Act) and other federal legislation reference and support work-based learning, including in the Every Student Succeeds Act of 2015 (ESSA), and the Workforce Innovation and Opportunity Act of 2014 (WIOA).
[2] Michael E. Wonacott, *The Impact of Work-Based Learning on Students*, ERIC Digest (2002), *available at* https://files.eric.ed.gov/fulltext/ED472603.pdf, at 2.
[3] Southern Regional Education Board, *Work-Based Learning*, https://www.sreb.org/node/1923 (last visited Feb. 25, 2021).
[4] 20 U.S.C. s. 2302(10).
[5] United States Department of Education, *Work-Based Learning Toolkit*, https://cte.ed.gov/wbltoolkit/ (Interact with the "WBL Framework" section) (last visited Feb. 25, 2021).

In 2019-2020, there were 23,258 students enrolled in secondary on-the-job training, preapprenticeship, work experience, and other WBL courses.[6]

Workers' Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence.[7] In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.[8] For such injuries, an employer is responsible for providing medical treatment[9] and compensation in the event of employee disability[10] or death.[11] Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.[12]

State Risk Management Program

The Division of Risk Management (DRM)[13] located within the Department of Financial Services (DFS) is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund (SRMTF). The SRMTF provides coverage that protects state property and workforce members that are exposed to the risk of financial losses through damage, injuries, and alleged negligent or improper acts.[14]

Effect of Proposed Changes

The bill creates s. 446.54, F.S., to provide a definition of "work-based learning" to include "on-the-job training' and mean interactions with industry or community professionals in off-campus workplaces which foster in-depth, firsthand engagement with the tasks required in a given career field and which are aligned to curriculum and instruction. The bill encourages school districts to place students in paid work experiences for purposes of educational training and WBL and defines WBL as it relates to public K-12 education to mean sustained interactions with industry or community professionals in workplace settings, to the extent practicable, or simulated

[6] Email, Florida Department of Education (Mar. 1, 2021).
[7] *See* Jones v. Martin Elecs., Inc., 932 So. 2d 1100, 1108 (Fla. 2006).
[8] Section 440.09(1), F.S.
[9] Section 440.13, F.S.
[10] Section 440.15, F.S.
[11] Section 440.16, F.S.
[12] Division of Workers' Compensation, *Coverage Requirements,* https://www.myfloridacfo.com/division/wc/Employer/coverage.htm (last visited on Feb. 25, 2021).
[13] Section 20.121(2)(h), F.S.
[14] Florida Department of Economic Opportunity, Economic and Demographic Research, *Risk Management Trust Fund* (Dec. 18, 2019), *available at* http://edr.state.fl.us/Content/conferences/riskmanagement/riskmanagementexecsumm.pdf.

environments that foster in-depth, firsthand engagement with the tasks required in a given career field, that align with curriculum and instruction, and that are provided in partnership with an educational institution.

The bill provides that:

- An individual 18 years of age or younger who is enrolled in a preapprenticeship program, as defined in s. 446.021, F.S., which requires work-based learning and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.
- A student in grades 6 through 12 who is enrolled in a course identified in the Course Code Directory which incorporates a work-based learning component or an activity that is unpaid and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

The bill provides that work-based learning may be paid or unpaid and may be delivered in a stand-alone, work-based learning course that results in high school credit or may be a component of an existing course which may use the cooperative method of instruction. As it relates to postsecondary education, the bill defines cooperative method of instruction as an instructional methodology that provides students enrolled in career education programs an opportunity to extend their employment preparation beyond the classroom through participation in concurrent career education instruction through regularly scheduled on-the-job training experiences.

The designation of preapprenticeship and WBL program students as employees of the state for the purposes of workers' compensation medical claims may increase the financial liability of the state, but may encourage more employers, who otherwise would not participate due to concerns about assuming liability for a minor, to partner with school districts to sponsor such programs. The provisions in the bill may allow more students under 18 to participate in WBL opportunities.

Florida College System Institution Admissions

Present Situation

Admissions Requirements for FCS Institutions

Each FCS institution board of trustees is authorized to adopt rules governing admissions of students subject to requirements provided in law and rules of the SBE.[15]

Admissions counseling must be provided to all students entering college or career credit programs. Counseling must use tests to measure achievement of college-level communication and computation competencies by students entering college credit programs or tests to measure achievement of basic skills for students entering career education programs. Counseling includes providing developmental education options for students whose assessment results indicate that

[15] Section 1007.263, F.S.

they need to improve communication or computation skills that are essential to perform college-level work.[16]

Each FCS institution board of trustees is required to develop a plan to implement developmental education strategies through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction. Each plan must include certain minimum requirements that are specified in law.[17]

FCS institutions are also required to annually prepare an accountability report that includes student success data relating to each developmental education strategy implemented by the institution and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the SBE.[18]

Admission to associate degree programs is subject to minimum standards adopted by the SBE and requires:

- A standard high school diploma, a high school equivalency diploma as prescribed in law,[19] previously demonstrated competency in college credit postsecondary coursework, or, in the case of a student who is home educated, a signed affidavit submitted by the student's parent or legal guardian attesting that the student has completed a home education program pursuant to the requirements of law. Students who are enrolled in a dual enrollment or early admission program are exempt from this requirement.
- A demonstrated level of achievement of college-level communication and computation skills.
- Any other requirements established by the FCS board of trustees.[20]

Student Eligibility for Dual Enrollment Programs

The dual enrollment program is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree. A student who is enrolled in postsecondary instruction that is not creditable toward a high school diploma may not be classified as a dual enrollment student. An eligible secondary student is a student who is enrolled in any of grades 6 through 12 in a Florida public school or in a Florida private school that provides a secondary curriculum.[21]

Student eligibility requirements for initial enrollment in college credit dual enrollment courses must include a 3.0 unweighted high school grade point average and the minimum score on a common placement test adopted by the SBE which indicates that the student is ready for college-level coursework. Student eligibility requirements for initial and continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted high school grade point

[16] Section 1007.263(1), F.S.
[17] Sections 1008.30(5) and 1008.02(1), F.S.
[18] Section 1008.30(5), F.S.
[19] Section 1003.435, F.S., specifies the requirements for earning a high school equivalency diploma.
[20] Section 1007.263(2), F.S.
[21] Section 1007.271(1) and (2), F.S.

average.[22] FCS institution boards of trustees may establish additional initial student eligibility requirements, which must be included in the dual enrollment articulation agreement, to ensure student readiness for postsecondary instruction.[23]

Common Placement Testing for Public Postsecondary Education

The SBE, in conjunction with the BOG, has implemented common placement testing requirements[24] for the purpose of assessing the basic computation and communication skills of students who intend to enter a degree program at any public postsecondary educational institution. The common placement testing program must include the capacity to diagnose the basic competencies in the areas of English, reading, and mathematics that are essential for success in meta-majors and the capacity to provide test information to students on the specific skills the student needs to attain.[25]

Assessment of Career Education Program Basic Skills

The SBE is required to adopt standards of basic skill mastery for completion of certificate career education programs and to designate examinations to assess mastery. Students who enroll in a program offered for career credit of 450 hours or more must complete an entry-level examination within the first six weeks after admission into the program. A student may not receive a career or technical certificate of completion without first demonstrating the basic skills required in the state curriculum frameworks for the career education program. Certain students are exempted from this requirement.[26]

Effect of Proposed Changes

Admissions Requirements for FCS Institutions

The bill modifies s. 1007.263, F.S., to provide flexibility to FCS institutions in their admissions requirements for entering students. Specifically, the bill authorizes FCS institutions to accept:

- Alternate methods, to be approved by the state board, to measure achievement of college level communication and computation competencies by students entering college credit programs.
- For admission to associate degree programs, a high school equivalency diploma issued by another state which is recognized as equivalent by SBE rule and is based on an assessment recognized by the United States Department of Education.

The bill requires that admissions counseling at FCS institutions measure achievement of basic skills for career education programs, which may direct a student to developmental education to improve communication and computation skills.

[22] Section 1007.271(3), F.S. Exceptions to the required grade point averages may be granted on an individual student basis if the educational entities agree and the terms of the agreement are contained within the dual enrollment articulation agreement developed by the district school superintendent and the public postsecondary institution president through an articulation committee, as specified in s. 1007.271(21).
[23] Section 1007.271(3), F.S.
[24] The state board has adopted rules 6A-14.064 and 6A-10.0315, F.A.C., to govern assessment requirements for determining initial student eligibility for dual enrollment programs.
[25] Section 1008.30(1) and (2), F.S.
[26] Section 1004.91(1)-(3), F.S.

The bill also modifies s. 1008.30, F.S., to remove outdated language related to a requirement that FCS institutions develop and submit a developmental education plan to the Chancellor of the FCS. In addition, the bill removes the requirement that the FCS annually prepare an accountability report that includes student success data relating to each developmental education strategy and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the SBE.

Student Eligibility for Dual Enrollment Programs

The bill modifies the mechanism in s. 1007.271, F.S., for assessing the readiness of a student for initial enrollment in college credit dual enrollment courses. In addition to achievement by a student of the minimum score on a common placement test, the bill authorizes a student to demonstrate a level of achievement of college-level communication and computation skills via an alternative method of assessment.

Common Placement Testing for Public Postsecondary Education

The bill modifies s. 1008.30, F.S., to require, by January 31, 2022, the SBE to adopt rules to develop and implement alternative methods for assessing the basic computation and communication skills of students who intend to enter a degree program at a FCS institution. The bill authorizes FCS institutions to use these alternative methods in lieu of common placement tests to assess student readiness for college-level work in computation and communication. The bill removes the requirement that the common placement testing program include the capacity to diagnose certain basic competencies in the areas of English, reading, and mathematics. The bill also specifies that students who are currently exempt from common placement testing requirements are also exempt from the college readiness assessment established in the bill.

Mathematics Pathways

Present Situation

Statewide Articulation Agreement

The SBE and the BOG are required to enter into a statewide articulation agreement. The agreement must preserve Florida's "2+2" system of articulation and facilitate the seamless articulation of student credit across and among Florida's educational entities.[27] The agreement requires state university BOT, FCS BOT, and district school boards to adopt policies and procedures to provide articulated programs so that students can proceed toward their educational objectives as rapidly as their circumstances permit.[28]

Academic Pathways

The SBE, in consultation with the BOG, is required to approve a series of meta-majors and the academic pathways that identify the gateway courses associated with each meta-major. FCS institutions use placement test results to determine the extent to which each student demonstrates sufficient communication and computation skills to indicate readiness for his or her chosen meta-

[27] Section 1007.23(1), F.S.
[28] Rule 6A-10.024(1), F.A.C.

major. FCS institutions counsel students into college credit courses as quickly as possible, with developmental education limited to the content needed for success in the meta-major.[29]

The purpose of meta-major academic pathways is to advise FCS system associate degree seeking students of the gateway courses that are aligned with their intended academic and career goals. The meta-major academic pathways in SBE rule are established in the following areas:

- Arts, humanities, communication and design.
- Business.
- Education.
- Health sciences.
- Industry/manufacturing and construction.
- Public Safety.
- Science, technology, engineering, and mathematics.
- Social and behavioral sciences and human services.[30]

In 2018, the Florida Student Success Center[31] established three workgroups to identify current challenges in mathematics pathways and develop policy and practice recommendations to improve student achievement across Florida's education systems. The charge to the workgroups was to explore complex issues surrounding mathematics pathways to prepare high school students for transition into FCS institutions, and FCS institution students for transition into four-year universities. More than 90 mathematics faculty, administrators and key stakeholders from Florida's K-12 system, the FCS, and the SUS served as members of the workgroups in 2018-19. Among the 12 recommendations, the workgroups recommended creation of common mathematics pathways by aligning mathematics courses to programs, meta-majors, and careers in Florida.[32]

Effect of Proposed Changes

The bill modifies s. 1007.23, F.S., to require the statewide articulation agreement to specify three mathematics pathways, which are aligned to programs, meta-majors, and careers, on which degree-seeking students must be placed. The bill specifies the purpose of the pathways is to facilitate seamless transfer, reduce excess credit hours, and ensure that students are taking the relevant courses needed for their future careers. To accomplish the identification of the mathematics pathways, the bill requires a representative committee of State University System, district career centers, and FCS faculty to collaborate to identify the three pathways.

The bill removes the requirement that the SBE, in consultation with the BOG, approve a series of meta-majors and the academic pathways that identify the gateway courses associated with each meta-major.

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[29] Section 1008.30(4) and (5), F.S.
[30] Rule 6A-14.065, F.A.C.
[31] The Florida Student Success Center is part of the national Student Success Center Network and supports Florida's 28 state and community colleges' efforts to develop student-centered pathways and increase student completion rates. The Florida College System, *Florida Student Success Center*, https://www.floridacollegesystemfoundation.org/florida-student-success-center-home (last visited Feb. 25, 2021).
[32] The Florida College System, *Mathematics Re-Design*, https://www.floridacollegesystemfoundation.org/fssc-math-redesign (last visited Feb. 25, 2021).

The bill also modifies s. 1009.25, F.S., to authorize the State Board of Education (SBE) and the Board of Governors of the State University System of Florida (BOG) to adopt rules and regulations, regarding documentation and procedures to implement a fee waiver for a student who is homeless.[33]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services, Division of Risk Management (DRM) estimates that the workers' compensation coverage provisions would cause additional claims costs for covering participants in preapprenticeship and work-based learning programs. The bill provides a $2 million nonrecurring appropriation from the General Revenue Fund to the State Risk Management Trust Fund in the Department of Financial Services for worker's compensation costs associated with the provisions of the bill. The bill also

[33] A homeless student is defined as a student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. Section 1009.25(1)(f), F.S.

provides an appropriation for two FTE positions to the Department of Financial Services out of the trust fund to implement the worker's coverage provisions of the bill.

Depending on the number and severity of future claims, the increase in workers' compensation loss payments and operational costs to the Risk Management Trust Fund could result in a long-term need for additional premium to be charged to the state agencies to cover these losses.

School districts that pay workers' compensation expenses for participants in work-based learning programs would likely see a reduction in workers' compensation costs. The reduction in workers' compensation costs is indeterminate.[34]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1007.23, 1007.263, 1007.271, 1008.30, and 1009.25.

This bill creates section 446.54 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by the Appropriations Subcommittee on Education on April 8, 2021:
The committee substitute makes the following changes:

- Removes modifications from the bill, provisions related to:
  - Apprenticeship and preapprenticeship programs.
  - CAPE Industry Certification Funding List.
- Provides an appropriation and two FTE positions to the Department of Financial Services for worker's compensation for anticipated claims associated with participants in the work-based learning programs.

CS by Education Committee on March 2, 2021:
The committee substitute:

- Changes the title of the bill to an act related to educational opportunities leading to employment.

[34]Florida Department of Financial Services, *2021 Legislative Bill Analysis for SB 366* (Apr. 4, 2021).

- Modifies legislative intent regarding apprenticeships to:
  - Expand legislative intent to encourage apprenticeship programs that lead to any postsecondary credential. The bill encourages only the programs that lead to college credit or a degree.
  - Clarify that the responsibility of the Department of Education (DOE) over minimum standards applies only to apprenticeship and preapprenticeship programs *that are registered.*
- Modifies the duties of the DOE to:
  - Provide that the DOE must include information and resources related to preapprenticeship programs in its annual apprenticeship report.
  - Add that the DOE must provide assistance to postsecondary educational institutions in notifying the community of apprenticeship and preapprenticeship opportunities.
  - Clarify that the DOE must ensure that equal opportunity for apprentices, preapprentices, and applicants for apprenticeships and preapprenticeships is provided for the apprenticeship and preapprenticeship programs.
- Modifies additional work-based learning program provisions. Specifically, the committee substitute:
  - Modifies provisions of the bill directed toward state universities and Florida College System (FCS) institutions and includes all postsecondary educational institutions.
  - Removes the requirement of the bill that defines apprentices as employees of the state for purposes of workers' compensation coverage for medical benefits. The amendment retains other provisions of the bill deeming preapprentices and students in work-based learning as employees of the state for workers' compensation coverage for medical benefits.
  - Defines "work-based learning," as it relates to public k-12 education, to mean sustained interactions with industry or community professionals in workplace settings, to the extent practicable, or simulated environments that foster in-depth, firsthand engagement with the tasks required in a given career field, that align with curriculum and instruction, and that are provided in partnership with an educational institution.
  - Defines "cooperative method of instruction," as it relates to postsecondary education, to mean an instructional methodology that provides students enrolled in career education programs an opportunity to extend their employment preparation beyond the classroom through participation in concurrent career education instruction through regularly scheduled on-the-job training experiences.
  - Removes a provision of the bill providing for guaranteed licenses for apprenticeship program completers.
- Modifies provisions related to the middle school course in career and education planning, by:
  - Removing a provision of the bill authorizing the Florida Virtual School to offer a course in career and education planning.
  - Removing a provision of the bill that would have made the required course in career and education planning optional for students in middle grades.
- Modifies provisions relating to K-12 career and technical education, by:

- Removing the requirement of the bill that opportunities for learning computer science in elementary school include computational thinking and foundational computer science skills, and retains current law that makes the skills optional.
- Removing a provision of the bill that modifies the authorized uses of funds for computer science instruction.
- Removing a provision of the bill authorizing school districts or regional consortia to work with national providers to submit recommended career-themed courses to the DOE for state board approval.
- Granting the DOE rulemaking authority over the administration of the CAPE Act.

- Modifies provisions relating to FCS institution admissions and student progression. The committee substitute:
  - Authorizes alternate methods, to be approved by the state board, to measure achievement of college level communication and computation competencies by students entering college credit programs.
  - Authorizes associate degree programs to accept a high school equivalency diploma issued by another state, as approved by the State Board of Education (SBE).
  - Clarifies that student eligibility for initial enrollment in dual enrollment courses includes a demonstrated level of achievement of college-level communication and computation skills through an approved common placement test or alternative method as adopted by the SBE.
  - Removes a requirement of existing law that the common placement testing program include the capacity to diagnose basic competencies in the areas of English, reading, and mathematics which are essential for success in meta-majors and to provide test information to students on the specific skills the student needs to attain.
  - Requires the SBE, by January 31, 2022, to adopt rules to develop and implement alternative methods for assessing the basic computation and communication skills of students who intend to enter a degree program at an FCS institution. The amendment authorizes FCS institutions to use these alternative methods in lieu of common placement tests to assess student readiness for college-level work in computation and communication.
  - Removes the requirement of existing law for FCS institutions to submit to the Chancellor of the FCS for approval implemented developmental education strategies through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction.
  - Adds alternative methods to the requirement for in current law for FCS institutions to use placement test results as established by the SBE to determine the extent to which each student demonstrates sufficient computation and communication skills to indicate readiness for his or her chosen meta-major and to counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major.
  - Removes a requirement of existing law that each FCS institution annually prepare and submit to state officials an accountability report that includes student success

data relating to each developmental education strategy implemented by the institution.

- Provides for a representative committee of State University System, certain career centers established by district school boards, and FCS faculty, instead of the representative workgroup of the Articulation Coordinating Committee required by the bill, to identify the three mathematics pathways and the mathematics course sequence within each pathway which align to the mathematics skills needed for success in the corresponding academic programs and careers.
- Modifies workforce and postsecondary financial provisions. The committee substitute:
  - Removes the additional full-time-equivalent (FTE) weights for industry certifications associated with aviation-related and aerospace-related occupations and instead provides additional FTE weight for industry certifications that lead to occupations in critical industry sectors as identified by the Department of Education and included on the Career and Professional Education (CAPE) industry funding list.
  - Authorizes a technical center operated by a school district, an FCS institution, or a state university to enter into an agreement with another entity to cover the approved apprenticeship program student tuition and fees, including lab fees.
  - Authorizes the SBE and the Board of Governors of the State University System of Florida to adopt rules and regulations regarding requirements for fee waivers for homeless students.
  - Modifies the provisions of the bill authorizing school districts and FCS institutions to earn an additional $2000 for workforce education programs that lead to industry certification in critical industry sectors to instead provide an additional $2000 for school districts and FCS institutions for industry certifications earned by students in workforce education programs that are identified as leading to employment in critical industry sectors.
  - Requires a district school board or FCS institution board of trustees that receives workforce performance funding to use at least 70 percent of the funds received to directly support the program that generated the funds.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

217338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 65
and insert:
(1)(a) A student in grades 6 through 12 who is enrolled in

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 3 - 5
and insert:
to employment; creating s. 446.54, F.S.; providing

217338

that certain individuals enrolled

441292

576-03910-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to educational opportunities leading to employment; creating s. 446.54, F.S.; providing legislative intent; defining the term "work-based learning"; providing that certain individuals enrolled in work-based learning are deemed to be employees of the state for purposes of receiving certain medically necessary care under workers' compensation coverage; amending s. 1007.23, F.S.; requiring that the statewide articulation agreement specify three mathematics pathways that meet a certain requirement upon which degree-seeking students must be placed; amending s. 1007.263, F.S.; requiring admissions counseling to use certain tests or alternative methods to measure achievement of college-level communication and computation by students entering college programs; requiring that such counseling measure achievement of certain basic skills; revising requirements for admission to associate degree programs; amending s. 1007.271, F.S.; revising eligibility requirements for initial enrollment in college-level dual enrollment courses; revising requirements for home education students seeking dual enrollment in certain postsecondary institutions; amending s. 1008.30, F.S.; requiring the State Board of Education to adopt, by a specified date, rules establishing alternative methods for assessing communication and computation skills of

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certain students; authorizing Florida College System institutions to use such alternative methods in lieu of the common placement test to assess a student's readiness to perform college-level work in communication and computation; deleting obsolete provisions; requiring Florida College System institutions to use placement test results or alternative methods to determine the extent to which certain students demonstrate sufficient communication and computation skills to indicate readiness for their meta-major; requiring Florida College System institutions to counsel and place certain students in specified college courses; limiting students' developmental education to content needed for success in their meta-major; conforming provisions to changes made by the act; making technical changes; amending s. 1009.25, F.S.; authorizing the State Board of Education to adopt specified rules and the Board of Governors to adopt specified regulations; providing an appropriation; authorizing positions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 446.54, Florida Statutes, is created to read:

446.54 Work-based learning.—

(1) It is the intent of the Legislature that, to the extent possible, school districts place students in paid work

experiences, including apprenticeships and preapprenticeships, for purposes of educational training and work-based learning.

(2) For purposes of this section, "work-based learning" includes "on-the-job training" as defined in s. 446.021(7) and means sustained interactions with industry or community professionals in off-campus workplace settings that foster in-depth firsthand engagement with the tasks required in a given career or field and are aligned to curriculum and instruction.

(3)(a) A student in grades 6 through 12 who is enrolled in a course identified in the Course Code Directory which incorporates a work-based learning component or an activity that is unpaid and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

(b) An individual 18 years of age or younger who is enrolled in a preapprenticeship program as defined in s. 446.021 which requires work-based learning and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

Section 2. Present subsections (3) through (8) of section 1007.23, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

1007.23 Statewide articulation agreement.—

(3) To facilitate seamless transfer of credits, reduce

excess credit hours, and ensure students are taking the courses needed for their future career, the articulation agreement must establish three mathematics pathways for students by aligning mathematics courses to programs, meta-majors, and careers. A representative committee consisting of State University System faculty, faculty of career centers established under s. 1001.44, and Florida College System institution faculty shall collaborate to identify the three mathematics pathways and the mathematics course sequence within each pathway which align to the mathematics skills needed for success in the corresponding academic programs and careers.

Section 3. Subsection (1) and paragraph (a) of subsection (2) of section 1007.263, Florida Statutes, are amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of Education. These rules shall include the following:

(1) Admissions counseling shall be provided to all students entering college or career credit programs. For students who are not otherwise exempt from testing under s. 1008.30, counseling must use the tests or alternative methods established by the State Board of Education under s. 1008.30 to measure achievement of college-level communication and computation competencies by students entering college credit programs ~~or tests to measure achievement of basic skills for career education programs as prescribed in s. 1004.91~~. Counseling must measure achievement of basic skills for career education programs under s. 1004.91. Counseling includes providing developmental education options

for students whose ~~assessment~~ results, determined under s. 1008.30, indicate that they need to improve communication or computation skills that are essential to perform college-level work.

(2) Admission to associate degree programs is subject to minimum standards adopted by the State Board of Education and shall require:

(a) A standard high school diploma~~;~~ ~~,~~ a State of Florida high school equivalency diploma awarded under s. 1003.435(2); a high school equivalency diploma issued by another state which is recognized as equivalent by State Board of Education rule and is based on an assessment recognized by the United States Department of Education; ~~as prescribed in s. 1003.435,~~ previously demonstrated competency in college credit postsecondary coursework~~;~~ ~~,~~ or, in the case of a student who is home educated, a signed affidavit submitted by the student's parent or legal guardian attesting that the student has completed a home education program pursuant to the requirements of s. 1002.41. Students who are enrolled in a dual enrollment or early admission program pursuant to s. 1007.271 are exempt from this requirement.

Each board of trustees shall establish policies that notify students about developmental education options for improving their communication or computation skills that are essential to performing college-level work, including tutoring, extended time in gateway courses, free online courses, adult basic education, adult secondary education, or private provider instruction.

Section 4. Subsection (3) and paragraph (b) of subsection

(13) of section 1007.271, Florida Statutes, are amended to read:

1007.271 Dual enrollment programs.—

(3) Student eligibility requirements for initial enrollment in college credit dual enrollment courses must include a 3.0 unweighted high school grade point average and a demonstrated level of achievement of college-level communication and computation skills as provided under s. 1008.30(1) or (2) ~~the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework~~. Student eligibility requirements for continued enrollment in college credit dual enrollment courses must include the maintenance of a 3.0 unweighted high school grade point average and the minimum postsecondary grade point average established by the postsecondary institution. Regardless of meeting student eligibility requirements for continued enrollment, a student may lose the opportunity to participate in a dual enrollment course if the student is disruptive to the learning process such that the progress of other students or the efficient administration of the course is hindered. Student eligibility requirements for initial and continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted high school grade point average. Exceptions to the required grade point averages may be granted on an individual student basis if the educational entities agree and the terms of the agreement are contained within the dual enrollment articulation agreement established under ~~pursuant to~~ subsection (21). Florida College System institution boards of trustees may establish additional initial student eligibility requirements, which shall be included in the dual enrollment articulation

agreement, to ensure student readiness for postsecondary instruction. Additional requirements included in the agreement may not arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses or limit the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

(13)

(b) Each public postsecondary institution eligible to participate in the dual enrollment program pursuant to s. 1011.62(1)(i) must enter into a home education articulation agreement with each home education student seeking enrollment in a dual enrollment course and the student's parent. By August 1 of each year, the eligible postsecondary institution shall complete and submit the home education articulation agreement to the Department of Education. The home education articulation agreement must include, at a minimum:

1. A delineation of courses and programs available to dually enrolled home education students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution. Any course or program limitations may not exceed the limitations for other dually enrolled students.

2. The initial and continued eligibility requirements for home education student participation, not to exceed those required of other dually enrolled students. A high school grade point average may not be required for home education students who demonstrate achievement of college-level communication and computation skills as provided under s. 1008.30(1) or (2) ~~meet~~

~~the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework~~; however, home education student eligibility requirements for continued enrollment in dual enrollment courses must include the maintenance of the minimum postsecondary grade point average established by the postsecondary institution.

3. The student's responsibilities for providing his or her own transportation.

4. A copy of the statement on transfer guarantees developed by the Department of Education under subsection (15).

Section 5. Section 1008.30, Florida Statutes, is amended to read:

1008.30 Assessing college-level communication and computation skills ~~Common placement testing~~ for public postsecondary education.—

(1) The State Board of Education, in conjunction with the Board of Governors, shall develop and implement a common placement test for the purpose of assessing the basic communication and computation ~~and communication~~ skills of students who intend to enter a degree program at any public postsecondary educational institution. Alternative assessments that may be accepted in lieu of the common placement test shall also be identified in rule. Public postsecondary educational institutions shall provide appropriate modifications of the test instruments or test procedures for students with disabilities.

(2) By January 31, 2022, the State Board of Education shall adopt rules to develop and implement alternative methods for assessing the basic communication and computation skills of

students who intend to enter a degree program at a Florida College System institution. Florida College System institutions may use these alternative methods in lieu of the common placement tests under subsection (1) to assess student readiness for college-level work in communication and computation ~~The common placement testing program shall include the capacity to diagnose basic competencies in the areas of English, reading, and mathematics which are essential for success in meta-majors and to provide test information to students on the specific skills the student needs to attain~~.

(3) ~~By October 31, 2013, the State Board of Education shall establish by rule the test scores a student must achieve to demonstrate readiness to perform college-level work, and~~ The rules adopted under subsection (2) must specify the following:

(a) A student who entered 9th grade in a Florida public school in the 2003-2004 school year, or any year thereafter, and earned a Florida standard high school diploma or a student who is serving as an active duty member of any branch of the United States Armed Services is ~~shall~~ not ~~be~~ required to be assessed for readiness for college-level work in communication and computation ~~take the common placement test~~ and is ~~shall~~ not ~~be~~ required to enroll in developmental education instruction in a Florida College System institution. However, a student who is not required to be assessed for readiness for college-level work in communication and computation ~~take the common placement test~~ and is not required to enroll in developmental education under this paragraph may opt to be assessed and to enroll in developmental education instruction, and the college shall provide such assessment and instruction upon the student's

request.

(b) A student who is assessed for readiness for college-level computation and communication and whose assessment results indicate ~~takes the common placement test and whose score on the test indicates~~ a need for developmental education must be advised of all the developmental education options offered at the institution and, after advisement, may ~~shall be allowed to~~ enroll in the developmental education option of his or her choice.

(c) A student who demonstrates readiness by achieving or exceeding the test scores established by the state board and enrolls in a Florida College System institution within 2 years after achieving such scores shall not be required to retest or complete developmental education when admitted to any Florida College System institution.

(4) ~~By December 31, 2013, the State Board of Education, in consultation with the Board of Governors, shall approve a series of meta-majors and the academic pathways that identify the gateway courses associated with each meta-major. Florida College System institutions shall use placement test results to determine the extent to which each student demonstrates sufficient communication and computation skills to indicate readiness for his or her chosen meta-major. Florida College System institutions shall counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major.~~

~~(5)~~(a) Each Florida College System institution ~~board of trustees~~ shall ~~develop a plan to~~ implement the developmental education strategies defined in s. 1008.02 and rules established

by the State Board of Education. ~~The plan must be submitted to the Chancellor of the Florida College System for approval no later than March 1, 2014, for implementation no later than the fall semester 2014. Each plan must include, at a minimum, local policies that outline:~~

~~1. Documented student achievements such as grade point averages, work history, military experience, participation in juried competitions, career interests, degree major declaration, or any combination of such achievements that the institution may consider, in addition to common placement test scores, for advising students regarding enrollment options.~~

~~2. Developmental education strategies available to students.~~

~~3. A description of student costs and financial aid opportunities associated with each option.~~

~~4. Provisions for the collection of student success data.~~

~~5. A comprehensive plan for advising students into appropriate developmental education strategies based on student success data.~~

(b) ~~Beginning October 31, 2015,~~ Each Florida College System institution shall use placement test results or alternative methods as established by the State Board of Education to determine the extent to which each student demonstrates sufficient communication and computation skills to indicate readiness for his or her chosen meta-major. Florida College System institutions shall counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major ~~annually prepare an accountability report that includes student~~

~~success data relating to each developmental education strategy implemented by the institution. The report shall be submitted to the Division of Florida Colleges by October 31 in a format determined by the Chancellor of the Florida College System. By December 31, the chancellor shall compile and submit the institutional reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education~~.

(c) A university board of trustees may contract with a Florida College System institution board of trustees for the Florida College System institution to provide developmental education on the state university campus. Any state university in which the percentage of incoming students requiring developmental education equals or exceeds the average percentage of such students for the Florida College System may offer developmental education without contracting with a Florida College System institution; however, any state university offering college-preparatory instruction as of January 1, 1996, may continue to provide developmental education instruction as defined in s. 1008.02(1).

(5) ~~(6)~~ A student may not be enrolled in a college credit mathematics or English course on a dual enrollment basis unless the student has demonstrated adequate precollegiate preparation in ~~on the section of~~ the basic ~~computation and~~ communication and computation skills ~~assessment required pursuant to subsection (1) that is~~ appropriate for successful student participation in the course.

Section 6. Paragraph (f) of subsection (1) of section 1009.25, Florida Statutes, is amended to read:

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1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(f) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This includes a student who would otherwise meet the requirements of this paragraph, as determined by a college or university, but for his or her residence in college or university dormitory housing. The State Board of Education may adopt rules and the Board of Governors may adopt regulations regarding documentation and procedures to implement this paragraph.

Section 7. For the 2021-2022 Fiscal Year, the nonrecurring sum of $2 million is appropriated from the General Revenue Fund to the State Risk Management Trust Fund in the Department of Financial Services for workers' compensation costs associated with participants under s. 446.54, Florida Statutes. The funds may not be included or combined with the premiums otherwise due from the Department of Education pursuant to chapter 284, Florida Statutes, but must be credited on behalf of the Department of Education.

Section 8. For the 2021-2022 fiscal year, two full-time equivalent positions with associated salary rate of 76,787 are authorized, and the sums of $127,190 in recurring funds and

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$7,790 in nonrecurring funds from the State Risk Management Trust Fund are appropriated to the Department of Financial Services for the purpose of implementing the workers' compensation coverage provisions of this act.

Section 9. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 366
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Hutson and others
SUBJECT:	Educational Opportunities Leading to Employment
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Fav/CS**
2.	Underhill	Elwell	AED	**Recommend: Fav/CS**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 366 modifies Florida's statutes to provide support for students in work-based learning programs, modify assessment requirements for initial student eligibility in dual enrollment programs, and provide relevant mathematics pathways. Specifically, the bill:

- Specifies that students in a preapprenticeship program or courses with a work-based component are deemed to be employees of the state for workers' compensation purposes for medically necessary care only.
- Clarifies that eligibility for initial enrollment in dual enrollment courses requires a student to demonstrate a level of achievement of college-level communication and computation skills through an approved common placement test or alternative method, to be approved by the State Board of Education.
- Eases plan development and reporting requirements for the implementation of developmental education strategies by Florida College System (FCS) institutions for potential students entering dual enrollment courses.
- Requires a representative committee of State University System, district career centers, and FCS faculty to identify mathematics pathways aligned to programs, meta-majors, and careers.

The fiscal impact is discussed in section V.

The bill takes effect on July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Work-based Learning

Present Situation

Federal legislation defines work-based learning (WBL) as "sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction."[1] Learning set in the real-world context of work not only makes academic learning more accessible to many students but also increases their engagement in schooling. WBL can play a crucial role in improving outcomes for at-risk students by increasing their engagement in learning, whether in or out of school.[2]

WBL takes many forms, such as internships, job shadowing, service learning, or preapprenticeships, and is defined by activities and experiences that occur when a student or worker:[3]

- Goes to a workplace or works with an employer; and
- Does meaningful job tasks that develop his or her skills, knowledge, and readiness for work and support entry or advancement in a particular career field.

WBL is comprised of identified courses that involve OJT, which is an instructional method whereby students acquire knowledge and skills exclusively on-site with a business or industry partner instead of a traditional classroom setting. WBL may also be delivered through utilization of the cooperative method of instruction which is delivered through formal classroom instruction and on-the-job learning, on-site, with a business or industry partner.[4]

Recent research, policy literature, and federal legislation suggest that comprehensive WBL programs contain three key components: the alignment of classroom and workplace learning; application of academic, technical, and employability skills in a work setting; and support from classroom or workplace mentors.[5]

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[1] 20 U.S.C. s. 2302; Perkins V (The Strengthening Career and Technical Education for the 21st Century Act) and other federal legislation reference and support work-based learning, including in the Every Student Succeeds Act of 2015 (ESSA), and the Workforce Innovation and Opportunity Act of 2014 (WIOA).
[2] Michael E. Wonacott, *The Impact of Work-Based Learning on Students*, ERIC Digest (2002), *available at* https://files.eric.ed.gov/fulltext/ED472603.pdf, at 2.
[3] Southern Regional Education Board, *Work-Based Learning*, https://www.sreb.org/node/1923 (last visited Feb. 25, 2021).
[4] 20 U.S.C. s. 2302(10).
[5] United States Department of Education, *Work-Based Learning Toolkit*, https://cte.ed.gov/wbltoolkit/ (Interact with the "WBL Framework" section) (last visited Feb. 25, 2021).

In 2019-2020, there were 23,258 students enrolled in secondary on-the-job training, preapprenticeship, work experience, and other WBL courses.[6]

Workers' Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence.[7] In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.[8] For such injuries, an employer is responsible for providing medical treatment[9] and compensation in the event of employee disability[10] or death.[11] Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.[12]

State Risk Management Program

The Division of Risk Management (DRM)[13] located within the Department of Financial Services (DFS) is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund (SRMTF). The SRMTF provides coverage that protects state property and workforce members that are exposed to the risk of financial losses through damage, injuries, and alleged negligent or improper acts.[14]

Effect of Proposed Changes

The bill creates s. 446.54, F.S., to encourage school districts to place students in paid work experiences for purposes of educational training and WBL.

The bill provides that:

- An individual 18 years of age or younger who is enrolled in a preapprenticeship program, as defined in s. 446.021, F.S., which requires work-based learning and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state

[6] Email, Florida Department of Education (Mar. 1, 2021).
[7] *See* Jones v. Martin Elecs., Inc., 932 So. 2d 1100, 1108 (Fla. 2006).
[8] Section 440.09(1), F.S.
[9] Section 440.13, F.S.
[10] Section 440.15, F.S.
[11] Section 440.16, F.S.
[12] Division of Workers' Compensation, *Coverage Requirements,* https://www.myfloridacfo.com/division/wc/Employer/coverage.htm (last visited on Feb. 25, 2021).
[13] Section 20.121(2)(h), F.S.
[14] Florida Department of Economic Opportunity, Economic and Demographic Research, *Risk Management Trust Fund* (Dec. 18, 2019), *available at* http://edr.state.fl.us/Content/conferences/riskmanagement/riskmanagementexecsumm.pdf.

for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

- A student in grades 6 through 12 who is enrolled in a course identified in the Course Code Directory which incorporates a work-based learning component or an activity that is unpaid and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

The bill provides that work-based learning may be paid or unpaid and may be delivered in a stand-alone, work-based learning course that results in high school credit or may be a component of an existing course which may use the cooperative method of instruction. As it relates to postsecondary education, the bill defines cooperative method of instruction as an instructional methodology that provides students enrolled in career education programs an opportunity to extend their employment preparation beyond the classroom through participation in concurrent career education instruction through regularly scheduled on-the-job training experiences.

The designation of preapprenticeship and WBL program students as employees of the state for the purposes of workers' compensation medical claims may increase the financial liability of the state, but may encourage more employers, who otherwise would not participate due to concerns about assuming liability for a minor, to partner with school districts to sponsor such programs. The provisions in the bill may allow more students under 18 to participate in WBL opportunities.

Florida College System Institution Admissions

Present Situation

Admissions Requirements for FCS Institutions

Each FCS institution board of trustees is authorized to adopt rules governing admissions of students subject to requirements provided in law and rules of the SBE.[15]

Admissions counseling must be provided to all students entering college or career credit programs. Counseling must use tests to measure achievement of college-level communication and computation competencies by students entering college credit programs or tests to measure achievement of basic skills for students entering career education programs. Counseling includes providing developmental education options for students whose assessment results indicate that they need to improve communication or computation skills that are essential to perform college-level work.[16]

Each FCS institution board of trustees is required to develop a plan to implement developmental education strategies through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction. Each plan must include certain minimum requirements that are specified in law.[17]

[15] Section 1007.263, F.S.
[16] Section 1007.263(1), F.S.
[17] Sections 1008.30(5) and 1008.02(1), F.S.

FCS institutions are also required to annually prepare an accountability report that includes student success data relating to each developmental education strategy implemented by the institution and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the SBE.[18]

Admission to associate degree programs is subject to minimum standards adopted by the SBE and requires:

- A standard high school diploma, a high school equivalency diploma as prescribed in law,[19] previously demonstrated competency in college credit postsecondary coursework, or, in the case of a student who is home educated, a signed affidavit submitted by the student's parent or legal guardian attesting that the student has completed a home education program pursuant to the requirements of law. Students who are enrolled in a dual enrollment or early admission program are exempt from this requirement.
- A demonstrated level of achievement of college-level communication and computation skills.
- Any other requirements established by the FCS board of trustees.[20]

Student Eligibility for Dual Enrollment Programs

The dual enrollment program is the enrollment of an eligible secondary student or home education student in a postsecondary course creditable toward high school completion and a career certificate or an associate or baccalaureate degree. A student who is enrolled in postsecondary instruction that is not creditable toward a high school diploma may not be classified as a dual enrollment student. An eligible secondary student is a student who is enrolled in any of grades 6 through 12 in a Florida public school or in a Florida private school that provides a secondary curriculum.[21]

Student eligibility requirements for initial enrollment in college credit dual enrollment courses must include a 3.0 unweighted high school grade point average and the minimum score on a common placement test adopted by the SBE which indicates that the student is ready for college-level coursework. Student eligibility requirements for initial and continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted high school grade point average.[22] FCS institution boards of trustees may establish additional initial student eligibility requirements, which must be included in the dual enrollment articulation agreement, to ensure student readiness for postsecondary instruction.[23]

[18] Section 1008.30(5), F.S.
[19] Section 1003.435, F.S., specifies the requirements for earning a high school equivalency diploma.
[20] Section 1007.263(2), F.S.
[21] Section 1007.271(1) and (2), F.S.
[22] Section 1007.271(3), F.S. Exceptions to the required grade point averages may be granted on an individual student basis if the educational entities agree and the terms of the agreement are contained within the dual enrollment articulation agreement developed by the district school superintendent and the public postsecondary institution president through an articulation committee, as specified in s. 1007.271(21).
[23] Section 1007.271(3), F.S.

Common Placement Testing for Public Postsecondary Education

The SBE, in conjunction with the BOG, has implemented common placement testing requirements[24] for the purpose of assessing the basic computation and communication skills of students who intend to enter a degree program at any public postsecondary educational institution. The common placement testing program must include the capacity to diagnose the basic competencies in the areas of English, reading, and mathematics that are essential for success in meta-majors and the capacity to provide test information to students on the specific skills the student needs to attain.[25]

Assessment of Career Education Program Basic Skills

The SBE is required to adopt standards of basic skill mastery for completion of certificate career education programs and to designate examinations to assess mastery. Students who enroll in a program offered for career credit of 450 hours or more must complete an entry-level examination within the first six weeks after admission into the program. A student may not receive a career or technical certificate of completion without first demonstrating the basic skills required in the state curriculum frameworks for the career education program. Certain students are exempted from this requirement.[26]

Effect of Proposed Changes

Admissions Requirements for FCS Institutions

The bill modifies s. 1007.263, F.S., to provide flexibility to FCS institutions in their admissions requirements for entering students. Specifically, the bill authorizes FCS institutions to accept:

- Alternate methods, to be approved by the state board, to measure achievement of college level communication and computation competencies by students entering college credit programs.
- For admission to associate degree programs, a high school equivalency diploma issued by another state which is recognized as equivalent by SBE rule and is based on an assessment recognized by the United States Department of Education.

The bill requires that admissions counseling at FCS institutions measure achievement of basic skills for career education programs, which may direct a student to developmental education to improve communication and computation skills.

The bill also modifies s. 1008.30, F.S., to remove outdated language related to a requirement that FCS institutions develop and submit a developmental education plan to the Chancellor of the FCS. In addition, the bill removes the requirement that the FCS annually prepare an accountability report that includes student success data relating to each developmental education strategy and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the SBE.

[24] The state board has adopted rules 6A-14.064 and 6A-10.0315, F.A.C., to govern assessment requirements for determining initial student eligibility for dual enrollment programs.
[25] Section 1008.30(1) and (2), F.S.
[26] Section 1004.91(1)-(3), F.S.

Student Eligibility for Dual Enrollment Programs

The bill modifies the mechanism in s. 1007.271, F.S., for assessing the readiness of a student for initial enrollment in college credit dual enrollment courses. In addition to achievement by a student of the minimum score on a common placement test, the bill authorizes a student to demonstrate a level of achievement of college-level communication and computation skills via an alternative method of assessment.

Common Placement Testing for Public Postsecondary Education

The bill modifies s. 1008.30, F.S., to require, by January 31, 2022, the SBE to adopt rules to develop and implement alternative methods for assessing the basic computation and communication skills of students who intend to enter a degree program at a FCS institution. The bill authorizes FCS institutions to use these alternative methods in lieu of common placement tests to assess student readiness for college-level work in computation and communication. The bill removes the requirement that the common placement testing program include the capacity to diagnose certain basic competencies in the areas of English, reading, and mathematics. The bill also specifies that students who are currently exempt from common placement testing requirements are also exempt from the college readiness assessment established in the bill.

Mathematics Pathways

Present Situation

Statewide Articulation Agreement

The SBE and the BOG are required to enter into a statewide articulation agreement. The agreement must preserve Florida's "2+2" system of articulation and facilitate the seamless articulation of student credit across and among Florida's educational entities.[27] The agreement requires state university BOT, FCS BOT, and district school boards to adopt policies and procedures to provide articulated programs so that students can proceed toward their educational objectives as rapidly as their circumstances permit.[28]

Academic Pathways

The SBE, in consultation with the BOG, is required to approve a series of meta-majors and the academic pathways that identify the gateway courses associated with each meta-major. FCS institutions use placement test results to determine the extent to which each student demonstrates sufficient communication and computation skills to indicate readiness for his or her chosen meta-major. FCS institutions counsel students into college credit courses as quickly as possible, with developmental education limited to the content needed for success in the meta-major.[29]

The purpose of meta-major academic pathways is to advise FCS system associate degree seeking students of the gateway courses that are aligned with their intended academic and career goals. The meta-major academic pathways in SBE rule are established in the following areas:

- Arts, humanities, communication and design.

[27] Section 1007.23(1), F.S.
[28] Rule 6A-10.024(1), F.A.C.
[29] Section 1008.30(4) and (5), F.S.

- Business.
- Education.
- Health sciences.
- Industry/manufacturing and construction.
- Public Safety.
- Science, technology, engineering, and mathematics.
- Social and behavioral sciences and human services.[30]

In 2018, the Florida Student Success Center[31] established three workgroups to identify current challenges in mathematics pathways and develop policy and practice recommendations to improve student achievement across Florida's education systems. The charge to the workgroups was to explore complex issues surrounding mathematics pathways to prepare high school students for transition into FCS institutions, and FCS institution students for transition into four-year universities. More than 90 mathematics faculty, administrators and key stakeholders from Florida's K-12 system, the FCS, and the SUS served as members of the workgroups in 2018-19. Among the 12 recommendations, the workgroups recommended creation of common mathematics pathways by aligning mathematics courses to programs, meta-majors, and careers in Florida.[32]

Effect of Proposed Changes

The bill modifies s. 1007.23, F.S., to require the statewide articulation agreement to specify three mathematics pathways, which are aligned to programs, meta-majors, and careers, on which degree-seeking students must be placed. The bill specifies the purpose of the pathways is to facilitate seamless transfer, reduce excess credit hours, and ensure that students are taking the relevant courses needed for their future careers. To accomplish the identification of the mathematics pathways, the bill requires a representative committee of State University System, district career centers, and FCS faculty to collaborate to identify the three pathways.

The bill removes the requirement that the SBE, in consultation with the BOG, approve a series of meta-majors and the academic pathways that identify the gateway courses associated with each meta-major.

The bill also modifies s. 1009.25, F.S., to authorize the State Board of Education (SBE) and the Board of Governors of the State University System of Florida (BOG) to adopt rules and regulations, regarding documentation and procedures to implement a fee waiver for a student who is homeless.[33]

[30] Rule 6A-14.065, F.A.C.

[31] The Florida Student Success Center is part of the national Student Success Center Network and supports Florida's 28 state and community colleges' efforts to develop student-centered pathways and increase student completion rates. The Florida College System, *Florida Student Success Center*, https://www.floridacollegesystemfoundation.org/florida-student-success-center-home (last visited Feb. 25, 2021).

[32] The Florida College System, *Mathematics Re-Design*, https://www.floridacollegesystemfoundation.org/fssc-math-redesign (last visited Feb. 25, 2021).

[33] A homeless student is defined as a student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. Section 1009.25(1)(f), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services, Division of Risk Management (DRM) estimates that the workers' compensation coverage provisions would cause additional claims costs for covering participants in preapprenticeship and work-based learning programs. The bill provides a $2 million nonrecurring appropriation from the General Revenue Fund to the State Risk Management Trust Fund in the Department of Financial Services for worker's compensation costs associated with the provisions of the bill. The bill also provides an appropriation for two FTE positions to the Department of Financial Services out of the trust fund to implement the worker's coverage provisions of the bill.

Depending on the number and severity of future claims, the increase in workers' compensation loss payments and operational costs to the Risk Management Trust Fund could result in a long-term need for additional premium to be charged to the state agencies to cover these losses.

School districts that pay workers' compensation expenses for participants in work-based learning programs would likely see a reduction in workers' compensation costs. The reduction in workers' compensation costs is indeterminate.[34]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1007.23, 1007.263, 1007.271, 1008.30, and 1009.25.

This bill creates section 446.54 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute makes the following changes:
- Removes the legislative intent and the definition of "work-based learning".
- Removes modifications from the bill, provisions related to:
  - Apprenticeship and preapprenticeship programs.
  - CAPE Industry Certification Funding List.
- Provides an appropriation and two FTE positions to the Department of Financial Services for worker's compensation for anticipated claims associated with participants in the work-based learning programs.

CS by Education Committee on March 2, 2021:
The committee substitute:
- Changes the title of the bill to an act related to educational opportunities leading to employment.
- Modifies legislative intent regarding apprenticeships to:
  - Expand legislative intent to encourage apprenticeship programs that lead to any postsecondary credential. The bill encourages only the programs that lead to college credit or a degree.
  - Clarify that the responsibility of the Department of Education (DOE) over minimum standards applies only to apprenticeship and preapprenticeship programs *that are registered.*
- Modifies the duties of the DOE to:

[34]Florida Department of Financial Services, *2021 Legislative Bill Analysis for SB 366* (Apr. 4, 2021).

  - Provide that the DOE must include information and resources related to preapprenticeship programs in its annual apprenticeship report.
  - Add that the DOE must provide assistance to postsecondary educational institutions in notifying the community of apprenticeship and preapprenticeship opportunities.
  - Clarify that the DOE must ensure that equal opportunity for apprentices, preapprentices, and applicants for apprenticeships and preapprenticeships is provided for the apprenticeship and preapprenticeship programs.
- Modifies additional work-based learning program provisions. Specifically, the committee substitute:
  - Modifies provisions of the bill directed toward state universities and Florida College System (FCS) institutions and includes all postsecondary educational institutions.
  - Removes the requirement of the bill that defines apprentices as employees of the state for purposes of workers' compensation coverage for medical benefits. The amendment retains other provisions of the bill deeming preapprentices and students in work-based learning as employees of the state for workers' compensation coverage for medical benefits.
  - Defines "work-based learning," as it relates to public k-12 education, to mean sustained interactions with industry or community professionals in workplace settings, to the extent practicable, or simulated environments that foster in-depth, firsthand engagement with the tasks required in a given career field, that align with curriculum and instruction, and that are provided in partnership with an educational institution.
  - Defines "cooperative method of instruction," as it relates to postsecondary education, to mean an instructional methodology that provides students enrolled in career education programs an opportunity to extend their employment preparation beyond the classroom through participation in concurrent career education instruction through regularly scheduled on-the-job training experiences.
  - Removes a provision of the bill providing for guaranteed licenses for apprenticeship program completers.
- Modifies provisions related to the middle school course in career and education planning, by:
  - Removing a provision of the bill authorizing the Florida Virtual School to offer a course in career and education planning.
  - Removing a provision of the bill that would have made the required course in career and education planning optional for students in middle grades.
- Modifies provisions relating to K-12 career and technical education, by:
  - Removing the requirement of the bill that opportunities for learning computer science in elementary school include computational thinking and foundational computer science skills, and retains current law that makes the skills optional.
  - Removing a provision of the bill that modifies the authorized uses of funds for computer science instruction.
  - Removing a provision of the bill authorizing school districts or regional consortia to work with national providers to submit recommended career-themed courses to the DOE for state board approval.
  - Granting the DOE rulemaking authority over the administration of the CAPE Act.

- Modifies provisions relating to FCS institution admissions and student progression. The committee substitute:
  - Authorizes alternate methods, to be approved by the state board, to measure achievement of college level communication and computation competencies by students entering college credit programs.
  - Authorizes associate degree programs to accept a high school equivalency diploma issued by another state, as approved by the State Board of Education (SBE).
  - Clarifies that student eligibility for initial enrollment in dual enrollment courses includes a demonstrated level of achievement of college-level communication and computation skills through an approved common placement test or alternative method as adopted by the SBE.
  - Removes a requirement of existing law that the common placement testing program include the capacity to diagnose basic competencies in the areas of English, reading, and mathematics which are essential for success in meta-majors and to provide test information to students on the specific skills the student needs to attain.
  - Requires the SBE, by January 31, 2022, to adopt rules to develop and implement alternative methods for assessing the basic computation and communication skills of students who intend to enter a degree program at an FCS institution. The amendment authorizes FCS institutions to use these alternative methods in lieu of common placement tests to assess student readiness for college-level work in computation and communication.
  - Removes the requirement of existing law for FCS institutions to submit to the Chancellor of the FCS for approval implemented developmental education strategies through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction.
  - Adds alternative methods to the requirement for in current law for FCS institutions to use placement test results as established by the SBE to determine the extent to which each student demonstrates sufficient computation and communication skills to indicate readiness for his or her chosen meta-major and to counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major.
  - Removes a requirement of existing law that each FCS institution annually prepare and submit to state officials an accountability report that includes student success data relating to each developmental education strategy implemented by the institution.
- Provides for a representative committee of State University System, certain career centers established by district school boards, and FCS faculty, instead of the representative workgroup of the Articulation Coordinating Committee required by the bill, to identify the three mathematics pathways and the mathematics course sequence within each pathway which align to the mathematics skills needed for success in the corresponding academic programs and careers.
- Modifies workforce and postsecondary financial provisions. The committee substitute:

- Removes the additional full-time-equivalent (FTE) weights for industry certifications associated with aviation-related and aerospace-related occupations and instead provides additional FTE weight for industry certifications that lead to occupations in critical industry sectors as identified by the Department of Education and included on the Career and Professional Education (CAPE) industry funding list.
- Authorizes a technical center operated by a school district, an FCS institution, or a state university to enter into an agreement with another entity to cover the approved apprenticeship program student tuition and fees, including lab fees.
- Authorizes the SBE and the Board of Governors of the State University System of Florida to adopt rules and regulations regarding requirements for fee waivers for homeless students.
- Modifies the provisions of the bill authorizing school districts and FCS institutions to earn an additional $2000 for workforce education programs that lead to industry certification in critical industry sectors to instead provide an additional $2000 for school districts and FCS institutions for industry certifications earned by students in workforce education programs that are identified as leading to employment in critical industry sectors.
- Requires a district school board or FCS institution board of trustees that receives workforce performance funding to use at least 70 percent of the funds received to directly support the program that generated the funds.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Education; and Senators Hutson and Brodeur

581-02347-21 2021366c1

A bill to be entitled

An act relating to educational opportunities leading to employment; amending s. 446.011, F.S.; revising legislative intent related to apprenticeship training; amending s. 446.021, F.S.; defining and redefining terms; amending s. 446.032, F.S.; revising the general duties of the Department of Education with regard to apprenticeship and preapprenticeship programs; amending s. 446.041, F.S.; requiring the department to regularly review and evaluate its uniform minimum standards for apprenticeship and preapprenticeship programs; conforming provisions to changes made by the act; requiring the department to ensure that equal opportunity for apprentices, preapprentices, and applicants for apprenticeship and preapprenticeship is provided for the apprenticeship and preapprenticeship programs; amending s. 446.045, F.S.; conforming provisions to changes made by the act; revising the membership of the State Apprenticeship Advisory Council; revising meeting requirements; amending s. 446.051, F.S.; providing that apprenticeship or preapprenticeship program sponsors are responsible for the selection and training of certain personnel, as approved by the department; encouraging district school boards and postsecondary educational institutions to cooperate in providing certain equipment, supplies, and instructor salaries; amending s. 446.052, F.S.; encouraging specified entities to cooperate in developing and establishing

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apprenticeship and preapprenticeship programs that include career instruction; encouraging specified entities to work together toward specified goals relating to apprenticeship programs; amending s. 446.071, F.S.; providing that certain entities may be approved as apprenticeship sponsors if they meet certain uniform minimum standards; removing the definition of the term "need"; conforming provisions to changes made by the act; amending s. 446.081, F.S.; revising construction; repealing s. 446.091, F.S., relating to the adaptation and applicability of certain provisions to on-the-job training programs; amending s. 446.092, F.S.; revising criteria for apprenticeship occupations; creating s. 446.54, F.S.; providing legislative intent; defining the term "work-based learning"; providing that certain individuals enrolled in work-based learning are deemed to be employees of the state for purposes of receiving certain medically necessary care under workers' compensation coverage; amending s. 1003.01, F.S.; defining the term "work-based learning"; amending s. 1003.491, F.S.; authorizing the department to adopt rules; amending s. 1004.02, F.S.; defining the term "cooperative method of instruction"; amending s. 1007.23, F.S.; requiring that the statewide articulation agreement specify three mathematics pathways that meet a certain requirement upon which degree-seeking students must be placed; amending s. 1007.263, F.S.; requiring admissions counseling to use

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certain tests or alternative methods to measure achievement of college-level communication and computation by students entering college programs; requiring that such counseling measure achievement of certain basic skills; revising requirements for admission to associate degree programs; amending s. 1007.271, F.S.; revising eligibility requirements for initial enrollment in college-level dual enrollment courses; revising requirements for home education students seeking dual enrollment in certain postsecondary institutions; amending s. 1008.30, F.S.; requiring the State Board of Education to adopt, by a specified date, rules establishing alternative methods for assessing computation and communication skills of certain students; authorizing Florida College System institutions to use such alternative methods in lieu of the common placement test to assess a student's readiness to perform college-level work in computation and communication; deleting obsolete provisions; requiring Florida College System institutions to use placement test results or alternative methods to determine the extent to which certain students demonstrate sufficient computation and communication skills to indicate readiness for their meta-major; requiring Florida College System institutions to counsel and place certain students in specified college courses; limiting students' developmental education to content needed for success in their meta-major; conforming provisions to changes made by the

act; making technical changes; amending s. 1008.44, F.S.; requiring the Department of Education to identify certain certifications as those leading to occupations in specified industry sectors; authorizing the Commissioner of Education to limit certain certifications for the purpose of specified calculations; amending s. 1009.25, F.S.; authorizing technical centers operated by school districts, Florida College System institutions, or state universities to enter into specified agreements with other entities; authorizing the State Board of Education to adopt specified rules and the Board of Governors to adopt specified regulations; amending s. 1011.62, F.S.; revising the calculation of certain additional full-time equivalent membership relating to funding for the operation of schools; deleting a provision relating to full-time equivalent membership calculation for elementary and middle grades students; requiring that a specified supplemental value for full-time equivalent student membership be calculated for certain industry certifications leading to employment in critical industry sectors; authorizing the use of a specified percentage of certain funds for CAPE program expenses; limiting the amount of funds that may be used for administrative costs; prohibiting the use of CAPE funding to supplant funds provided for basic operation of the CAPE program; amending s. 1011.80, F.S.; providing for an appropriation to a school district or Florida College System institution

from the General Appropriations Act for certain industry certifications; requiring a district school board or Florida College System institution board of trustees that receives certain funding to use the funding in a specified manner; amending s. 1011.802, F.S.; specifying that Florida Pathways to Career Opportunities Grant Program funds may be used for instructional personnel; specifying the maximum amount of funds that may be used by the department to administer the Florida Pathways to Career Opportunities Grant Program; amending s. 1011.81, F.S.; providing for an appropriation to each Florida College System institution from the General Appropriations Act for certain industry certifications; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 446.011, Florida Statutes, is amended to read:

446.011 Legislative intent regarding apprenticeship training.—

(1) It is the intent of the State of Florida to provide educational opportunities for its residents so that they can be trained for trades, occupations, and professions suited to their abilities. It is the intent of this act to promote the mode of training known as apprenticeship in occupations throughout industry ~~in the state that require physical manipulative skills~~. The Legislature further intends to broaden ~~By broadening~~ job

training opportunities by ~~and~~ providing for increased coordination between secondary and postsecondary educational institutions and businesses and industries participating in ~~public school academic programs, career programs, and~~ registered apprenticeship programs so that~~,~~ the residents of this state ~~will~~ benefit from an additional avenue to a postsecondary credential or degree when on-the-job training is combined with related technical and theoretical instruction provided by a school district or any accredited postsecondary educational institution. Therefore, this act encourages apprenticeship programs to lead to a postsecondary credential ~~the valuable training opportunities developed when on-the-job training is combined with academic related classroom experiences~~. Moreover, this act is intended to develop the apparent potentials in apprenticeship training by assisting in the establishment of preapprenticeship programs in the public school system and elsewhere and by expanding presently registered programs as well as promoting new registered programs in jobs that lend themselves to apprenticeship training.

(2) It is the intent of the Legislature that the Department of Education have responsibility for the development of the registered apprenticeship and registered preapprenticeship uniform minimum standards for ~~the~~ apprenticeable occupations ~~trades~~ and that the department have responsibility for assisting approved program sponsors pursuant to s. 446.071 ~~district school boards and Florida College System institution boards of trustees~~ in developing preapprenticeship programs.

(3) It is the further intent of ss. 446.011-446.092 that the department ensure quality training through the adoption and

enforcement of uniform minimum standards and that the department promote, register, monitor, and service apprenticeship and preapprenticeship training programs and ensure that the programs adhere to the standards.

(4) It is the intent of the Legislature that this act not require the use of apprentices or preapprentices on construction projects financed by the state or any county, municipality, town or township, public authority, special district, municipal service taxing unit, or other agency of state or local government. Notwithstanding this intent, whenever any government or agency of government employs, of its own choice, apprentices or preapprentices or employs contractors who employ apprentices or preapprentices, the behavior of the government and the contractors employed by the government shall be governed by the provisions of this act.

Section 2. Section 446.021, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 446.021, F.S., for present text.)

446.021 Definitions of terms used in ss. 446.011-446.092.—As used in ss. 446.011-446.092, the term:

(1) "Apprentice" means a person at least 16 years of age who has entered into an apprenticeship agreement with a registered apprenticeship program sponsor, is engaged in learning an apprenticeable occupation through actual work experience under the supervision of journeyworkers, and is enrolled in the apprenticeship program, thereby receiving an organized and systematic form of instruction designed to provide theoretical and technical knowledge related to the occupation.

(2) "Apprenticeship program" means a program that is registered with the department on the basis of a plan submitted to the department which contains the terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including requirements for a written apprenticeship agreement.

(3) "Cancellation" means the termination or deregistration of an apprenticeship program at the request of the program sponsor or the termination of an apprenticeship agreement at the request of the apprentice.

(4) "Department" means the Department of Education.

(5) "Journeyworker" means a person working in an apprenticeable occupation who has successfully completed a registered apprenticeship program or who has worked the number of years required by established industry practices for the particular trade or occupation.

(6) "On-the-job training" means a structured system of work processes under the supervision of a journeyworker which provides the experience and knowledge necessary to meet the training objective of learning a specific skill, trade, or occupation.

(7) "Preapprentice" means a person at least 16 years of age who enters into a preapprenticeship agreement with a preapprenticeship program sponsor approved by the department and who engages in learning an apprenticeable occupation in any course of instruction in the public school system or elsewhere.

(8) "Preapprenticeship program" means a program sponsored by an apprenticeship program in the same occupation which is registered with the department on the basis of a plan submitted

to the department which contains the terms and conditions of instruction in the public school system or elsewhere and is designed to prepare a registered preapprentice to become an apprentice in an apprenticeship program.

(9) "Related instruction" means an organized and systematic form of instruction designed to provide an apprentice or a preapprentice with the knowledge of theoretical subjects related to a specific trade or occupation.

(10) "Uniform minimum standards" means the minimum requirements established for each occupation under which an apprenticeship or preapprenticeship program is administered. The term includes standards of admission, training objectives, curriculum outlines, objective standards to measure successful completion of the apprenticeship or preapprenticeship program, and the percentage of credit which may be given to an apprentice or preapprentice.

Section 3. Subsection (1), paragraphs (b), (d), and (e) of subsection (2), and subsection (3) of section 446.032, Florida Statutes, are amended to read:

446.032 General duties of the department for apprenticeship training.—The department shall:

(1) Establish uniform minimum standards ~~and policies~~ governing apprenticeship ~~apprentice~~ programs and agreements. The standards and policies shall govern the terms and conditions of the apprentice's employment and training, including the quality training of the apprentice for, but not limited to, such matters as ratios of apprentices to journeyworkers, safety, related technical instruction, and on-the-job training; but these standards ~~and policies~~ may not include rules, standards, or

guidelines that require the use of apprentices ~~and job trainees~~ on state, county, or municipal contracts. Uniform minimum standards must be uniform across all occupations ~~The department may adopt rules necessary to administer the standards and policies~~.

(2) By September 1 of each year, publish an annual report on apprenticeship and preapprenticeship programs. The report must be published on the department's website and, at a minimum, include all of the following:

(b) A detailed summary of each local educational agency's expenditure of funds for apprenticeship and preapprenticeship programs, including:

1. The total amount of funds received for apprenticeship and preapprenticeship programs;

2. The total amount of funds allocated to each apprenticeable ~~trade or~~ occupation;

3. The total amount of funds expended for administrative costs per apprenticeable ~~trade or~~ occupation; and

4. The total amount of funds expended for instructional costs per apprenticeable ~~trade and~~ occupation.

(d) The percentage of apprentices and preapprentices who complete their respective programs ~~in the appropriate timeframe~~.

(e) Information and resources related to ~~applications for~~ new apprenticeship programs and preapprenticeship programs and technical assistance and requirements for potential apprenticeship programs and preapprenticeship programs ~~applicants~~.

(3) Provide assistance to district school boards, postsecondary educational institutions, Florida College System

institution boards of trustees, approved program sponsors under s. 446.071, and local workforce development boards in notifying students, parents, and members of the community of the availability of apprenticeship and preapprenticeship opportunities, including data provided in the economic security report pursuant to s. 445.07.

Section 4. Subsections (2) through (8), (10), (11), and (12) of section 446.041, Florida Statutes, are amended to read:

446.041 Apprenticeship program, duties of the department.—The department shall:

(2) Regularly review and evaluate the uniform minimum ~~Administer the~~ standards established by the department for registered apprenticeship and preapprenticeship programs.

(3) Register, in accordance with this chapter, any apprenticeship or preapprenticeship program that~~, regardless of affiliation, which~~ meets the uniform minimum standards established by the department.

(4) Investigate complaints concerning the failure of any registered program to meet the uniform minimum standards established by the department.

(5) Cancel the registration of any program that fails to comply with the uniform minimum standards and policies of the department or that unreasonably fails or refuses to cooperate with the department in monitoring and enforcing compliance with the uniform minimum standards.

(6) Encourage potential sponsors to develop ~~and encourage~~ apprenticeship and preapprenticeship programs.

(7) Lead and coordinate outreach efforts to educate veterans about apprenticeship programs ~~and career opportunities~~.

(8) Cooperate with ~~and assist local~~ apprenticeship sponsors in the development of the uniform minimum ~~their~~ apprenticeship standards and training requirements.

(10) Monitor registered apprenticeship programs to ensure that they are being operated in compliance with all applicable uniform minimum standards.

(11) ~~Supervise all apprenticeship programs that are registered with the department.~~

~~(12)~~ Ensure that equal opportunity for apprentices, preapprentices, and applicants for apprenticeships and preapprenticeships is provided for the apprenticeship and preapprenticeship programs and that minority and gender diversity are considered in administering this program.

Section 5. Paragraphs (a), (b), and (c) of subsection (2) of section 446.045, Florida Statutes, are amended to read:

446.045 State Apprenticeship Advisory Council.—

(2)(a) There is created a State Apprenticeship Advisory Council to be composed of 10 voting members appointed by the Governor and two ex officio nonvoting members. The purpose of the advisory council is to advise the department on matters relating to apprenticeship and preapprenticeship. The advisory council may not establish policy, adopt rules, or consider whether particular apprenticeship or preapprenticeship programs should be approved by the department.

(b) The Commissioner of Education or the commissioner's designee shall serve ex officio as chair of the State Apprenticeship Advisory Council, but may not vote. A representative ~~The state director~~ of the Office of Apprenticeship of the United States Department of Labor shall

serve ex officio as a nonvoting member of the council. The Governor shall appoint to the council four members representing employee organizations and four members representing employer organizations. Each of these eight members shall represent industries that have registered apprenticeship programs. The Governor shall also appoint two public members who are knowledgeable about registered apprenticeship and apprenticeable occupations and who are independent of any joint or nonjoint organization. Members shall be appointed for 4-year staggered terms. The Governor ~~A vacancy~~ shall fill any vacancy ~~be filled~~ for the remainder of the unexpired term.

(c) The council shall meet at the call of the chair or the chair's designee or at the request of a majority of its voting membership, but at least twice a year. A majority of the voting members shall constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take action.

Section 6. Section 446.051, Florida Statutes, is amended to read:

446.051 Related instruction for apprentices.—

(1) The administration and supervision of related and supplemental instruction for apprentices, the coordination of such instruction with job experiences, and the selection and training of teachers, instructors, and coordinators for such instruction, all as approved by the department ~~registered program sponsor~~, are ~~shall be~~ the responsibility of the apprenticeship and preapprenticeship program sponsors ~~appropriate career education institution~~.

(2) District school boards and postsecondary educational institutions are ~~The appropriate career education institution~~

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~~shall be~~ encouraged to cooperate with and assist in providing to any registered program sponsor facilities, equipment and supplies, and instructors' salaries for the performance of related and supplemental instruction associated with the apprenticeship or preapprenticeship ~~registered~~ program.

Section 7. Subsections (1), (2), and (3) of section 446.052, Florida Statutes, are amended to read:

446.052 Preapprenticeship program.—

(1) There is created and established a preapprenticeship ~~education~~ program, as defined in s. 446.021.

(2) The department, under regulations established by the State Board of Education, may administer the provisions of ss. 446.011-446.092 which relate to preapprenticeship programs ~~in cooperation with district school boards and Florida College System institution boards of trustees~~. District school boards, postsecondary educational institutions ~~Florida College System institution boards of trustees~~, and registered program sponsors are encouraged to ~~shall~~ cooperate in developing and establishing programs that include career instruction ~~and general education courses required to obtain a high school diploma~~.

(3) The department, ~~the~~ district school boards, and postsecondary educational institutions ~~the Florida College System institution boards of trustees~~ shall work together with existing registered apprenticeship programs in order that individuals completing the preapprenticeship programs may be able to receive credit toward ~~towards~~ completing a registered apprenticeship program. In addition, postsecondary educational institutions are encouraged to work together with existing associate of science programs, associate of applied science

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programs, career certification programs, or degree programs to ensure that individuals completing a registered apprenticeship program may be able to receive college credit toward a technical degree.

Section 8. Section 446.071, Florida Statutes, is amended to read:

446.071 Apprenticeship sponsors.—

(1) One or more ~~local~~ apprenticeship sponsors must ~~shall~~ be approved in any apprenticeable occupation ~~trade~~ or multiple apprenticeable occupations ~~group of trades~~ by the department, upon a determination of need, if the apprenticeship sponsor meets all of the uniform minimum standards established by the department. ~~The term "need" refers to the need of state residents for apprenticeship training. In the absence of proof to the contrary, it shall be presumed that there is need for apprenticeship and preapprenticeship training in each county in this state.~~

(2) An ~~A local~~ apprenticeship sponsor may be a committee, a group of employers, an employer~~,~~ or a group of employees, an educational institution, a local workforce board, a community or faith-based organization, or any entity preapproved by the department as being in accordance with the requirements of this chapter ~~combination thereof~~.

(3) The department may grant a variance from the uniform minimum standards upon a showing of good cause for the variance by program sponsors in nonconstruction trades. The purpose of this subsection is to recognize the unique and varying training requirements in nontraditional apprenticeable occupations and to authorize the department to adapt the standards to the needs of

the programs.

Section 9. Subsection (4) of section 446.081, Florida Statutes, is amended to read:

446.081 Limitation.—

(4) Nothing in ss. 446.011-446.092 or in any rules adopted or contained in any approved apprentice agreement under such sections invalidates any special provision for veterans, minority persons, or women in the standards, qualifications, or operation of the apprenticeship program which is not otherwise prohibited by any applicable general law, executive order, rule, or regulation.

Section 10. Section 446.091, Florida Statutes, is repealed.

Section 11. Section 446.092, Florida Statutes, is amended to read:

446.092 Criteria for apprenticeship occupations.—At a minimum, an apprenticeable occupation must possess ~~is a skilled trade which possesses~~ all of the following characteristics:

(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.

(2) It is clearly identified and commonly recognized throughout an industry.

(3) It involves manual, mechanical, or technical skills and knowledge which, in accordance with the industry standards for the occupation, require ~~would require~~ a minimum of 2,000 hours of on-the-job training, which hours are excluded from the time spent at related technical or supplementary instruction.

(4) It requires related technical instruction to supplement on-the-job training. Such instruction may be given in a

classroom, through occupational or industrial courses or correspondence courses of equivalent value, through electronic media, or through other forms of self-study approved by the department.

Section 12. Section 446.54, Florida Statutes, is created to read:

446.54 Work-based learning.—

(1) It is the intent of the Legislature that, to the extent possible, school districts place students in paid work experiences, including apprenticeships and preapprenticeships, for purposes of educational training and work-based learning.

(2) For purposes of this section, "work-based learning" includes "on-the-job training" as defined in s. 446.021 and means sustained interactions with industry or community professionals in off-campus workplace settings that foster in-depth firsthand engagement with the tasks required in a given career or field and are aligned to curriculum and instruction.

(3)(a) A student in grades 6 through 12 who is enrolled in a course identified in the Course Code Directory which incorporates a work-based learning component or an activity that is unpaid and who suffers a work-related injury in the course of his or her enrollment is deemed to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

(b) An individual 18 years of age or younger who is enrolled in a preapprenticeship program as defined in s. 446.021 which requires work-based learning and who suffers a work-related injury in the course of his or her enrollment is deemed

to be an employee of the state for purposes of workers' compensation coverage. Such coverage applies only to medically necessary care rendered as a direct result of that injury.

Section 13. Subsection (17) is added to section 1003.01, Florida Statutes, to read:

1003.01 Definitions.—As used in this chapter, the term:

(17) "Work-based learning" means sustained interactions with industry or community professionals in workplace settings, to the extent practicable, or simulated environments that foster in-depth, firsthand engagement with the tasks required in a given career field, that align with curriculum and instruction, and that are provided in partnership with an educational institution. Work-based learning may be paid or unpaid and may be delivered in a stand-alone, work-based learning course that results in high school credit or may be a component of an existing course which may use the cooperative method of instruction as defined in s. 1004.02(27).

Section 14. Subsection (6) is added to section 1003.491, Florida Statutes, to read:

1003.491 Florida Career and Professional Education Act.—The Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(6) The Department of Education may adopt rules to administer this section.

Section 15. Subsection (27) is added to section 1004.02, Florida Statutes, to read:

1004.02 Definitions.—As used in this chapter:

(27) "Cooperative method of instruction" means an instructional methodology that provides students enrolled in career education programs an opportunity to extend their employment preparation beyond the classroom through participation in concurrent career education instruction through regularly scheduled on-the-job training experiences.

Section 16. Present subsections (3) through (8) of section 1007.23, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

1007.23 Statewide articulation agreement.—

(3) To facilitate seamless transfer of credits, reduce excess credit hours, and ensure that students are taking the courses needed for their future careers, the articulation agreement must establish three mathematics pathways for students by aligning mathematics courses to programs, meta-majors, and careers. A representative committee of State University System, career centers established under s. 1001.44, and Florida College System faculty shall collaborate to identify the three mathematics pathways and the mathematics course sequence within each pathway which align to the mathematics skills needed for success in the corresponding academic programs and careers.

Section 17. Subsection (1) and paragraph (a) of subsection (2) of section 1007.263, Florida Statutes, are amended to read:

1007.263 Florida College System institutions; admissions of students.—Each Florida College System institution board of trustees is authorized to adopt rules governing admissions of students subject to this section and rules of the State Board of

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Education. These rules shall include the following:

(1) Admissions counseling shall be provided to all students entering college or career credit programs. For students who are not otherwise exempt from testing under s. 1008.30, counseling must use the tests or alternative methods established by the State Board of Education pursuant to s. 1008.30 to measure achievement of college-level communication and computation competencies by students entering college credit programs ~~or tests to measure achievement of basic skills for career education programs as prescribed in s. 1004.91~~. Counseling must measure achievement of basic skills for career education programs under s. 1004.91 and include ~~includes~~ providing developmental education options for students whose ~~assessment~~ results, determined under s. 1008.30, indicate that they need to improve communication or computation skills that are essential to perform college-level work.

(2) Admission to associate degree programs is subject to minimum standards adopted by the State Board of Education and shall require:

(a) A standard high school diploma;~~,~~ a State of Florida high school equivalency diploma awarded under s. 1003.435(2); a high school equivalency diploma issued by another state which is recognized as equivalent by State Board of Education rule and is based on an assessment recognized by the United States Department of Education; ~~as prescribed in s. 1003.435,~~ previously demonstrated competency in college credit postsecondary coursework;~~,~~ or, in the case of a student who is home educated, a signed affidavit submitted by the student's parent or legal guardian attesting that the student has

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completed a home education program pursuant to the requirements of s. 1002.41. Students who are enrolled in a dual enrollment or early admission program pursuant to s. 1007.271 are exempt from this requirement.

Each board of trustees shall establish policies that notify students about developmental education options for improving their communication or computation skills that are essential to performing college-level work, including tutoring, extended time in gateway courses, free online courses, adult basic education, adult secondary education, or private provider instruction.

Section 18. Subsection (3) and paragraph (b) of subsection (13) of section 1007.271, Florida Statutes, are amended to read:

1007.271 Dual enrollment programs.—

(3) Student eligibility requirements for initial enrollment in college credit dual enrollment courses must include a 3.0 unweighted high school grade point average and a demonstrated level of achievement of college-level communication and computation skills as provided under s. 1008.30(1) or (2) ~~the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework~~. Student eligibility requirements for continued enrollment in college credit dual enrollment courses must include the maintenance of a 3.0 unweighted high school grade point average and the minimum postsecondary grade point average established by the postsecondary institution. Regardless of meeting student eligibility requirements for continued enrollment, a student may lose the opportunity to participate in a dual enrollment course if the student is disruptive to the

learning process such that the progress of other students or the efficient administration of the course is hindered. Student eligibility requirements for initial and continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted high school grade point average. Exceptions to the required grade point averages may be granted on an individual student basis if the educational entities agree and the terms of the agreement are contained within the dual enrollment articulation agreement established pursuant to subsection (21). Florida College System institution boards of trustees may establish additional initial student eligibility requirements, which shall be included in the dual enrollment articulation agreement, to ensure student readiness for postsecondary instruction. Additional requirements included in the agreement may not arbitrarily prohibit students who have demonstrated the ability to master advanced courses from participating in dual enrollment courses or limit the number of dual enrollment courses in which a student may enroll based solely upon enrollment by the student at an independent postsecondary institution.

(13)

(b) Each public postsecondary institution eligible to participate in the dual enrollment program pursuant to s. 1011.62(1)(i) must enter into a home education articulation agreement with each home education student seeking enrollment in a dual enrollment course and the student's parent. By August 1 of each year, the eligible postsecondary institution shall complete and submit the home education articulation agreement to the Department of Education. The home education articulation

agreement must include, at a minimum:

1. A delineation of courses and programs available to dually enrolled home education students. Courses and programs may be added, revised, or deleted at any time by the postsecondary institution. Any course or program limitations may not exceed the limitations for other dually enrolled students.

2. The initial and continued eligibility requirements for home education student participation, not to exceed those required of other dually enrolled students. A high school grade point average may not be required for home education students who demonstrate achievement of college-level communication and computation skills as provided under s. 1008.30(1) or (2) ~~meet the minimum score on a common placement test adopted by the State Board of Education which indicates that the student is ready for college-level coursework~~; however, home education student eligibility requirements for continued enrollment in dual enrollment courses must include the maintenance of the minimum postsecondary grade point average established by the postsecondary institution.

3. The student's responsibilities for providing his or her own transportation.

4. A copy of the statement on transfer guarantees developed by the Department of Education under subsection (15).

Section 19. Section 1008.30, Florida Statutes, is amended to read:

1008.30 Common placement testing for public postsecondary education.—

(1) The State Board of Education, in conjunction with the Board of Governors, shall develop and implement a common

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placement test for the purpose of assessing the basic computation and communication skills of students who intend to enter a degree program at any public postsecondary educational institution. Alternative assessments that may be accepted in lieu of the common placement test shall also be identified in rule. Public postsecondary educational institutions shall provide appropriate modifications of the test instruments or test procedures for students with disabilities.

(2) By January 31, 2022, the State Board of Education shall adopt rules to develop and implement alternative methods for assessing the basic computation and communication skills of students who intend to enter a degree program at a Florida College System institution. Florida College System institutions may use these alternative methods in lieu of common placement tests as described in subsection (1) to assess student readiness for college-level work in computation and communication ~~The common placement testing program shall include the capacity to diagnose basic competencies in the areas of English, reading, and mathematics which are essential for success in meta-majors and to provide test information to students on the specific skills the student needs to attain~~.

(3) ~~By October 31, 2013, the State Board of Education shall establish by rule the test scores a student must achieve to demonstrate readiness to perform college-level work, and~~ The rules required by subsection (2) must specify the following:

(a) A student who entered 9th grade in a Florida public school in the 2003-2004 school year, or any year thereafter, and earned a Florida standard high school diploma or a student who is serving as an active duty member of any branch of the United

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States Armed Services shall not be required to be assessed for readiness for college-level work in computation and communication ~~take the common placement test~~ and shall not be required to enroll in developmental education instruction in a Florida College System institution. However, a student who is not required to be assessed for readiness for college-level work in computation and communication ~~take the common placement test~~ and is not required to enroll in developmental education under this paragraph may opt to be assessed and to enroll in developmental education instruction, and the college shall provide such assessment and instruction upon the student's request.

(b) A student who is assessed for readiness for college-level computation and communication and whose assessment results indicate ~~takes the common placement test and whose score on the test indicates~~ a need for developmental education must be advised of all the developmental education options offered at the institution and, after advisement, shall be allowed to enroll in the developmental education option of his or her choice.

(c) A student who demonstrates readiness by achieving or exceeding the test scores established by the state board and enrolls in a Florida College System institution within 2 years after achieving such scores shall not be required to retest or complete developmental education when admitted to any Florida College System institution.

(4)(a) ~~By December 31, 2013, the State Board of Education, in consultation with the Board of Governors, shall approve a series of meta-majors and the academic pathways that identify~~

~~the gateway courses associated with each meta-major. Florida College System institutions shall use placement test results to determine the extent to which each student demonstrates sufficient communication and computation skills to indicate readiness for his or her chosen meta-major. Florida College System institutions shall counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major.~~

~~(5)(a)~~ Each Florida College System institution ~~board of trustees~~ shall ~~develop a plan to~~ implement the developmental education strategies defined in s. 1008.02 and rules established by the State Board of Education. ~~The plan must be submitted to the Chancellor of the Florida College System for approval no later than March 1, 2014, for implementation no later than the fall semester 2014. Each plan must include, at a minimum, local policies that outline:~~

~~1. Documented student achievements such as grade point averages, work history, military experience, participation in juried competitions, career interests, degree major declaration, or any combination of such achievements that the institution may consider, in addition to common placement test scores, for advising students regarding enrollment options.~~

~~2. Developmental education strategies available to students.~~

~~3. A description of student costs and financial aid opportunities associated with each option.~~

~~4. Provisions for the collection of student success data.~~

~~5. A comprehensive plan for advising students into appropriate developmental education strategies based on student~~

~~success data.~~

(b) ~~Beginning October 31, 2015,~~ Each Florida College System institution shall use placement test results or alternative methods as established by the State Board of Education to determine the extent to which each student demonstrates sufficient computation and communication skills to indicate readiness for his or her chosen meta-major. Florida College System institutions shall counsel students into college credit courses as quickly as possible, with developmental education limited to that content needed for success in the meta-major ~~annually prepare an accountability report that includes student success data relating to each developmental education strategy implemented by the institution. The report shall be submitted to the Division of Florida Colleges by October 31 in a format determined by the Chancellor of the Florida College System. By December 31, the chancellor shall compile and submit the institutional reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Board of Education~~.

(c) A university board of trustees may contract with a Florida College System institution board of trustees for the Florida College System institution to provide developmental education on the state university campus. Any state university in which the percentage of incoming students requiring developmental education equals or exceeds the average percentage of such students for the Florida College System may offer developmental education without contracting with a Florida College System institution; however, any state university offering college-preparatory instruction as of January 1, 1996,

may continue to provide developmental education instruction as defined in s. 1008.02(1).

(5)~~(6)~~ A student may not be enrolled in a college credit mathematics or English course on a dual enrollment basis unless the student has demonstrated adequate precollegiate preparation in ~~on the section of~~ the basic computation and communication skills ~~assessment required pursuant to subsection (1) that is~~ appropriate for successful student participation in the course.

Section 20. Paragraph (a) of subsection (1) and paragraph (b) of subsection (4) of section 1008.44, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

1008.44 CAPE Industry Certification Funding List and CAPE Postsecondary Industry Certification Funding List.—

(1) Pursuant to ss. 1003.4203 and 1003.492, the Department of Education shall, at least annually, identify, under rules adopted by the State Board of Education, and the Commissioner of Education may at any time recommend adding the following certificates, certifications, and courses:

(a) CAPE industry certifications identified on the CAPE Industry Certification Funding List that must be applied in the distribution of funding to school districts pursuant to s. 1011.62(1)(o). The CAPE Industry Certification Funding List shall incorporate by reference the industry certifications on the career pathways list approved for the Florida Gold Seal CAPE Vocational Scholars award. In addition, by August 1 of each year, the not-for-profit corporation established pursuant to s. 445.004 may annually select one industry certification, that does not articulate for college credit, for inclusion on the

CAPE Industry Certification Funding List for a period of 3 years unless otherwise approved by the curriculum review committee pursuant to s. 1003.491. Such industry certifications, if earned by a student, shall be eligible for additional full-time equivalent membership, pursuant to s. 1011.62(1)(o)1.

(f) Industry certifications leading to occupations in critical industry sectors which, if earned by a student, are eligible for additional full-time equivalent student membership pursuant to s. 1011.62(1)(o)1.e.

(4)

(b) For the purpose of calculating additional full-time equivalent membership pursuant to s. 1011.62(1)(o)1.e., the Commissioner of Education may limit CAPE industry certifications and CAPE Digital Tool certificates to students in certain grades ~~based on formal recommendations by providers of CAPE industry certifications and CAPE Digital Tool certificates~~.

Section 21. Paragraphs (b) and (f) of subsection (1) of section 1009.25, Florida Statutes, are amended to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(b) A student enrolled in an ~~approved~~ apprenticeship program, as defined in s. 446.021. A technical center operated by a school district, a Florida College System institution, or a state university may enter into an agreement with another entity to cover the approved apprenticeship program student tuition and fees, including lab fees.

(f) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This includes a student who would otherwise meet the requirements of this paragraph, as determined by a college or university, but for his or her residence in college or university dormitory housing. The State Board of Education may adopt rules and the Board of Governors may adopt regulations regarding documentation and procedures to implement this paragraph.

Section 22. Paragraph (o) of subsection (1) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(o) *Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry*

certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.—

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool certificates earned by students in elementary and middle school grades.

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. For a CAPE industry certification that has a statewide articulation agreement for 4 to 14 college credits and for a CAPE industry certification that has a statewide articulation agreement for 1 to 3 college credits and that is deemed by the department to be of sufficient rigor and to be linked to a high-skill occupation, a value of 0.2 full-time equivalent membership shall be calculated. For all other CAPE industry certifications with a statewide articulation agreement for 1 to 3 college credits, a value of 0.1 full-time equivalent membership shall be calculated ~~A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education~~. For CAPE industry certifications that do not articulate for college credit, the Department of Education shall

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calculate ~~assign~~ a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. ~~Additional FTE membership for an elementary or middle grades student may not exceed 0.1 for certificates or certifications earned within the same fiscal year.~~ The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a certification through a dual enrollment course and the certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry

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Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.

d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

e. In addition to the full-time equivalent student membership calculated under paragraphs (a)-(d), a supplemental value of 0.2 full-time equivalent student membership shall be calculated for industry certifications identified on the CAPE Industry Certification Funding List as leading to employment in occupations in critical industry sectors.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. The remaining 20 percent may be used for other CAPE program expenses, such as administrative costs and new industry certification programs; however, administrative costs may not exceed 5 percent of the total funds provided for CAPE industry certification. Funds provided for CAPE industry certification may not be used for any other purpose and, specifically, ~~This allocation~~ may not be used to supplant funds provided for basic operation of the program, such as teacher salaries and other costs that are funded for other courses with non-CAPE funds.

3. For CAPE industry certifications earned in the 2013-2014

school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus of $25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus of $50 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2.

c. A bonus of $75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of $100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph must ~~shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall~~ be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the certification is earned by the student. Any bonus

awarded to a teacher pursuant to this paragraph is in addition to any regular wage or other bonus the teacher received or is scheduled to receive. A bonus may not be awarded to a teacher who fails to maintain the security of any CAPE industry certification examination or who otherwise violates the security or administration protocol of any assessment instrument that may result in a bonus being awarded to the teacher under this paragraph.

Section 23. Paragraph (b) of subsection (7) and paragraph (a) of subsection (8) of section 1011.80, Florida Statutes, are amended to read:

1011.80 Funds for operation of workforce education programs.—

(7)

(b) Performance funding for industry certifications for school district workforce education programs is contingent upon specific appropriation in the General Appropriations Act and shall be determined as follows:

1. Occupational areas for which industry certifications may be earned, as established in the General Appropriations Act, are eligible for performance funding. Priority shall be given to the occupational areas emphasized in state, national, or corporate grants provided to Florida educational institutions.

2. The Chancellor of Career and Adult Education shall identify the industry certifications eligible for funding on the CAPE Postsecondary Industry Certification Funding List approved by the State Board of Education pursuant to s. 1008.44, based on the occupational areas specified in the General Appropriations Act.

3.a. Except as provided in sub-subparagraph b., each school district shall be provided $1,000 for each industry certification earned by a workforce education student. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated.

b. For each industry certification earned by a workforce education student which is identified as leading to employment in occupations in critical industry sectors, each school district shall be provided a total of $3,000. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated.

(8)(a) A school district or Florida College System institution that receives workforce education funds must use the money to benefit the workforce education programs it provides. The money may be used for equipment upgrades, program expansions, or any other use that would result in workforce education program improvement. The district school board or Florida College System institution board of trustees may not withhold any portion of the performance funding for indirect costs. A district school board or Florida College System institution board of trustees that receives workforce performance funding must use at least 70 percent of the funds received to directly support the program that generated the funds.

Section 24. Present subsection (4) of section 1011.802, Florida Statutes, is redesignated as subsection (5), a new subsection (4) is added to that section, and subsection (3) of that section is amended, to read:

1011.802 Florida Pathways to Career Opportunities Grant

Program.—

(3) The department shall give priority to apprenticeship programs with demonstrated regional demand. Grant funds may be used for instructional equipment, supplies, instructional personnel, student services, and other expenses associated with the creation or expansion of an apprenticeship program. Grant funds may not be used for recurring instructional costs or for indirect costs. Grant recipients must submit quarterly reports in a format prescribed by the department.

(4) Up to $200,000 of the total amount allocated may be used by the department to administer the grant program.

Section 25. Paragraph (c) of subsection (2) of section 1011.81, Florida Statutes, is amended to read:

1011.81 Florida College System Program Fund.—

(2) Performance funding for industry certifications for Florida College System institutions is contingent upon specific appropriation in the General Appropriations Act and shall be determined as follows:

(c)1. Except as provided in subparagraph 2., each Florida College System institution shall be provided $1,000 for each industry certification earned by a student. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated.

2. For each industry certification earned by a workforce education student which is identified as leading to employment in occupations in critical industry sectors, each Florida College System institution shall be provided a total of $3,000. If funds are insufficient to fully fund the calculated total award, such funds shall be prorated.

Section 26. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 468
INTRODUCER:	Judiciary Committee and Senator Bracy
SUBJECT:	Expunction of Criminal History Records Relating to Certain Cannabis Offenses
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Stokes	Jones	CJ	**Favorable**
3.	Forbes	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 468 creates section 943.0586, Florida Statutes, providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition. The language in the bill closely mirrors the procedures and requirements for court ordered expunction under section 943.0585, Florida Statutes.

The bill provides that a person may only receive one expunction under this section, and may only petition the court for an expunction after at least one year has elapsed since the disposition of the criminal activity to which the petition pertains, and he or she is no longer under court supervision. A person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under any other section of law.

The bill's fiscal impact to the Florida Department of Law Enforcement is significant; most of these costs will be offset by expunction application fees. See Section V. Fiscal Impact Statement for additional information.

The bill is effective July 1, 2021.

II. Present Situation:

There are several limited forms of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been

sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether a person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.[1]

Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency[2] that contains criminal history information.[3] Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.[4]

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.[5] Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed[6] or expunged for either a minor or an adult.[7] However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.[8]

A person may have his or her criminal history record[9] expunged under certain enumerated circumstances.[10] When a record is expunged, the criminal justice agencies[11] that possess the record must physically destroy or obliterate it. However, a criminal justice agency may retain a notation indicating compliance with an order to expunge.[12] The FDLE maintains a copy of the

[1] *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, *available at* http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged (last visited March 22, 2021).
[2] Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.
[3] Section 943.045(6), F.S.
[4] Section 943.045(5), F.S.
[5] Sections 943.0585(4)(a) and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. *See also* Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).
[6] In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws. Sections 943.045(19), 943.059(6), and 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.
[7] Sections 943.0585(4)(b) and 943.059(4)(b), F.S.
[8] Section 943.0585(4)(b) and (e), F.S.
[9] Section 943, 045(6), F.S., provides that a "criminal history record" is any judicial record maintained by a criminal justice agency containing criminal history information.
[10] Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.
[11] Section 943.045(11), F.S., provides that "criminal justice agency," means: (1) A court; (2) the FDLE; (3) The Department of Juvenile Justice; (4) The protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and (5) Any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.
[12] Section 943.0585(6)(a), F.S.

record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.[13] The criminal history record retained by the FDLE is confidential and exempt.[14] Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.[15, 16]

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.[17] Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other changing document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to expunge a criminal history record that is ineligible under s. 943.0584, F.S.[18]

[13] Section 943.045(16), F.S.
[14] Section 943.0585(6)(a), F.S.
[15] Section 943.0585(6), F.S.
[16] Section 943.0585(6), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.
[17] Section 943.0585(4), F.S.
[18] Section 943.0584, F.S., A criminal history record is not eligible for court-ordered sealing if it relates to:
Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.); Illegal use of explosives (Chapter 552, F.S.); Terrorism (Section 775.30, F.S); Murder (Sections 782.04, 782.065, and 782.09, F.S.); Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.); Assault or battery of one family or household member by another family or household member (Sections 784.011 and 784.03, F.S.); Aggravated assault (Section 784.021, F.S.); Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.); Stalking or aggravated stalking (Section 784.048, F.S.); Luring or enticing a child (Section 787.025, F.S.); Human trafficking (Section 787.06, F.S.); Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.); Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.); Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, L.O.F.)); Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.); Arson (Section 806.01, F.S.); Burglary of a dwelling (Section 810.02, F.S.); Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.); Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.); Carjacking (Section 812.133, F.S.); Home invasion robbery (Section 812.135, F.S.); A violation of the Florida Communications Fraud Act (Section 817.034, F.S.); Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.); Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.); Child abuse or aggravated child abuse (Section 827.03, F.S); Sexual performance by a child (Section 827.071, F.S.); Offenses by public officers and employees (Chapter 839, F.S.); Certain acts in connection with obscenity (Section 847.0133, F.S.); A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.); Selling or buying of minors (Section 847.0145, F.S.); Aircraft piracy (Section 860.16, F.S); Manufacturing a controlled substance (Chapter 893, F.S.); Drug trafficking (Section 893.135, F.S.); Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.[19]
- The person has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:
  - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
  - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.[20]

Certificate of Eligibility

A person must first apply to the FDLE for a certificate of eligibility. The FDLE must issue a certificate of eligibility for court-ordered expunction to a person who:[21]

- Is eligible for expunction, as described above.
- Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with certain requirements described above.
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains.
- Pays a $75 processing fee to the FDLE for placement in the FDLE Operating Trust Fund, unless the executive director waives such fee.[22]

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to expunge the record.[23] A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.[24] It is solely within the court's discretion to grant or deny a petition to expunge.[25]

[19] Section 943.0585(1)(d)1.-13., F.S. Assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a), F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; open carrying of a weapon, as defined in s. 790.053, F.S.; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as defined in s. 790.115, F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; arson, as defined in s. 806.031(1), F.S.; petit theft, as defined in s. 812.014(3), F.S.; or cruelty to animals, as defined in s. 828.12(1), F.S.
[20] Section 943.0585(1), F.S.
[21] Section 943.0585(2), F.S.
[22] Section 943.0585(2), F.S.
[23] Section 943.0585(3), F.S
[24] Section 943.0585(3), F.S.
[25] Section 943.0585(4), F.S.

Fees to Expunge Records

The application for a certificate of eligibility to seal or expunge under either statute must include a certified copy of the disposition. The clerk charges $2 per document for a certification fee[26] plus $1 a page for copying[27] the disposition. The FDLE charges $75 for the certificate of eligibility.[28]

Other Types of Expunction

Other types of expunction include:
- Lawful self-defense expunction.[29]
- Human trafficking victim expunction.[30]
- Automatic Juvenile expunction.[31]
- Early juvenile expunction.[32]
- Administrative expunction.[33]
- Juvenile diversion program expunction.[34]

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis.

A person is eligible to petition the court for an expunction if:
- The person was arrested or given a notice to appear for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis, regardless of disposition.
- The person was not convicted of, nor pled no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- At least 1 year has elapsed since disposition of the offense or alleged criminal activity.
- The person is no longer under court supervision related to the cannabis offense.
- The person has not previously received this type of expunction.

A person must apply to the FDLE for a certificate of eligibility before he or she petitions a court to expunge a criminal history record. The bill directs the FDLE to establish procedures for applying for and issuing a certificate of eligibility. The FDLE must issue a certificate of eligibility to a person who is the subject of a criminal history record if that person:
- Satisfies the criteria listed above, and is not ineligible under s. 943.0584, F.S.[35]

[26] Section 28.24(2), F.S.
[27] Section 28.24(5)(a), F.S.
[28] Section 943.0585(2)(a)4., F.S.
[29] Section 943.0578, F.S.
[30] Section 943.0583, F.S.
[31] Section 943.0515(1)(b)1., F.S.
[32] Section 943.0515(1)(b)2., F.S.
[33] Section 943.0581, F.S.
[34] Section 943.0582, F.S.
[35] *See footnote 21.*

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor that confirms the criminal history record complies with the criteria listed above.
- Has submitted a certified copy of the disposition of the charge.
- Remits a processing fee.

A certificate of eligibility is valid for 12 months after the date it is issued by the FDLE.

The following must be submitted with the petition to expunge a criminal history record:
- A valid certificate of eligibility.
- The petitioner's sworn statement that he or she satisfies the eligibility requirements for expunction, and is eligible for expunction and to the best of his or her knowledge does not have any other petition to seal or expunge pending before any court.

A person who knowingly provides false information commits a third degree felony.

The bill further provides that courts have jurisdiction over their own procedures to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established in the bill. A court may order a criminal justice agency to expunge a criminal history record of a person who complies with the requirements established in the bill.

The court may order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. However, the court may order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest.

The bill provides that it does not confer any right to expunction of any criminal history record and any request for expunction may be denied at the sole discretion of the court.

A copy of the completed petition must be served upon the state attorney or the statewide prosecutor, who, with the arresting agency, may respond to the petition. If the expunction is granted, the clerk must certify copies of the order to:
- The appropriate state attorney or statewide prosecutor.
- The arresting agency who must forward the order to any agency to which the arresting agency disseminated the criminal history record information.
- Any other agency which the court records reflect has received the criminal history record from the court.

Additionally, the FDLE must forward the order to the Federal Bureau of Investigations.

The FDLE and any other criminal justice agency is only required to act on a court order if the order is in compliance with the criteria described above. Upon receipt of an order that is not in compliance, the FDLE must notify:
- The appropriate state attorney or statewide prosecutor.
- The petitioner or the petitioner's attorney.
- The arresting agency.

The appropriate state attorney or statewide prosecutor must take action within 60 days to correct the record and petition the court to void the order. A cause of action, including contempt of court, may not arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility or comply with other requirements.

A person who has received an expunction may lawfully deny or fail to acknowledge the arrests and notices to appear covered by the expunged record, except in specified circumstances.[36]

Except as provided above, a person who has been granted an expunction under this bill may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by a person's failure to recite or acknowledge an expunged criminal history record.

The bill provides that a person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[36] Exceptions include, when the person is a defendant is a criminal prosecution; Is a candidate for admission to The Florida Bar; Is seeking employment or licensing with specified entities; Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE will experience an increase in workload associated with this bill; however, the $75 application fee will provide revenue to support additional staffing to address this workload. This bill allows the FDLE to collect a $75 application processing fee to be deposited into the department's Operating Trust Fund. Currently, the Computerized Criminal History (CCH) repository contains 729,070 unique state identification numbers (SIDs) with 1,016,255 charges for a qualifying marijuana offense of possession under 20 grams. Assuming 10 percent of those individuals seek relief, there would be an increase of 72,907 applications @ $75 for a total of $5,468,025 in increased revenue.[37] The FDLE estimates the bill's provision will result in the need to hire 88 additional staff to manage the workload, at a recurring cost of $5,425,716. The department also estimates additional nonrecurring costs of $1 million for technology modifications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.0586 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 16, 2021:
The committee substitute re-drafted the bill in order to closely follow existing expungement law codified at s. 943.0585, F.S. Significant policy changes made by the Committee Substitute include:

- The process is no longer completely free to the applicant, but will require a $75 fee to the Department of Law Enforcement for a certificate of eligibility.

[37] The FDLE, 2021 Agency Analysis for Cs/SB 468, p. 4, February 16, 2021 (Revised March 23, 2021).

- The one year wait and the probation limitation are added.
- The petition must be filed with the sentencing court.
- The clerk of court is not responsible for service on the state attorney.
- Expungement is limited to one time under this new section.
- No other contemporaneous offense is allowed.
- Expungement is not automatic, it may be denied by the court.
- The exceptions allowing future access for select agencies was added.
- The CS specifies that expungement under this new section is not a bar to sealing or expungement of a different offense under another law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Judiciary; and Senator Bracy

590-02872-21 2021468c1

A bill to be entitled

An act relating to expunction of criminal history records relating to certain cannabis offenses; creating s. 943.0586, F.S.; providing for eligibility; requiring a petitioner to obtain a certificate of eligibility from the Department of Law Enforcement; requiring the department to adopt rules; providing application requirements and contents of a certificate of eligibility for expunction; requiring the department to issue a certificate of eligibility for expunction if a person meets specified criteria; providing contents of a petition; providing court procedures for expungement; providing that the subject of an expungement order may lawfully deny or fail to acknowledge the arrest and notice to appear; providing exceptions; providing that a petition for expunction of certain cannabis offenses does not foreclose the petitioner from applying to seal or expunge other criminal arrests; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 943.0586, Florida Statutes, is created to read:

943.0586 Expunction of criminal history records relating to qualifying cannabis offenses.—

(1) ELIGIBILITY.—A person is eligible to petition a court to expunge a criminal history record under this section if all of the following apply:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-02872-21 2021468c1

(a) The person was arrested or given a notice to appear for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis, regardless of disposition.

(b) The person was not convicted of, or did not plead no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.

(c) At least one year has elapsed since the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(d) The person is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(e) The person has not previously been granted relief under this section.

(2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court to expunge a criminal history record, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for expunction.

(a) The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

1. Satisfies the eligibility criteria in paragraphs (1)(a)-(e) and is not ineligible under s. 943.0584;

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

with the criteria in paragraphs (1)(a)-(d);

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains; and

4. Remits a processing fee, equal to that fee charged pursuant to s. 943.0585(2)(a)4., to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

(b) A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

(3) PETITION.—Each petition to expunge a criminal history record must be accompanied by all of the following:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in subsection (1).

2. Is eligible for expunction to the best of his or her knowledge and does not have any other petition to seal or expunge a criminal history record pending before any court.

A person who knowingly provides false information on such sworn statement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) COURT AUTHORITY.—

(a) The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information, to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section.

(b) A court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court may not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility under subsection (2).

(c) The court may order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity only, except that the court may order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity.

(d) This section does not confer any right to expunction of any criminal history record, and any request for expunction of a

criminal history record may be denied at the sole discretion of the court.

(5) PROCESSING OF A PETITION OR AN ORDER.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency shall forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) The department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide

prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(6) EFFECT OF EXPUNCTION ORDER.—

(a) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests and notices to appear covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Is a candidate for admission to The Florida Bar;

4. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

5. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

school, or any local governmental entity that licenses child care facilities;

6. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

7. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(7) RELATION TO OTHER LAWS ON EXPUNCTION OR SEALING.—Expunction or sealing granted under this section does not prevent the person who receives such relief from petitioning for the expunction or sealing of a criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, if the person is otherwise eligible under those sections.

Section 2. This act shall take effect July 1, 2021.

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

468
Bill Number (if applicable)

Topic Expunction of criminal history

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 519 E. Call St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

468
Bill Number (if applicable)

Topic: Expunction of Criminal History Records Relating to Certain Cannabis Offenses

Amendment Barcode (if applicable)

Name: Pamela Burch Fort

Job Title:

Address: 104 South Monroe Street
Street
Tallahassee — FL — 32301
City — *State* — *Zip*

Phone: 850-425-1344

Email: TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: ACLU FL and NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

468
Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 488-6850

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 470
INTRODUCER:	Judiciary Committee and Senator Bracy
SUBJECT:	Public Records/Expunged Criminal History Records
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Stokes	Jones	CJ	**Favorable**
3.	Forbes	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 470 is the public records exemption bill linked to CS/SB 468. The bill provides that criminal history records relating to certain misdemeanor cannabis offenses that have been expunged and are retained by the Florida Department of Law Enforcement (FDLE) are confidential and exempt from public disclosure. Exceptions permit specified entities to access such records for limited purposes. CS/SB 468 creates section 943.0586, Florida Statutes, providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition.

Additionally, the bill provides that it is a first degree misdemeanor for any employee of a specified entity to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to:

- The person to whom the record relates.
- Persons having direct responsibility for employment, access authorization, or licensure decisions.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as CS/SB 468 or similar legislation takes effect. CS/SB 468 is effective on July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provides that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption; however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Expunction

A criminal history record includes any non-judicial record maintained by a criminal justice agency[27] that contains criminal history information.[28] Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of

[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.
[28] Section 943.045(6), F.S.

individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.[29]

A person may have his or her criminal history record expunged under certain circumstances.[30] When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.[31] The criminal history record retained by the FDLE is confidential and exempt.[32] Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.[33]

SB 468 Expunction of Criminal History Records Relating to Certain Cannabis Offenses

CS/SB 468 creates s. 943.0586, F.S., providing for the expunction of certain criminal history records relating to the misdemeanor offense of possession of 20 grams or less of cannabis, regardless of disposition. The language in the bill closely mirrors the procedures and requirements for court ordered expunction under s. 943.0585, F.S.

The bill provides that a person may only receive one expunction under this section, and may only petition the court for an expunction after at least one year has elapsed since the disposition of the criminal activity to which the petition pertains, and he or she is no longer under court supervision. A person who receives an expunction under this section is not precluded from seeking a sealing or expunction provided under any other section of law.

III. Effect of Proposed Changes:

CS/SB 470 is the public records exemption bill linked to CS/SB 468. The bill provides that criminal history records relating to certain misdemeanor cannabis offenses that have been expunged and are retained by the FDLE are confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the State Constitution. The bill provides exceptions to permit specified entities to access such records for limited purposes. The FDLE must disclose the existence of a criminal history record ordered expunged to specified entities for their respective licensing, access authorization, employment purposes, and to criminal justice agencies for criminal justice purposes. Such entities include:

- Criminal justice agencies.
- The Florida Bar.
- The Department of Children and Families.
- The Division of Vocational Rehabilitation with the Department of Education.
- The Agency for Health Care Administration.
- The Agency for Persons with Disabilities.
- The Department of Health.
- The Department of Elderly Affairs.

[29] Section 943.045(5), F.S.
[30] Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.
[31] Section 943.045(16), F.S.
[32] Section 943.0585(6)(a), F.S.
[33] Section 943.0585(6), F.S.

- The Department of Juvenile Justice.
- Any district school board, university laboratory school, charter school, private or parochial school, or local governmental entity that licenses child care facilities.
- The Division of Insurance Agent and Agency Services within the Department of Financial Services.
- The guardian ad litem program.

The bill creates a first degree misdemeanor for any employee of an entity listed above to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to:

- The person to whom the record relates.
- Persons having direct responsibility for employment, access authorization, or licensure decisions.

This subsection is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

> The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or possession of small amounts of cannabis has had on minorities and disadvantaged communities. The Legislature further recognizes the trends in this state, and nationally, of counties and localities decriminalizing the purchase or possession of small amounts of cannabis. Without this public records exemption, individuals with such low-level and nonviolent criminal history records who are granted expunction of such records might not be able to seek gainful employment and become productive, contributing members of this state. For these reasons, the Legislature finds that it is a public necessity that such records be made confidential and exempt.

This bill takes effect on the same date as CS/SB 468 or similar legislation takes effect. As currently in the Senate, CS/SB 468 is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged, and therefore, requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for a judicial record that is expunged. Section 2 of the bill provides a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited criminal history records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

VI. None. Technical Deficiencies:

The Open Government Sunset Review repeal language refers to repeal of the entire section, but perhaps should only repeal subsection (8) of s. 943.0586, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates subsection (8) in section 943.0586, Florida Statutes, which section is created by companion bill, CS/SB 468.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 15, 2020:
The committee substitute added references to the companion bill SB 468, added exceptions to the public records exemption consistent with changes made by amendment to SB 468 at the same committee meeting, and added a first degree misdemeanor related to those exceptions, which is consistent with similar public records laws.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Judiciary; and Senator Bracy

590-02873-21 2021470c1

A bill to be entitled

An act relating to public records; amending s. 943.0586, F.S.; providing an exemption from public records requirements for specified expunged criminal history records; providing exceptions; providing criminal penalties; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 943.0586, Florida Statutes, as created by SB 468 or similar legislation, 2021 Regular Session, to read:

943.0586 Expunction of criminal history records relating to qualifying cannabis offenses.—

(8) PUBLIC RECORDS.—A criminal history record ordered expunged under this section which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (6)(a)1. and 3.-7. for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (6)(a)1., subparagraph (6)(a)3., subparagraph (6)(a)4., subparagraph (6)(a)5., subparagraph (6)(a)6., or subparagraph (6)(a)7. to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-02873-21 2021470c1

disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that individuals who petition a court and are granted expunction of certain low-level and nonviolent criminal history records have such criminal history records made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes the disproportionate harm that criminalizing the purchase or possession of small amounts of cannabis has had on minorities and disadvantaged communities. The Legislature further recognizes the trends in this state, and nationally, of counties and localities decriminalizing the purchase or possession of small amounts of cannabis. The Legislature also recognizes the need for certain limited exceptions are necessary for public safety. Without this public records exemption, individuals having such low-level and nonviolent criminal history records who are granted expunction of such records might not be able to seek gainful employment and become productive, contributing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

members of this state. For these reasons, the Legislature finds that it is a public necessity that such records be made confidential and exempt.

Section 3. This act shall take effect on the same date that SB 468 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

4/19/2021
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

470
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public records / Expunction

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Tallahassee FL 32301
City State Zip

Phone 850-321-9386

Email fcfap@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 506
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Garcia
SUBJECT:	Transparency in Government Spending
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Davis	Sadberry	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 506 requires a nongovernmental entity that receives at least 50 percent of its annual revenue from state funds or that receives $750,000 or more from state funds in a fiscal year to submit a report to the Department of Management Services (DMS) by January 15 of each year that includes the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to, each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions. The report must be verified by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity.

The bill provides definitions for the terms "nongovernmental entity" and "state funds."

The bill requires the DMS to include on its Florida Has a Right to Know website the information reported by the nongovernmental entities beginning February 1, 2022, and annually thereafter.

The bill requires a nongovernmental entity to post the reported information on its own website, if the nongovernmental entity maintains a website.

The bill provides that, before receiving funds from a governmental entity, a nongovernmental entity that received state funds in the previous year must submit to the governmental entity an attestation verifying that the nongovernmental entity has submitted the required report. A

nongovernmental entity that did *not* receive state funds in the previous year must submit, before receiving funds from a governmental entity, to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.

The bill establishes that, beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting and posting requirements. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Transparency Florida Act

Section 215.985, F.S., is referred to as the Transparency Government Act (the act). The act mandates the Executive Office of the Governor, in consultation with the appropriations committees of the Senate and the House of Representatives, to establish and maintain a single website that provides access to all other websites required under s. 215.985, F.S. The single website, and other websites must:

- Be constructed for usability and provide an intuitive user experience.
- Provide a consistent visual design, interaction or navigation design, and information or data presentation.
- Be deployed in compliance with the Americans with Disabilities Act.
- Be compatible with all major web browsers.

The outcome of this requirement has been the single webpage known as "Transparency Florida,"[1] an initiative to ensure accountability in how the state spends its money. The Transparency Florida website allows for Florida citizens to view state budgets, payments, and contracts in order to hold state government accountable. The website provides links to:

- State Financials (budget, spending, and related information);
- State Payments;
- Florida State Contract Search (FACTS);
- State Contract Audits;
- State Economic Incentives Program;
- Quasi Government Spending;
- Estimated state taxes paid based on income;
- State Financial Reports;
- Local Government Financial Reporting; and
- State Employee Data (Florida Has a Right to Know).

[1] Department of Financial Services, *Transparency Florida, available at* https://www.myfloridacfo.com/Transparency/ (last visited Apr. 5, 2021).

Florida Fiscal Portal

Section 215.985(5), F.S., requires the Executive Office of the Governor to establish and maintain a website that provides information relating to fiscal planning for the state.[2] This website is known as the "Florida Fiscal Portal" and houses a collection of documents that detail the fiscal status of the state. The website includes agency legislative budget requests, the long-range financial outlook, the Governor's budget recommendation, and other fiscal publications.[3] The Office of Policy and Budget in the Executive Office of the Governor ensures all data added to the website remains accessible to the public for 10 years.

Florida Has a Right to Know Website

The DMS is required to maintain a website that provides current information regarding each employee or officer of a state agency, a state university, a Florida College System institution, or the State Board of Administration, regardless of the appropriation category.[4] This website, known as "Florida Has a Right to Know," provides current information relating to each employee or officer including the:

- Name;
- Salary or hourly rate of pay;
- Position number, class code, and class title; and
- Employing agency and budget entity.[5]

The information must be searchable by state agency, state university, Florida College System institution, and State Board Administration, and by employee name, salary range, or class code, and must be downloadable in a format that allows offline analysis.[6]

Florida Accountability Contract Tracking System

The Chief Financial Officer (CFO) is required to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website.[7] The Department of Financial Services (DFS) maintains and updates the contract tracking system. The tracking system contains contracts, grant awards, and amendments to contracts.

Within 30 days after executing a contract, each state entity is required to post the following information relating to the contract on the contract tracking system:

- The names of the contracting entities;
- The procurement method;
- The contract beginning and ending dates;
- The nature or type of commodities or services purchased;
- Applicable contract unit prices and deliverables;
- Total compensation to be paid or received under the contract;
- All payments made to the contractor to date;

[2] Section 215.985(5), F.S.
[3] Florida Fiscal Portal, *available at* http://floridafiscalportal.state.fl.us/Home.aspx (last visited Apr. 5, 2021).
[4] Section 215.985(6), F.S.
[5] Section 215.985(6)(a), F.S.
[6] Section 215.985(6)(b), F.S.
[7] Section 215.985(14), F.S.

- Applicable contract performance measures;
- If a competitive solicitation was not used to procure the goods and services, the justification of the action, including citation to a statutory exemption from competitive solicitation if any; and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.[8]

Within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information on the contract tracking system.

Records made available on the contract tracking system may not reveal information made confidential or exempt by law. Each state entity that is a party to a contract must redact confidential and exempt information from the contract and procurement documents before posting an electronic copy on the contract tracking system.[9] A request to redact confidential and exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity. The CFO, and the DFS, or an employee thereof, is not responsible for redacting confidential or exempt information contained on the system or the failure of a state entity to redact the confidential or exempt information. The CFO may regulate and prohibit the posting of records that could facilitate identity theft or fraud. Such action by the CFO does not supersede the duty of a public entity to provide a copy of a public record upon request.[10]

Verification of Documents

Section 92.525, F.S., specifies that the requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath (affirmation) that the facts or matters stated or recited in the document are true or other words to that effect. A document may be verified in three ways:

- Under oath or affirmation taken or administered before an officer authorized under s. 92.50, F.S., to administer oaths;
- Under oath or affirmation taken or administered by an officer authorized under s. 117.10, F.S., to administer oaths; or
- By the signing of the written declaration prescribed in s. 92.525(2), F.S.[11,12]

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to expand transparency in government spending.

[8] Section 215.985(14)(a), F.S.
[9] Section 215.985(14)(d), F.S.
[10] Section 215.985(14)(f), F.S.
[11] Section 92.525(2), F.S., provides that a written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.
[12] Section 92.525(1), F.S.

The term "nongovernmental entity" is defined as a nonprofit corporation.

The term "state funds" is defined to mean funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program.

This section requires a nongovernmental entity that receives at least 50 percent of its annual revenue, calculated using the nongovernmental entity's fiscal year, from state funds or that receives $750,000 or more from state funds in a fiscal year, to submit a report to the DMS by January 15 of each year that lists the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions of the nongovernmental entity. The report must be verified as provided in s. 92.525, F.S., by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity. Beginning February 1, 2022, and annually thereafter, the DMS must post the submitted information on its Florida Has a Right to Know website. In addition, the nongovernmental entity must post the same information on its own website if it maintains a website.

Before receiving funds from a governmental entity, a nongovernmental entity must attest that it has received state funds above the applicable thresholds in the previous year and has submitted the report required to the DMS, or that it did not receive funding meeting those thresholds in the previous year.

Beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the requirements of the bill. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

Section 2 provides that the bill take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate fiscal impact on private sector organizations. A nonprofit corporation may experience costs associated with complying with the reporting requirement and including the reported information on its own website, if it maintains one. Further, nongovernmental entities will incur additional workload and costs associated with verifying the attestation being submitted to the affiliated governmental entity.

C. Government Sector Impact:

The DMS will incur additional workload and associated costs resulting from the processing and posting of the data provided by nongovernmental entities. The DMS estimates costs, based on current technology spending for the Florida Has a Right to Know website, will result in a net increase of at least $1,000 annually to maintain the data on the portal.[13]

The bill prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity that is in noncompliance with the requirements of the bill. Governmental entities will experience increased workload and associated costs relating to the determination or confirmation of a nongovernmental entity's compliance before expending, transferring, or distributing funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill as currently drafted does not appear to provide to noncompliant nongovernmental entities notice or an opportunity to be heard prior to the suspension of funding.

[13] Department of Management Services, *2021 Agency Legislative Bill Analysis for CS/SB 506*, at 4 (Mar. 22, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends section 215.985 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 17, 2021:
The CS:

- Provides a definition for "nongovernmental entity" and "state funds."
- Requires a nonprofit corporation that receives at least 50 percent of its annual revenue from state funds or that receives $750,000 or more from state funds in a fiscal year, to submit to the DMS a report providing compensation information of the nongovernmental entities executives.
- Requires the DMS to include on the Florida Has a Right to Know website the information provided by the nongovernmental entity.
- Requires nongovernmental entities, before they receive funds from a governmental entity, to submit to the governmental entity an attestation verifying whether or not the nongovernmental entity submitted the required report if they received funding the previous year.
- Requires nongovernmental entities, before they receive funds from a governmental entity, which did not receive funding in the previous year, to submit to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.
- Prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting requirements.
- Establishes that the provisions of the bill are applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Governmental Oversight and Accountability; and Senator Garcia

585-02992-21 2021506c1

A bill to be entitled

An act relating to transparency in government spending; amending s. 215.985, F.S.; defining terms; requiring nongovernmental entities that have received a specified amount of state funds to submit an annual report detailing certain compensation data to the Department of Management Services; requiring such reports to be verified under penalty of perjury; requiring the department to post the information received through such reports on a specified website; requiring a nongovernmental entity to post the reported compensation information on its website; requiring a nongovernmental entity to take certain actions before receiving funds from a governmental entity; prohibiting a governmental entity from expending, transferring, or distributing funds to a nongovernmental entity if compliance with reporting requirements is not met; specifying applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (6) of section 215.985, Florida Statutes, are amended to read:

215.985 Transparency in government spending.—

(2) As used in this section, the term:

(a) "Committee" means the Legislative Auditing Committee.

(b) "Contract" means a written agreement or purchase order issued for the purchase of goods or services or a written

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-02992-21 2021506c1

agreement for the receipt of state or federal financial assistance.

(c) "Governmental entity" means a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof, or public school, Florida College System institution, state university, or associated board.

(d) "Nongovernmental entity" means a nonprofit corporation.

(e) "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program.

(f) "Website" means a site on the Internet which is easily accessible to the public at no cost and does not require the user to provide information.

(6)(a) The Department of Management Services shall establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, a Florida College System institution, or the State Board of Administration, regardless of the appropriation category from which the person is paid.

1.~~(a)~~ For each employee or officer, the information must include, at a minimum, his or her:

a.~~1.~~ Name and salary or hourly rate of pay.

b.~~2.~~ Position number, class code, and class title.

c.~~3.~~ Employing agency and budget entity.

2.~~(b)~~ The information must be searchable by state agency,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

state university, Florida College System institution, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

(b)1. A nongovernmental entity that receives at least 50 percent of its annual revenue, calculated using the nongovernmental entity's fiscal year, from state funds or that receives $750,000 or more in state funds in a fiscal year, must submit to the Department of Management Services by January 15 of each year a report that includes the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to, each director, board member, chief executive officer, chief financial officer, or chief operating officer or any other person performing equivalent functions. The report must be verified as provided in s. 92.525 by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity.

2. Beginning February 1, 2022, and each February 1 thereafter, the Department of Management Services shall include the information reported in subparagraph 1. on the website established under paragraph (a).

3. A nongovernmental entity required to submit a report under subparagraph 1. must post the reported information on its website if the entity maintains a website.

4. Before receiving funds from a governmental entity, a nongovernmental entity that:

a. Received funding subject to this paragraph in the preceding year must submit to the governmental entity an

attestation verified as provided in s. 92.525, that the nongovernmental entity has submitted the report required in subparagraph 1.

b. Did not receive funding subject to this paragraph in the preceding year must submit to the governmental entity an attestation verified as provided in s. 92.525, that the nongovernmental entity has not received funding in the preceding year.

5.a. Beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the requirements of this paragraph.

b. This subparagraph is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

Section 2. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 17, 2021

I respectfully request that **Senate Bill #506**, relating to Transparency in Government Spending, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 37

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 694
INTRODUCER:	Appropriation Committee; Community Affairs Committee; and Senator Rodrigues and others
SUBJECT:	Waste Management
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Favorable**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 694 amends the requirement that a local government must either provide three years' notice before its solid waste collection service displaces a private waste company or pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service. The bill requires a local government that displaces a solid waste collection service to provide a three-year notice period *and* pay the displaced company an amount equal to the company's preceding 18 months' gross receipts at the end of the notice period. The bill specifies that this does not apply to any displacement where the local government provided three years notice on or before December 31, 2020.

The bill defines the term "storm-generated yard trash" to expressly include storm-generated debris. It further provides that a private solid waste or debris management service provider is not required to collect such debris unless it is otherwise specified in a contract or agreement with a local government.

The bill also requires the Department of Environmental Protection (DEP) to review and update their 2010 Retail Bags Report. The DEP must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the DEP, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition,

sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

The DEP may incur nominal costs while reviewing and updating its 2010 Retail Bags Report.

The bill takes effect July 1, 2021.

II. Present Situation:

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2] Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[3]

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[4] Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitution, county charter, or statute.[5]

Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.[6] A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste[7] will be disposed of in a manner consistent with county ordinance or state or federal law.[8] Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.[9]

The DEP is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and

[1] FLA. CONST., art. VIII, s. 1.(f).
[2] FLA. CONST., art. VIII, s. 1.(g).
[3] FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.
[4] Sections 125.01(1)(d)(e)(f) and (k)1., F.S.
[5] Section 166.021(3), F.S.
[6] Section 125.01(1)(k), F.S.
[7] Section 403.703(36), F.S. "Solid waste" is defined as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.
[8] Section 125.01(1)(k)2., F.S.
[9] Section 403.706(1), F.S.

disposal of solid waste throughout the state.[10] The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.[11]

Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county[12] and may contract with other persons to fulfill some or all of its solid waste responsibilities.[13] Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.[14] In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.[15] Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.[16]

Competition with Private Companies

Section 403.70605, F.S., was enacted in 2000 to address concerns of private waste management companies regarding competition with local governments' solid waste departments for third party service contracts.[17] Private companies were concerned that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.[18]

Solid Waste Collection Services in Direct Competition

Under s. 403.70605, F.S., local governments providing specific solid waste collection services in direct competition with a private company must comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.[19] Local governments may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services, excluding zoning, land use, or comprehensive plan requirements.[20]

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[10] Section 403.705, F.S.
[11] Section 403.705(2)(a), F.S.
[12] Section 403.706(1), F.S.
[13] Section 403.706(8), F.S.
[14] Section 403.706(3), F.S.
[15] Section 403.7063, F.S.
[16] *Id*.
[17] Chapter 2000-304, s. 1, Laws of Fla.
[18] S*ee* Florida House of Representatives, Committee on Community Affairs, *CS/HB 1425 Final Analysis*, p. 2 (May 12, 2000), *available at* http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf (last visited Feb. 5, 2021).
[19] Section 403.70605(1)(a), F.S.
[20] Section 403.70605(1)(a)2., F.S.

When providing solid waste collection services outside of their jurisdiction in competition with private companies, local governments are prohibited from instituting predatory pricing schemes.[21]

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief. [22] The private company must notify the local government of the violation and give them 30 days to respond.[23] No injunctive relief is granted if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government, unless a court finds the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.[24]

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company[25] that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. "Displacement" means a local government's provision of a collection service which prohibits a private company from continuing to provide the same service it was providing when the decision to displace was made.[26]

Displacement does not include:

- Public and private sector competition for individual contracts;
- A local government refusing to renew an expiring contract with a private company;
- Local government action in response to an act by a private company that is a threat to public health or safety, or results in a substantial public nuisance;
- Local government action in response to material breach by a private company of its contract with the local government;
- Refusal by a private company to continue operations under the terms and conditions of existing agreement during the three-year notice period;
- Contracts between local governments and private waste companies absent an ordinance that displaces another private company;
- A majority of property owners in the displacement area petitioning for the local governing body to take over collection services;
- Municipal annexations honoring existing solid waste contracts pursuant to law; or
- A private company licensed to provide service for a limited time whose license expires and is not renewed by the local government.[27]

Before displacing a private company, a local government must first hold at least one public hearing, publicly noticed with a separate notice to private companies providing the service within

[21] Section 403.70605(2), F.S.; *see also* ss. 542.18 and 542.19, F.S.
[22] Sections 403.70605(1)(b) and (2)(c), F.S.
[23] Section 403.70605(1)(b), F.S.
[24] *Id*.
[25] Section 403.70605(4)(b), F.S. "Private company" is defined as "any entity other than a local government or other unit of government that provides solid waste collection services."
[26] Section 403.70605(3)(a), F.S.
[27] *Id.*

the jurisdiction, on the advisability of the local government providing the service.[28] The local government must take measures to provide services within one year of the final public hearing.[29] The local governments must provide three years' notice to a private company before it engages in the actual provision of the service that displaces the company.[30] As an alternative to delaying displacement three years, the local government may pay a displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area.[31] The local government and the private company are not prohibited from voluntarily negotiating a different notice period or amount of compensation.[32]

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the three-year notice period, the company is no longer considered displaced and the notice period lapses.[33]

Department of Environmental Protection Retail Bag Report

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature enacted s. 403.7033, F.S., in 2008 to require the DEP to analyze "the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments." Section 403.7033, F.S., required the DEP to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.[34]

Additionally, s. 403.7033, F.S., includes a prohibition on local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts the DEP's recommendations.[35] To date, the Legislature has not adopted any recommendations contained in the report and the prohibition on any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags remains in effect.

III. Effect of Proposed Changes:

Section 1 amends s. 403.7033, F.S., to require the DEP to review and update their 2010 Retail Bags Report. The DEP must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the DEP, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

[28] Section 403.70605(3)(b), F.S.
[29] Section 403.70605(3)(c), F.S.
[30] *Id.*
[31] *Id*.
[32] *Id*.
[33] Section 403.70605(3)(a)5., F.S.
[34] Section 403.7033, F.S.
[35] *Id*.

Section 2 amends s. 403.70605, F.S., which establishes the process a local government must follow when its provision of a solid waste collection service displaces a private waste company. Under current law, a local government must either provide three years' notice to the private company before beginning the displacing service, or, as an alternative to delaying displacement for three years, the local government may pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service. The bill requires local governments to provide the three years' notice *and* pay the private company an amount equal to its preceding 18 months' gross receipts at the end of the three-year notice period.

Section 3 provides that this act does not apply to any displacement if the local government provided three years' notice to the displaced private company or companies on or before December 31, 2020.

Section 4 provides a definition in s. 403.703, F.S., for the term "storm-generated yard trash" as vegetative matter that:

- Results from a tropical storm, a hurricane, a tornado, or any other significant weather event and is located or placed within a federally designated disaster area on public property or a public right-of-way;
- Is eligible for federal reimbursement; and
- Is placed curbside or on public property or a public right-of-way within the 15-day period after the tropical storm, hurricane, tornado, or other significant weather event that is the subject of the federally declared disaster.

The bill further provides the definition expressly includes storm-generated debris, as described in existing law, which is solid waste generated as a result of a storm event that is the subject of an emergency order issued by the DEP.

Section 5 amends s. 403.7071, F.S., to provide that a private solid waste or debris management service provider is not required to collect storm-generated yard trash, unless otherwise specified in a contract or franchise agreement between a local government and a private service provider. **Section 6** provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate, positive economic impact on the private sector because the bill deletes the authorization in current law for local governments to pay the displaced company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured three years' notice prior to displacement and 18 months of gross receipts when their service ends.

C. Government Sector Impact:

There may be an indeterminate, negative fiscal impact on local governments because the bill deletes the authorization in current law for local governments to pay the displaced company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured three years' notice prior to displacement and 18 months of gross receipts when their service ends.

The DEP may incur nominal costs while reviewing and updating its 2010 Retail Bags Report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.7033 and 403.70605.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Committee on April 15, 2021:
The committee substitute:

- Removes a deletion to retain a provision authorizing local governments and displaced private waste companies to voluntarily negotiate a notice period or amount of compensation different from those provided in statute.
- Specifies that the bill does not apply to any displacement where the local government provided three years' notice to the displaced private company(s) on or before December 31, 2020.
- Creates a new definition for part IV of ch. 403, F.S., defining "storm-generated yard trash" as vegetative matter that:
  - Results from a tropical storm, a hurricane, a tornado, or any other significant weather event and is located or placed within a federally designated disaster area on public property or a public right-of-way;
  - Is eligible for federal reimbursement; and
- Is placed curbside or on public property or a public right-of-way within the 15-day period after the tropical storm, hurricane, tornado, or other significant weather event that is the subject of the federally declared disaster.
- Provides the definition expressly includes storm-generated debris, as described in existing law, which is solid waste generated as a result of a storm event that is the subject of an emergency order issued by the Department of Environmental Protection.
- Provides that a private solid waste or debris management service provider is not required to collect storm-generated yard trash, unless otherwise specified in a contract or franchise agreement between a local government and a private service provider.

CS by Community Affairs on March 30, 2021:
The committee substitute adds the provision requiring the DEP to review and update the its 2010 Retail Bags Report and changes the title of the bill to "an act relating to waste management."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

426204

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Delete lines 62 - 64
and insert:
~~in~~ This paragraph does not prohibit ~~prohibits~~ the local government and the company from voluntarily negotiating a different notice period or amount of compensation.

Section 3. This act does not apply to any displacement as defined in s. 403.70605(3)(a), Florida Statutes, if the local government provided 3 years' notice to the displaced private

426204

company or companies on or before December 31, 2020.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 13 - 16

and insert:

delaying displacement for a specified period;
providing applicability; providing an effective date.

403980

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodrigues) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65

insert:

Section 3. Present subsections (42) through (47) of section 403.703, Florida Statutes, are redesignated as subsections (43) through (48), respectively, and a new subsection (42) is added to that section, to read:

403.703 Definitions.—As used in this part, the term:

(42)(a) "Storm-generated yard trash" means vegetative

403980

matter that:

1. Results from a tropical storm, a hurricane, a tornado, or any other significant weather event and is located or placed within a federally designated disaster area on public property or a public right-of-way;

2. Is eligible for federal reimbursement under 42 U.S.C. s. 5121 et seq.; and

3. Is placed curbside or on public property or a public right-of-way within the 15-day period after the tropical storm, hurricane, tornado, or other significant weather event that is the subject of the federally declared disaster.

(b) The term includes storm-generated debris under s. 403.7071.

Section 4. Subsection (7) is added to section 403.7071, Florida Statutes, and subsection (6) of that section is reenacted, to read:

403.7071 Management of storm-generated debris.—Solid waste generated as a result of a storm event that is the subject of an emergency order issued by the department may be managed as follows:

(6) Local governments or their agents may conduct the burning of storm-generated yard trash, other storm-generated vegetative debris, or untreated wood from construction and demolition debris in air-curtain incinerators without prior notice to the department. Within 10 days after commencing such burning, the local government shall notify the department in writing describing the general nature of the materials burned; the location and method of burning; and the name, address, and telephone number of the representative of the local government

403980

to contact concerning the work. The operator of the air-curtain incinerator is subject to any requirement of the Florida Forest Service or of any other agency concerning authorization to conduct open burning. Any person conducting open burning of vegetative debris is also subject to such requirements.

(7) Unless otherwise specified in a contract or franchise agreement between a local government and a private solid waste or debris management service provider, a private solid waste or debris management service provider is not required to collect storm-generated yard trash.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 16

and insert:

notice; amending s. 403.703, F.S.; defining the term "storm-generated yard trash"; reenacting and amending s. 403.7071, F.S.; providing that private solid waste or debris management service providers are not required to collect storm-generated yard trash unless required to do so by contract or franchise agreement with a local government; providing an effective date.

By the Committee on Community Affairs; and Senators Rodrigues and Perry

578-03606-21 2021694c1

A bill to be entitled

An act relating to waste management; amending s. 403.7033, F.S.; requiring the Department of Environmental Protection to review and update its report on retail bags and submit the updated report to the Legislature by a specified date; amending s. 403.70605, F.S.; requiring a local government to pay a specified amount of compensation to a displaced private waste company at the end of a specified notice period; removing a provision authorizing a local government to pay a specified amount of compensation to a private waste company as an alternative to delaying displacement for a specified period; removing a provision authorizing a local government and private waste company to negotiate such compensation and notice; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 403.7033, Florida Statutes, is amended to read:

403.7033 Departmental analysis of particular recyclable materials.—The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall review and update its 2010 report on retail bags analyzing ~~undertake an analysis of~~ the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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from retail establishments. The updated report must ~~analysis shall~~ include input from state and local government agencies, stakeholders, private businesses, and citizens~~,~~ and must ~~shall~~ evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure consistent and effective implementation, the department shall submit the updated ~~a~~ report with conclusions and recommendations to the Legislature no later than December 31, 2021 ~~February 1, 2010~~. Until such time that the Legislature adopts the recommendations of the department, a ~~no~~ local government, local governmental agency, or state governmental ~~government~~ agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

Section 2. Paragraph (c) of subsection (3) of section 403.70605, Florida Statutes, is amended to read:

403.70605 Solid waste collection services in competition with private companies.—

(3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

(c) Following the final public hearing held under paragraph (b), but not later than 1 year after the hearing, the local government may proceed to take those measures necessary to provide the service. The ~~A~~ local government shall provide 3 years' notice to the ~~a~~ private company before it engages in the actual provision of the service that displaces the company. At the end of the 3-year notice period ~~As an alternative to delaying displacement 3 years~~, the ~~a~~ local government shall ~~may~~ pay the ~~a~~ displaced company an amount equal to the company's preceding 18 ~~15~~ months' gross receipts for the displaced service

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

in the displacement area. The 3-year notice period shall lapse as to any private company being displaced when the company ceases to provide service within the displacement area. ~~Nothing in this paragraph prohibits the local government and the company from voluntarily negotiating a different notice period or amount of compensation.~~

Section 3. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

April 7, 2021

The Honorable Kelli Stargel
Senate Appropriations Committee, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: CS/SB 694- Waste Management

Dear Madam Chair:

Please allow this letter to serve as my respectful request to place CS/SB 694, relating to Waste Management, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Ray Rodrigues

Ray Rodrigues
Senate District 27

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
❒ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 748 (236698)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senator Brandes
SUBJECT:	Courts
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Forbes	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 748 revises a broad range of statutes that govern the operation of the court system. Some of the diverse changes are made to accommodate developments in technology, some reflect the impact COVID-19 has had on the court system, and one change recognizes the effect of inflation on the monetary jurisdictional thresholds in the county courts.

- The bill updates provisions controlling the maintenance of appellate court records to allow the electronic storage of court records at a remote location. These provisions are updated to keep pace with electronic technology rather than require the court clerk to keep manual control of the records.
- The clerks of court, working with the Florida Courts Technology Commission, must prepare a plan to procure or develop a statewide electronic solution that identifies all civil and criminal mandatory financial assessments required by statute.
- The jurisdictional amount of county courts will be adjusted beginning in 2030, and every 10 years afterwards, to account for inflation based on changes in the Consumer Price Index.
- The jurisdictional limit must be rounded to the nearest $5,000, but no lower than $50,000. The Office of Economic and Demographic Research (EDR) must calculate the adjusted jurisdictional limit and certify it to the Chief Justice of the Supreme Court beginning January 31, 2030 and every 10 years thereafter.
- The EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their websites.

- The bill authorizes a person to postpone for jury service for up to 1 year when a public health emergency or a state of emergency is declared.
- Finally, the bill revises three criminal statutes to authorize the taking and certification of fingerprints when a guilty judgment is entered in a proceeding that is conducted remotely. The fingerprints no longer must be taken in open court and in the judge's presence.

The bill takes effect July 1, 2021.

II. Present Situation:

Responsibilities of the Clerk of the Florida Supreme Court

Chapter 25, F.S., is devoted to the organization and operation of the Florida Supreme Court. Among the provisions in the chapter are two statutes detailing the responsibilities of the Clerk of the Supreme Court. The clerk must keep all books, papers, records, files, and the seal of the Court in the clerk's office in the Supreme Court Building and in his or her custody.[1]

Additionally, any decisions and opinions delivered by the Court or any justice must be filed and remain in the clerk's office. These decisions and opinions may not be removed unless ordered by the Court. The clerk is required to furnish certified copies of the decisions and opinions to any person who requests them and pays the necessary fees.[2] These statutes do not accommodate the developments in technology that allow for digital storage in a remote location.

Mandatory Monetary Assessments

The clerks of the circuit courts were required, by October 1, 2012, to develop a uniform form for the identification and imposition of all assessments mandated by statute. The clerks were required to work with their association and in consultation with the Office of the State Courts Administrator to develop the form. An assessment includes, but is not limited to, a fine or other monetary penalty, fee, service charge, or cost. The clerks are currently required to submit that form by October 1 of each year to the Supreme Court for approval. The form must contain updates to reflect recent changes made in the law. Once a form is approved by the Court, all circuit and county courts must use the form.[3]

According to information supplied in the *Judicial Branch 2021 Legislative Agenda*, the clerks' association, the Florida Court Clerks and Comptrollers, submitted the initial form matrix as required on October 1, 2012, and updated the form annually. The matrix is a catalogue of mandatory and discretionary fines, fees, charges, and costs in many areas, both civil and criminal. It provides the necessary statutory authority for each item with a brief description, states whether the item is mandatory or discretionary, provides the minimum and maximum amounts authorized, and often contains brief comments on the assessment.[4] *The Judicial Branch 2021 Legislative Agenda* further states that the Supreme Court has never approved the form

[1] Section 25.221, F.S.
[2] Section 25.301, F.S.
[3] Section 28.2457(1), (2), and (3), F.S.
[4] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, (January 21, 2021) (on file with the Senate Committee on Judiciary).

matrix because of "concerns that it is not a form within the meaning of the statute." However, the chief justice has provided the document each year to the chief judges of the trial courts for their use as a possible resource.[5]

The Judicial Management Council's Workgroup on Court Costs and Fines[6] was established on December 31, 2018, within the Judicial Management Council. Its purpose is to review monetary assessments and identify methods that will reduce the disproportionate impact the assessments have on low income individuals.[7] In June 2020, the Workgroup finalized its report, *Court Costs and Fines in Florida*, and the report was approved by the Judicial Management Council on August 31, 2020. The Workgroup recommended:

- Removing from statute the requirement for a uniform form for identifying and imposing assessments that the clerks produce; and
- Working in cooperation with the clerks of court to develop reforms, using an electronic system, to standardize the ability to identify and impose assessments and payments.

The Supreme Court approved these recommendations on November 4, 2020, at the Court Conference for consideration by the Legislature.[8]

Jurisdictional Amount of County Courts

A county court is a trial court that has jurisdiction over the following types of cases within its jurisdictional or monetary limits:

- All criminal misdemeanor cases not cognizable by the circuit courts.
- All violations of municipal and county ordinances.
- Disputes occurring in homeowner associations, but this jurisdiction is concurrent with the jurisdiction of the circuit courts.[9]

The statute governing the jurisdiction of county courts was amended in 2018 to increase the maximum jurisdictional amount of county courts in a three-step process. For all actions, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees, the jurisdictional amount is:

- $15,000 if filed on or before December 31, 2019.
- $30,000 if filed on or after January 1, 2020.
- $50,000 if filed on or after January 1, 2023.[10]

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[5] *Id.*, at 13.

[6] The Judicial Management Councils are described as "high-level management consultants" to the Florida Supreme Court. The first Judicial Management Council was established in 2012 and the current council is the Court's fifth council. Each council is composed of 15 voting members including the Chief Justice and one other justice, members of each level of the court system, and members from the public. The council meets at least quarterly and is tasked with identifying potential crisis situations for the judiciary and developing strategies to meet those concerns; evaluating information that will improve the effectiveness and performance of the judicial branch; developing and monitoring the judiciary's long-range planning work; reviewing the charges of the courts and Florida Bar commissions and committees, making revisions and proposing ways to coordinate the work of these groups; and addressing issues that the Supreme Court brings before the council. https://www.flcourts.org/Administration-Funding/Judicial-Management-Council

[7] Fla. Admin. Order No. AOSC18-77.

[8] *Judicial Branch Legislative Agenda*, *supra* note 4, at 15.

[9] Section 34.01(1), F.S.

[10] *Id.*; Ch. 2019-58, s. 9, Laws of Fla.

When the statute was amended in 2018, an additional provision was included requiring the Office of the State Courts Administrator to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2021. The report was to include recommendations regarding the adjustment of county court jurisdiction that considered the claim value of filings in both county and circuit courts, case events, the timeliness in processing cases, as well as any fiscal impact to the state resulting from the adjusted jurisdictional limits. The clerks of the county and circuit courts were tasked with providing data to assist in developing the report. The report was to include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district and circuit courts, including the use of appellate panels by circuit courts.

The Office of the State Courts Administrator issued its report entitled "Recommendations Regarding the Adjustment of County Court Jurisdiction" on February 1, 2021.[11]

Maintenance of Appellate Court Records in the District Courts of Appeal

The statutes contain a number of provisions directing how court records are to be stored. Unfortunately, many of these provisions have become outdated and have not kept pace with changes in electronic technology and storage. Section 35.15, F.S., states that all decisions and opinions delivered by the district courts of appeal or one its judges must be filed and remain in the office of the clerk. The decisions and opinions may not be taken from the clerk's office except by court order. However, the clerk must furnish to anyone who desires certified copies of the opinions and decision upon payment of the appropriate fees.

Section 35.24, F.S., requires each clerk for a district court of appeal to physically keep his or her records at the headquarters of the court. This provision does not envision advancements in technology and electronic storage that would permit a clerk to store records electronically at a remote location.

In a similar manner, s. 35.24, F.S., requires that all books, papers, records, files, and the court seal be kept in the clerk's office. This also precludes electronic storage of these items at a remote location.

Jury Duty Postponement

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.[12] If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she may be required to pay a fine that does not exceed $100 and may be held in contempt of court.[13]

If someone has been summoned for jury duty, jury service may be postponed for up to 6 months once a written or oral request is made. The request may specify a date or time period to which

[11] Office of the State Courts Administrator, *Recommendations Regarding the Adjustment of County Court Jurisdiction*, (February 1, 2021) (on file with the Senate Committee on Judiciary).
[12] Section 40.23(1), F.S.
[13] Section 40.23(3), F.S.

the service is to be postponed, and if that is stated, he or she will be given consideration for service once the assignment of the postponed date of jury service is made.[14]

According to the *Judicial Branch 2021 Legislative Agenda*, jury service in Florida has been postponed since March 2020 because of the COVID-19 pandemic. Once jury service resumes, some people who are summoned may not be able to attend on a particular date due to complications created by the pandemic. The examples are given that the person summoned might recently have returned to work after being unemployed during the pandemic or might be responsible for the care of someone who is at greater risk of health complications if he or she is exposed to COVID-19.[15]

Fingerprinting a Defendant upon Conviction

The criminal law statutes detail procedures that must be followed when a judgment is entered in certain misdemeanor and all felony offenses. A judgment of guilty or not guilty for a misdemeanor petit theft offense[16] or a felony offense[17] must contain:

- A written record, signed by the judge, and recorded by the clerk of the circuit court; or
- An electronic record that contains the judge's electronic signature and is recorded by the clerk of the circuit court.

To enter a written or electronic judgment of guilt involving petit theft and all felonies, the judge must, in open court, and in the judge's presence, have the defendant's fingerprints taken either manually or electronically, sign a certificate certifying that the fingerprints on the judgment are the defendant's fingerprints and that they were placed on the certificate in the judge's presence, and for a felony judgment, cause the defendant's social security number to be recorded. It is the opinion of some practitioners that these statutes do not appear to allow for a proceeding to be conducted remotely.

III. Effect of Proposed Changes:

Responsibilities of the Clerk of the Florida Supreme Court (Sections 1 and 2)

The requirement that the clerk keep all books, papers, records, files, and the seal in his or her office and custody is amended. The revised language reflects developments in technology and electronic storage and requires that those items be "maintained" by the clerk and in the clerk's "control" as prescribed by the Supreme Court. The clerk is no longer required to physically keep them in the clerk's office and custody but is permitted to electronically store records at a remote location.

[14] Section 40.23(2), F.S.
[15] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 9 (January 21, 2021) (on file with the Senate Committee on Judiciary.)
[16] Section 812.014(3)(d), F.S.
[17] Section 921.241, F.S.

Mandatory Monetary Assessments (Section 3)

Section 28.2457(2), F.S., is amended to delete the requirements that the uniform form developed by the circuit court clerks be updated and submitted annually to the Supreme Court for approval and later distribution. Under the bill, the clerks of the circuit courts must collaborate with the state courts through the Florida Courts Technology Commission[18] to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all civil and criminal assessments required by statute. At a minimum, the plan must address operational, technological, and fiscal considerations involved in implementing the electronic solution. The clerks must submit the plan to the President of the Senate and the Speaker of the House of Representatives by January 1, 2022.

Jurisdiction Amount of County Courts (Section 4)

The statute defining the jurisdiction of the county courts is amended to delete the now obsolete provision requiring the Office of the State Courts Administrator to publish a report by February 1, 2021.

A new provision is added requiring the $50,000 jurisdictional amount for cases that will be filed on or after January 1, 2023, to be adjusted in accordance with changes in the Consumer Price Index. Effective January 1, 2030, and every 10 years after, the $50,000 limit will be adjusted by The Office of Economic and Demographic Research (EDR), and certified to the Chief Justice of the Supreme Court. The percentage change must be adjusted and increased by the Consumer Price Index for all Urban Consumers, U.S. Average, All Items 1982-84=100, or successor reports, as initially reported by the United States Department of Labor, Bureau of Labor Statistics. . The jurisdictional limit must be rounded to the nearest $5,000, but may not be lower than $50,000. The EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their websites.

Maintenance of Appellate Court Records in the District Courts of Appeal (Sections 5, 6, and 7)

Section 35.15, F.S., as amended, no longer requires that decisions and opinions be kept in the physical office of the clerks, but requires them to be kept under the clerk's "maintenance or control." The decisions and opinions, however, may be taken from the clerk's maintenance or control when ordered by the court. These revisions permit the electronic storage of records at a remote location and reflects an adaptation to advancements in technology.

Section 35.23, F.S., is amended to provide that a clerk must no longer "keep his or her records" at the headquarters of the district court of appeal, but rather to "have an office" at the headquarters of the court. This revision permits the use of electronic technology to store records at a remote location in accordance with the revision to s. 35.24, F.S., which no longer requires

[18] The Florida Courts Technology Commission was created by the Florida Supreme Court in 2010. The Commission is composed of 25 members who are tasked with the responsibility of "overseeing, managing, and directing the development and use of technology within the judicial branch under the direction of the Court." The Commission must submit an annual report by April 1 each year.
https://www.flcourts.org/content/download/579375/file/FCTC%20Operational%20Procedures%20-%20Feb%202020.pdf.

the clerk to keep the books, papers, records, files, and the seal of the court in his or her office. As amended, these items must be maintained by, and in the control of, the clerk.

Jury Duty Postponement (Section 8)

The bill creates an additional postponement period of up to 12 months for someone who has been summoned for jury service. If the State Health Officer declares a public health emergency pursuant to s. 381.00315, F.S., or the Governor declares a state of emergency pursuant to s. 252.36(2), F.S., a person who has been summoned may have his or her service postponed from for up to 12 months upon a written or oral request. As with the existing 6 month postponement in statute, the request may specify a date or time period to which the service is to be postponed and may be given consideration when an assignment of jury service is made.

Fingerprinting a Defendant upon Conviction (Sections 9, 10, and 11)

The pandemic has significantly limited the number of in-person criminal court proceedings, which is creating a backlog of pending cases. The Florida Supreme Court's COVID-19 workgroup has studied options for resolving criminal cases remotely without the requirement of proceedings conducted in court. The Workgroup determined that the Florida Rules of Criminal Procedure could be adopted to authorize a criminal defendant to expressly request and be given approval by the court to either enter a plea of guilty or nolo contendere in a remote proceeding using audio-visual technology. To make this possible, the Workgroup has recommended that several statutes be amended.[19]

Because current law requires that a defendant be fingerprinted in open court in the judge's presence, it appears that current laws must be amended to establish a court's authority to take fingerprints at the time a judgment is entered in a remotely conducted proceeding.[20]

Section 812.014, F.S., relating to petit theft, s. 921.241, F.S., relating to felony judgments, and s. 921.242, F.S., relating to prostitution offenses, are amended to:

- Authorize the fingerprinting of a defendant, either manually or electronically, when a guilty judgment is entered in a proceeding that is conducted outside of court or outside of the judge's presence.
- Delete the requirement that a judge must certify that a defendant's fingerprints were taken in open court and in the judge's presence.
- Require that the certification be entered by a court officer, employee of the court, or the employee of a criminal justice agency who captured the fingerprints. If taken manually, the person who took the fingerprints must place his or her written signature on the certification. If taken electronically, he or she must place a written or electronic signature on the certification. The fingerprints and certification must be filed in the case.
- Delete the requirement that a defendant's social security number be taken when his or her fingerprints are taken.

[19] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 10-12 (January 21, 2021) (on file with the Senate Committee on Judiciary).
[20] *Id*. at 11.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.221, 25.301, 28.2457, 34.01, 35.15, 35.23, 35.24, 40.23, 812.014, 921.241, and 921.242.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 24, 2021:
The committee substitute requires the jurisdictional limit be rounded to the nearest $5,000, but no lower than $50,000. The Office of Economic and Demographic Research (EDR) must calculate the adjusted jurisdictional limit and certify it to the Chief Justice of the Supreme Court beginning January 31, 2030 and every 10 years thereafter. EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their respective websites.

CS by Judiciary Committee on March 2, 2021:
The committee substitute makes changes to the underlying bill in two areas: mandatory monetary assessments and fingerprinting defendants. The clerks of court must work with the Florida Courts Technology Commission to develop a plan for a technology solution that tracks all civil and criminal monetary assessments. The plan must be submitted to legislative leaders by January 1, 2022. The fingerprinting section now permits fingerprints to be taken manually or electronically, regardless of whether the judgment is a written judgment or electronic judgment. The defendant's fingerprints and the certification of the person who took the fingerprints must be filed in the case in which the judgment is entered.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

236698

576-03365-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to courts; amending s. 25.221, F.S.; deleting the requirement that the Clerk of the Supreme Court physically keep books, records, and other materials in the clerk's office; amending s. 25.301, F.S.; deleting the requirement that Supreme Court decisions and orders remain in the clerk's office; amending s. 28.2457, F.S.; requiring the clerks of the circuit court, with specified entities, to prepare a plan to procure or develop a statewide electronic solution to accurately identify all assessments mandated by statute; requiring the plan to address certain considerations relating to the implementation of the electronic solution; requiring the clerks to submit the plan to the Legislature by a specified date; deleting a provision requiring the clerks to annually submit a uniform form for identification and imposition of mandated assessments to the Supreme Court; amending s. 34.01, F.S.; providing for the periodic inflationary adjustment of the monetary jurisdictional limit applicable to all actions at law in county courts filed on or after a specified date, beginning in 2030; requiring the Office of Economic and Demographic Research to periodically calculate and certify such jurisdictional limit to the Chief Justice of the Supreme Court by a specified date; requiring specified entities to publish the adjusted

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jurisdictional limit on their websites; deleting obsolete language; amending s. 35.15, F.S.; deleting the requirement that decisions and orders of district courts of appeal remain in the office of the clerk of any such court; amending s. 35.23, F.S.; requiring the clerk of a district court of appeal to have an office at the headquarters of the court; deleting a requirement that the clerk keep records at the headquarters office; amending s. 35.24, F.S.; deleting the requirement that the clerk of a district court of appeal physically keep books, records, and other materials in the clerk's office; amending s. 40.23, F.S.; authorizing any person who has been summoned for jury service to postpone such service for an additional timeframe in the event of a declared public health emergency or a state of emergency; specifying requirements for any such request; amending s. 812.014, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt of petit theft; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; amending s. 921.241, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt for a felony; authorizing the electronic capture of fingerprints; requiring the court officer, the

employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; removing the requirement that a judge obtain a defendant's social security number at the time of fingerprinting; amending s. 921.242, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt for an offense under ch. 796, F.S.; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 25.221, Florida Statutes, is amended to read:

25.221 Maintenance ~~Custody~~ of books, records, and other materials ~~etc.~~—All books, papers, records, files, and the seal of the Supreme Court must be maintained by ~~shall be kept in the office of~~ the clerk ~~of said court~~ and be in the clerk's control, as prescribed by the Supreme Court ~~custody~~.

Section 2. Section 25.301, Florida Statutes, is amended to read:

25.301 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the Supreme ~~said~~ Court, or

any justice thereof, relating ~~in relation~~ to any action or proceeding pending in the ~~said~~ court must ~~shall~~ be filed ~~and remain~~ in the office of the clerk and maintained by the clerk in the manner prescribed by the Supreme Court. Such decisions or opinions may~~, and shall~~ not be taken out from the clerk's maintenance or control except by order of the court; however, the ~~but said~~ clerk must ~~shall at all times be required to~~ furnish certified copies of such opinions and decisions to any person who makes such a request ~~may desire the same certified copies of such opinions and decisions~~, upon receiving any required fees ~~his or her fees therefor~~.

Section 3. Subsection (2) of section 28.2457, Florida Statutes, is amended to read:

28.2457 Mandatory monetary assessments.—

(2) The clerks of the circuit courts shall collaborate with the state courts through the Florida Courts Technology Commission to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all assessments mandated by statute. The plan must, at a minimum, address operational, technological, and fiscal considerations related to the implementation of the electronic solution. The clerks shall submit the plan to the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2022 ~~The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall develop by October 1, 2012, a uniform form for the identification and imposition of all assessments mandated by statute. The clerks shall submit the form by that date, and by October 1 every year thereafter if necessary to~~

~~reflect changes in the law, to the Supreme Court for approval. Upon approval of the form by the Supreme Court, all circuit and county courts shall use the form~~.

Section 4. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts.

(b) Of all violations of municipal and county ordinances.

(c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

1. If filed on or before December 31, 2019, the sum of $15,000.

2. If filed on or after January 1, 2020, the sum of $30,000.

3. If filed on or after January 1, 2023, the sum of $50,000.

Effective July 1, 2030, and every 10 years thereafter, the $50,000 jurisdictional limit in subparagraph 3. must be adjusted and increased by the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items 1982-84=100, or successor reports, for the preceding 10 calendar years as initially reported by the United States Department of Labor, Bureau of Labor Statistics. The adjusted jurisdictional limit must be rounded to the nearest $5,000. However, the

jurisdictional limit may not be lower than $50,000. The Office of Economic and Demographic Research must calculate the adjusted jurisdictional limit and certify the adjusted jurisdictional limit to the Chief Justice of the Supreme Court beginning January 31, 2030, and every 10 years thereafter. The Office of Economic and Demographic Research and the Office of the State Courts Administrator must publish the adjusted jurisdictional limit on their websites.

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

~~By February 1, 2021, the Office of the State Courts Administrator shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must make recommendations regarding the adjustment of county court jurisdiction, including, but not limited to, consideration of the claim value of filings in county court and circuit court, case events, timeliness in processing cases, and any fiscal impact to the state as a result of adjusted jurisdictional limits. The clerks of the circuit court and county court shall provide claim value data and necessary case event data to the office to be used in development of the report. The report must also include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district courts and the circuit courts, including the use of appellate panels by circuit courts.~~

Section 5. Section 35.15, Florida Statutes, is amended to

read:

35.15 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the district courts of appeal, or any judge thereof, relating ~~in relation~~ to any action or proceeding pending in such ~~said~~ court must ~~shall~~ be filed ~~and remain~~ in the office of the clerk and maintained in the control of the clerk. Such decisions and opinions may~~, and shall~~ not be taken from the clerk's maintenance or control ~~therefrom~~ except by order of the court; however, the ~~but said~~ clerk must ~~shall at all times be required to~~ furnish certified copies of such opinions and decisions to any person who makes such a request ~~may desire the same certified copies of such opinions and decisions~~, upon receiving any required fees ~~his or her fees therefor~~.

Section 6. Section 35.23, Florida Statutes, is amended to read:

35.23 Location of clerk's office.—Each clerk shall have an office ~~keep his or her records~~ at the headquarters of the district court of appeal.

Section 7. Section 35.24, Florida Statutes, is amended to read:

35.24 Maintenance ~~Custody~~ of books, records, and other materials ~~etc~~.—All books, papers, records, files and the seal of each district court of appeal shall be maintained by, and in the control of, ~~kept in the office of~~ the clerk of the ~~said~~ court.

Section 8. Subsection (2) of section 40.23, Florida Statutes, is amended to read:

40.23 Summoning jurors.—

(2) The jury service of any person who has been summoned

may be postponed for a period not to exceed 6 months upon written or oral request. However, if either a public health emergency has been declared by the State Health Officer pursuant to s. 381.00315 or a state of emergency has been declared by the Governor pursuant to s. 252.36(2), the jury service of any person who has been summoned may be postponed for a period not to exceed 12 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

Section 9. Paragraph (d) of subsection (3) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(3)

(d)1. A judgment of guilty or not guilty of a petit theft must ~~shall~~ be in:

a. A written record that is signed by the judge and recorded by the clerk of the circuit court; or

b. An electronic record that contains the judge's electronic signature as defined in s. 933.40 and is recorded by the clerk of the circuit court.

2. A ~~At the time a defendant is found guilty of petit theft, the~~ judge shall cause ~~the following to occur in open court and in the judge's presence:~~

~~a. For a written judgment of guilty,~~ the fingerprints of a ~~the~~ defendant who is found guilty of petit theft to ~~against whom such judgment is rendered shall~~ be manually taken or electronically captured ~~and affixed beneath the judge's signature on the judgment~~. ~~Beneath~~ Such fingerprints must be

certified and filed in the case in which the judgment of guilty is entered as provided in s. 921.241(3). ~~shall be appended a certificate to the following effect:~~

~~"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence, in open court, this the .... day of ...., ...(year)...."~~

~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

~~b. For an electronic judgment of guilty, the fingerprints of the defendant must be electronically captured and a certificate must be issued as provided in s. 921.241(3)(b).~~

3. A written or an electronic judgment of guilty of a petit theft, or a certified copy thereof, is admissible in evidence in the courts of this state as provided in s. 921.241(4).

Section 10. Section 921.241, Florida Statutes, is amended to read:

921.241 Felony judgments and~~,~~ fingerprints ~~and social security number~~ required in record.—

(1) As used in this section, the term:

(a) "Electronic signature" has the same meaning as in s. 933.40.

(b) "Transaction control number" means the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record generated by the device used to electronically capture the fingerprints.

(2) A judgment of guilty or not guilty of a felony must ~~shall~~ be in:

(a) A written record ~~that is~~ signed by the judge and recorded by the clerk of the court; or

(b) An electronic record that contains the judge's electronic signature and is recorded by the clerk of the court.

(3) A ~~At the time a defendant is found guilty of a felony, the~~ judge shall cause the ~~following to occur in open court and in the judge's presence:~~

~~(a) For a written judgment of guilty, the~~ fingerprints of a ~~the~~ defendant who is found guilty of a felony to ~~shall~~ be manually taken or electronically captured. If the fingerprints are:

(a) Manually taken, the fingerprints must be filed in the case in which ~~and affixed beneath the judge's signature on~~ the judgment of guilty is entered. Beneath such fingerprints shall be appended a certification ~~certificate~~ to the following effect:

"I hereby certify that the above and foregoing fingerprints ~~on this judgment~~ are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence~~, in open court,~~ this the .... day of ...., ...(year)...."

The court officer, the employee of the court, or the employee of a criminal justice agency who manually took the fingerprints shall place his or her written signature on the certification. ~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

(b) ~~For an electronic judgment of guilty, the fingerprints of the defendant shall be~~ Electronically captured, ~~and~~ the following certification must ~~certificate shall~~ be filed in the case in which ~~included in~~ the ~~electronic~~ judgment of guilty is entered:

"I hereby certify that the digital fingerprint record associated with Transaction Control Number .... contains the fingerprints of the defendant, ..., which were electronically captured from the defendant in my presence~~, in open court,~~ this the .... day of ...., ...(year)...."

The court officer, the employee of the court, or the employee of a criminal justice agency who electronically captured the fingerprints ~~judge~~ shall place his or her written or electronic signature~~, which shall be followed by the word "Judge,"~~ on the certification ~~certificate~~.

(4) A written or electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as prima facie evidence that the:

(a) Manual fingerprints filed in the case in which the judgment of guilty is entered ~~appearing thereon~~ and certified ~~by the judge~~ as specified in this section ~~aforesaid~~ are the fingerprints of the defendant against whom the judgment of guilty was rendered.

(b) Digital fingerprint record associated with the transaction control number specified in the certification required by this section and filed in the case in which the

judgment of guilty is entered ~~judge's certificate~~ contains the fingerprints of the defendant against whom the judgment of guilty was rendered.

~~(5) At the time the defendant's fingerprints are manually taken or electronically captured, the judge shall also cause the defendant's social security number to be taken. The defendant's social security number shall be specified in each written or electronic judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence shall be specified in the written or electronic judgment.~~

Section 11. Section 921.242, Florida Statutes, is amended to read:

921.242 Subsequent offenses under chapter 796; method of proof applicable.—

(1) A judgment of guilty with respect to any offense governed by ~~the provisions of~~ chapter 796 must ~~shall~~ be in:

(a) A written record ~~that is~~ signed by the judge and recorded by the clerk of the circuit court; or

(b) An electronic record that contains the judge's electronic signature as defined in s. 933.40 and is recorded by the clerk of the circuit court.

(2) A ~~At the time a defendant is found guilty, the~~ judge shall cause the ~~following to occur in open court and in the judge's presence:~~

~~(a) For a written judgment of guilty, the~~ fingerprints of a ~~the~~ defendant who is found guilty of any offense governed by chapter 796 to ~~against whom such judgment is rendered shall~~ be

manually taken or electronically captured. ~~and affixed beneath the judge's signature on the judgment. Beneath~~ Such fingerprints must be certified and filed in the case in which the judgment of guilty is entered as provided in s. 921.241(3). ~~shall be appended a certificate to the following effect:~~

~~"I hereby certify that the above and foregoing fingerprints are of the defendant, ...(name)..., and that they were placed thereon by said defendant in my presence, in open court, this the .... day of ...., ...(year)...."~~

~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

~~(b) For an electronic judgment of guilty, the fingerprints of the defendant must be electronically captured, and a certificate must be issued as provided in s. 921.241(3)(b).~~

(3) A written or an electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as provided in s. 921.241(4).

Section 12. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 748
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senator Brandes
SUBJECT:	Courts
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Forbes	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 748 revises a broad range of statutes that govern the operation of the court system. Some of the diverse changes are made to accommodate developments in technology, some reflect the impact COVID-19 has had on the court system, and one change recognizes the effect of inflation on the monetary jurisdictional thresholds in the county courts.

- The bill updates provisions controlling the maintenance of appellate court records to allow the electronic storage of court records at a remote location. These provisions are updated to keep pace with electronic technology rather than require the court clerk to keep manual control of the records.
- The clerks of court, working with the Florida Courts Technology Commission, must prepare a plan to procure or develop a statewide electronic solution that identifies all civil and criminal mandatory financial assessments required by statute.
- The jurisdictional amount of county courts will be adjusted beginning in 2030, and every 10 years afterwards, to account for inflation based on changes in the Consumer Price Index.
- The jurisdictional limit must be rounded to the nearest $5,000, but no lower than $50,000. The Office of Economic and Demographic Research (EDR) must calculate the adjusted jurisdictional limit and certify it to the Chief Justice of the Supreme Court beginning January 31, 2030 and every 10 years thereafter.
- The EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their websites.

- The bill authorizes a person to postpone for jury service for up to 1 year when a public health emergency or a state of emergency is declared.
- Finally, the bill revises three criminal statutes to authorize the taking and certification of fingerprints when a guilty judgment is entered in a proceeding that is conducted remotely. The fingerprints no longer must be taken in open court and in the judge's presence.

The bill takes effect July 1, 2021.

II. Present Situation:

Responsibilities of the Clerk of the Florida Supreme Court

Chapter 25, F.S., is devoted to the organization and operation of the Florida Supreme Court. Among the provisions in the chapter are two statutes detailing the responsibilities of the Clerk of the Supreme Court. The clerk must keep all books, papers, records, files, and the seal of the Court in the clerk's office in the Supreme Court Building and in his or her custody.[1]

Additionally, any decisions and opinions delivered by the Court or any justice must be filed and remain in the clerk's office. These decisions and opinions may not be removed unless ordered by the Court. The clerk is required to furnish certified copies of the decisions and opinions to any person who requests them and pays the necessary fees.[2] These statutes do not accommodate the developments in technology that allow for digital storage in a remote location.

Mandatory Monetary Assessments

The clerks of the circuit courts were required, by October 1, 2012, to develop a uniform form for the identification and imposition of all assessments mandated by statute. The clerks were required to work with their association and in consultation with the Office of the State Courts Administrator to develop the form. An assessment includes, but is not limited to, a fine or other monetary penalty, fee, service charge, or cost. The clerks are currently required to submit that form by October 1 of each year to the Supreme Court for approval. The form must contain updates to reflect recent changes made in the law. Once a form is approved by the Court, all circuit and county courts must use the form.[3]

According to information supplied in the *Judicial Branch 2021 Legislative Agenda*, the clerks' association, the Florida Court Clerks and Comptrollers, submitted the initial form matrix as required on October 1, 2012, and updated the form annually. The matrix is a catalogue of mandatory and discretionary fines, fees, charges, and costs in many areas, both civil and criminal. It provides the necessary statutory authority for each item with a brief description, states whether the item is mandatory or discretionary, provides the minimum and maximum amounts authorized, and often contains brief comments on the assessment.[4] *The Judicial Branch 2021 Legislative Agenda* further states that the Supreme Court has never approved the form

[1] Section 25.221, F.S.
[2] Section 25.301, F.S.
[3] Section 28.2457(1), (2), and (3), F.S.
[4] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, (January 21, 2021) (on file with the Senate Committee on Judiciary).

matrix because of "concerns that it is not a form within the meaning of the statute." However, the chief justice has provided the document each year to the chief judges of the trial courts for their use as a possible resource.[5]

The Judicial Management Council's Workgroup on Court Costs and Fines[6] was established on December 31, 2018, within the Judicial Management Council. Its purpose is to review monetary assessments and identify methods that will reduce the disproportionate impact the assessments have on low income individuals.[7] In June 2020, the Workgroup finalized its report, *Court Costs and Fines in Florida*, and the report was approved by the Judicial Management Council on August 31, 2020. The Workgroup recommended:

- Removing from statute the requirement for a uniform form for identifying and imposing assessments that the clerks produce; and
- Working in cooperation with the clerks of court to develop reforms, using an electronic system, to standardize the ability to identify and impose assessments and payments.

The Supreme Court approved these recommendations on November 4, 2020, at the Court Conference for consideration by the Legislature.[8]

Jurisdictional Amount of County Courts

A county court is a trial court that has jurisdiction over the following types of cases within its jurisdictional or monetary limits:

- All criminal misdemeanor cases not cognizable by the circuit courts.
- All violations of municipal and county ordinances.
- Disputes occurring in homeowner associations, but this jurisdiction is concurrent with the jurisdiction of the circuit courts.[9]

The statute governing the jurisdiction of county courts was amended in 2018 to increase the maximum jurisdictional amount of county courts in a three-step process. For all actions, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees, the jurisdictional amount is:

- $15,000 if filed on or before December 31, 2019.
- $30,000 if filed on or after January 1, 2020.
- $50,000 if filed on or after January 1, 2023.[10]

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[5] *Id.*, at 13.

[6] The Judicial Management Councils are described as "high-level management consultants" to the Florida Supreme Court. The first Judicial Management Council was established in 2012 and the current council is the Court's fifth council. Each council is composed of 15 voting members including the Chief Justice and one other justice, members of each level of the court system, and members from the public. The council meets at least quarterly and is tasked with identifying potential crisis situations for the judiciary and developing strategies to meet those concerns; evaluating information that will improve the effectiveness and performance of the judicial branch; developing and monitoring the judiciary's long-range planning work; reviewing the charges of the courts and Florida Bar commissions and committees, making revisions and proposing ways to coordinate the work of these groups; and addressing issues that the Supreme Court brings before the council. https://www.flcourts.org/Administration-Funding/Judicial-Management-Council

[7] Fla. Admin. Order No. AOSC18-77.

[8] *Judicial Branch Legislative Agenda*, *supra* note 4, at 15.

[9] Section 34.01(1), F.S.

[10] *Id.*; Ch. 2019-58, s. 9, Laws of Fla.

When the statute was amended in 2018, an additional provision was included requiring the Office of the State Courts Administrator to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2021. The report was to include recommendations regarding the adjustment of county court jurisdiction that considered the claim value of filings in both county and circuit courts, case events, the timeliness in processing cases, as well as any fiscal impact to the state resulting from the adjusted jurisdictional limits. The clerks of the county and circuit courts were tasked with providing data to assist in developing the report. The report was to include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district and circuit courts, including the use of appellate panels by circuit courts.

The Office of the State Courts Administrator issued its report entitled "Recommendations Regarding the Adjustment of County Court Jurisdiction" on February 1, 2021.[11]

Maintenance of Appellate Court Records in the District Courts of Appeal

The statutes contain a number of provisions directing how court records are to be stored. Unfortunately, many of these provisions have become outdated and have not kept pace with changes in electronic technology and storage. Section 35.15, F.S., states that all decisions and opinions delivered by the district courts of appeal or one its judges must be filed and remain in the office of the clerk. The decisions and opinions may not be taken from the clerk's office except by court order. However, the clerk must furnish to anyone who desires certified copies of the opinions and decision upon payment of the appropriate fees.

Section 35.24, F.S., requires each clerk for a district court of appeal to physically keep his or her records at the headquarters of the court. This provision does not envision advancements in technology and electronic storage that would permit a clerk to store records electronically at a remote location.

In a similar manner, s. 35.24, F.S., requires that all books, papers, records, files, and the court seal be kept in the clerk's office. This also precludes electronic storage of these items at a remote location.

Jury Duty Postponement

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.[12] If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she may be required to pay a fine that does not exceed $100 and may be held in contempt of court.[13]

If someone has been summoned for jury duty, jury service may be postponed for up to 6 months once a written or oral request is made. The request may specify a date or time period to which

[11] Office of the State Courts Administrator, *Recommendations Regarding the Adjustment of County Court Jurisdiction*, (February 1, 2021) (on file with the Senate Committee on Judiciary).
[12] Section 40.23(1), F.S.
[13] Section 40.23(3), F.S.

the service is to be postponed, and if that is stated, he or she will be given consideration for service once the assignment of the postponed date of jury service is made.[14]

According to the *Judicial Branch 2021 Legislative Agenda*, jury service in Florida has been postponed since March 2020 because of the COVID-19 pandemic. Once jury service resumes, some people who are summoned may not be able to attend on a particular date due to complications created by the pandemic. The examples are given that the person summoned might recently have returned to work after being unemployed during the pandemic or might be responsible for the care of someone who is at greater risk of health complications if he or she is exposed to COVID-19.[15]

Fingerprinting a Defendant upon Conviction

The criminal law statutes detail procedures that must be followed when a judgment is entered in certain misdemeanor and all felony offenses. A judgment of guilty or not guilty for a misdemeanor petit theft offense[16] or a felony offense[17] must contain:

- A written record, signed by the judge, and recorded by the clerk of the circuit court; or
- An electronic record that contains the judge's electronic signature and is recorded by the clerk of the circuit court.

To enter a written or electronic judgment of guilt involving petit theft and all felonies, the judge must, in open court, and in the judge's presence, have the defendant's fingerprints taken either manually or electronically, sign a certificate certifying that the fingerprints on the judgment are the defendant's fingerprints and that they were placed on the certificate in the judge's presence, and for a felony judgment, cause the defendant's social security number to be recorded. It is the opinion of some practitioners that these statutes do not appear to allow for a proceeding to be conducted remotely.

III. Effect of Proposed Changes:

Responsibilities of the Clerk of the Florida Supreme Court (Sections 1 and 2)

The requirement that the clerk keep all books, papers, records, files, and the seal in his or her office and custody is amended. The revised language reflects developments in technology and electronic storage and requires that those items be "maintained" by the clerk and in the clerk's "control" as prescribed by the Supreme Court. The clerk is no longer required to physically keep them in the clerk's office and custody but is permitted to electronically store records at a remote location.

[14] Section 40.23(2), F.S.
[15] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 9 (January 21, 2021) (on file with the Senate Committee on Judiciary.)
[16] Section 812.014(3)(d), F.S.
[17] Section 921.241, F.S.

Mandatory Monetary Assessments (Section 3)

Section 28.2457(2), F.S., is amended to delete the requirements that the uniform form developed by the circuit court clerks be updated and submitted annually to the Supreme Court for approval and later distribution. Under the bill, the clerks of the circuit courts must collaborate with the state courts through the Florida Courts Technology Commission[18] to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all civil and criminal assessments required by statute. At a minimum, the plan must address operational, technological, and fiscal considerations involved in implementing the electronic solution. The clerks must submit the plan to the President of the Senate and the Speaker of the House of Representatives by January 1, 2022.

Jurisdiction Amount of County Courts (Section 4)

The statute defining the jurisdiction of the county courts is amended to delete the now obsolete provision requiring the Office of the State Courts Administrator to publish a report by February 1, 2021.

A new provision is added requiring the $50,000 jurisdictional amount for cases that will be filed on or after January 1, 2023, to be adjusted in accordance with changes in the Consumer Price Index. Effective January 1, 2030, and every 10 years after, the $50,000 limit will be adjusted by The Office of Economic and Demographic Research (EDR), and certified to the Chief Justice of the Supreme Court. The percentage change must be adjusted and increased by the Consumer Price Index for all Urban Consumers, U.S. Average, All Items 1982-84=100, or successor reports, as initially reported by the United States Department of Labor, Bureau of Labor Statistics. . The jurisdictional limit must be rounded to the nearest $5,000, but may not be lower than $50,000. The EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their websites.

Maintenance of Appellate Court Records in the District Courts of Appeal (Sections 5, 6, and 7)

Section 35.15, F.S., as amended, no longer requires that decisions and opinions be kept in the physical office of the clerks, but requires them to be kept under the clerk's "maintenance or control." The decisions and opinions, however, may be taken from the clerk's maintenance or control when ordered by the court. These revisions permit the electronic storage of records at a remote location and reflects an adaptation to advancements in technology.

Section 35.23, F.S., is amended to provide that a clerk must no longer "keep his or her records" at the headquarters of the district court of appeal, but rather to "have an office" at the headquarters of the court. This revision permits the use of electronic technology to store records at a remote location in accordance with the revision to s. 35.24, F.S., which no longer requires

[18] The Florida Courts Technology Commission was created by the Florida Supreme Court in 2010. The Commission is composed of 25 members who are tasked with the responsibility of "overseeing, managing, and directing the development and use of technology within the judicial branch under the direction of the Court." The Commission must submit an annual report by April 1 each year.
https://www.flcourts.org/content/download/579375/file/FCTC%20Operational%20Procedures%20-%20Feb%202020.pdf.

the clerk to keep the books, papers, records, files, and the seal of the court in his or her office. As amended, these items must be maintained by, and in the control of, the clerk.

Jury Duty Postponement (Section 8)

The bill creates an additional postponement period of up to 12 months for someone who has been summoned for jury service. If the State Health Officer declares a public health emergency pursuant to s. 381.00315, F.S., or the Governor declares a state of emergency pursuant to s. 252.36(2), F.S., a person who has been summoned may have his or her service postponed from for up to 12 months upon a written or oral request. As with the existing 6 month postponement in statute, the request may specify a date or time period to which the service is to be postponed and may be given consideration when an assignment of jury service is made.

Fingerprinting a Defendant upon Conviction (Sections 9, 10, and 11)

The pandemic has significantly limited the number of in-person criminal court proceedings, which is creating a backlog of pending cases. The Florida Supreme Court's COVID-19 workgroup has studied options for resolving criminal cases remotely without the requirement of proceedings conducted in court. The Workgroup determined that the Florida Rules of Criminal Procedure could be adopted to authorize a criminal defendant to expressly request and be given approval by the court to either enter a plea of guilty or nolo contendere in a remote proceeding using audio-visual technology. To make this possible, the Workgroup has recommended that several statutes be amended.[19]

Because current law requires that a defendant be fingerprinted in open court in the judge's presence, it appears that current laws must be amended to establish a court's authority to take fingerprints at the time a judgment is entered in a remotely conducted proceeding.[20]

Section 812.014, F.S., relating to petit theft, s. 921.241, F.S., relating to felony judgments, and s. 921.242, F.S., relating to prostitution offenses, are amended to:

- Authorize the fingerprinting of a defendant, either manually or electronically, when a guilty judgment is entered in a proceeding that is conducted outside of court or outside of the judge's presence.
- Delete the requirement that a judge must certify that a defendant's fingerprints were taken in open court and in the judge's presence.
- Require that the certification be entered by a court officer, employee of the court, or the employee of a criminal justice agency who captured the fingerprints. If taken manually, the person who took the fingerprints must place his or her written signature on the certification. If taken electronically, he or she must place a written or electronic signature on the certification. The fingerprints and certification must be filed in the case.
- Delete the requirement that a defendant's social security number be taken when his or her fingerprints are taken.

[19] Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 10-12 (January 21, 2021) (on file with the Senate Committee on Judiciary).
[20] *Id*. at 11.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.221, 25.301, 28.2457, 34.01, 35.15, 35.23, 35.24, 40.23, 812.014, 921.241, and 921.242.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute requires the jurisdictional limit be rounded to the nearest $5,000, but no lower than $50,000. The Office of Economic and Demographic Research (EDR) must calculate the adjusted jurisdictional limit and certify it to the Chief Justice of the Supreme Court beginning January 31, 2030 and every 10 years thereafter. EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit to their respective websites.

CS by Judiciary Committee on March 2, 2021:
The committee substitute makes changes to the underlying bill in two areas: mandatory monetary assessments and fingerprinting defendants. The clerks of court must work with the Florida Courts Technology Commission to develop a plan for a technology solution that tracks all civil and criminal monetary assessments. The plan must be submitted to legislative leaders by January 1, 2022. The fingerprinting section now permits fingerprints to be taken manually or electronically, regardless of whether the judgment is a written judgment or electronic judgment. The defendant's fingerprints and the certification of the person who took the fingerprints must be filed in the case in which the judgment is entered.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Judiciary; and Senator Brandes

590-02342-21 2021748c1

A bill to be entitled

An act relating to courts; amending s. 25.221, F.S.; deleting the requirement that the Clerk of the Supreme Court physically keep books, records, and other materials in the clerk's office; amending s. 25.301, F.S.; deleting the requirement that Supreme Court decisions and orders remain in the clerk's office; amending s. 28.2457, F.S.; requiring the clerks of the circuit courts, with specified entities, to prepare a plan to procure or develop a statewide electronic solution to accurately identify all assessments mandated by statute; requiring the plan to address certain considerations relating to the implementation of the electronic solution; requiring the clerks to submit the plan to the Legislature by a specified date; deleting a provision requiring the clerks to annually submit a uniform form for identification and imposition of mandated assessments to the Supreme Court; amending s. 34.01, F.S.; providing for the periodic inflationary adjustment of the monetary jurisdictional limit applicable to all actions at law in county courts filed on or after a specified date, beginning in 2030; deleting obsolete language; amending s. 35.15, F.S.; deleting the requirement that decisions and orders of district courts of appeal remain in the office of the clerk of any such court; amending s. 35.23, F.S.; requiring the clerk of a district court of appeal to have an office at the headquarters of the court; deleting a requirement that

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-02342-21 2021748c1

the clerk keep records at the headquarters office; amending s. 35.24, F.S.; deleting the requirement that the clerk of a district court of appeal physically keep books, records, and other materials in the clerk's office; amending s. 40.23, F.S.; authorizing any person who has been summoned for jury service to postpone such service for an additional timeframe in the event of a declared public health emergency or a state of emergency; specifying requirements for any such request; amending s. 812.014, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt of petit theft; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; amending s. 921.241, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt for a felony; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; removing the requirement that a judge obtain a defendant's social security number at the time of fingerprinting; amending s. 921.242, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's

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presence upon a judgment of guilt for an offense under ch. 796, F.S.; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 25.221, Florida Statutes, is amended to read:

25.221 Maintenance ~~Custody~~ of books, records, and other materials ~~etc.~~—All books, papers, records, files, and the seal of the Supreme Court must be maintained by ~~shall be kept in the office of~~ the clerk ~~of said court~~ and be in the clerk's control, as prescribed by the Supreme Court ~~custody~~.

Section 2. Section 25.301, Florida Statutes, is amended to read:

25.301 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the Supreme ~~said~~ Court, or any justice thereof, relating ~~in relation~~ to any action or proceeding pending in the ~~said~~ court must ~~shall~~ be filed ~~and remain~~ in the office of the clerk and maintained by the clerk in the manner prescribed by the Supreme Court. Such decisions or opinions may~~, and shall~~ not be taken out from the clerk's maintenance or control except by order of the court; however, the ~~but said~~ clerk must ~~shall at all times be required to~~ furnish certified copies of such opinions and decisions to any

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person who makes such a request ~~may desire the same certified copies of such opinions and decisions~~, upon receiving any required fees ~~his or her fees therefor~~.

Section 3. Subsection (2) of section 28.2457, Florida Statutes, is amended to read:

28.2457 Mandatory monetary assessments.—

(2) The clerks of the circuit courts shall collaborate with the state courts through the Florida Courts Technology Commission to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all assessments mandated by statute. The plan must, at a minimum, address operational, technological, and fiscal considerations related to the implementation of the electronic solution. The clerks shall submit the plan to the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2022 ~~The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall develop by October 1, 2012, a uniform form for the identification and imposition of all assessments mandated by statute. The clerks shall submit the form by that date, and by October 1 every year thereafter if necessary to reflect changes in the law, to the Supreme Court for approval. Upon approval of the form by the Supreme Court, all circuit and county courts shall use the form~~.

Section 4. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit

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courts.

(b) Of all violations of municipal and county ordinances.

(c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

1. If filed on or before December 31, 2019, the sum of $15,000.

2. If filed on or after January 1, 2020, the sum of $30,000.

3. If filed on or after January 1, 2023, the sum of $50,000.

The $50,000 jurisdictional limit in subparagraph 3. shall be adjusted, effective January 1, 2030, and every 10 years thereafter, by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2022. The adjusted jurisdictional limit must be rounded to the nearest $1,000.

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

~~By February 1, 2021, the Office of the State Courts Administrator shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must make recommendations regarding~~

~~the adjustment of county court jurisdiction, including, but not limited to, consideration of the claim value of filings in county court and circuit court, case events, timeliness in processing cases, and any fiscal impact to the state as a result of adjusted jurisdictional limits. The clerks of the circuit court and county court shall provide claim value data and necessary case event data to the office to be used in development of the report. The report must also include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district courts and the circuit courts, including the use of appellate panels by circuit courts.~~

Section 5. Section 35.15, Florida Statutes, is amended to read:

35.15 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the district courts of appeal, or any judge thereof, relating ~~in relation~~ to any action or proceeding pending in such ~~said~~ court must ~~shall~~ be filed ~~and remain~~ in the office of the clerk and maintained in the control of the clerk. Such decisions and opinions may~~, and shall~~ not be taken from the clerk's maintenance or control ~~therefrom~~ except by order of the court; however, the ~~but said~~ clerk must ~~shall at all times be required to~~ furnish certified copies of such opinions and decisions to any person who makes such a request ~~may desire the same certified copies of such opinions and decisions~~, upon receiving any required fees ~~his or her fees therefor~~.

Section 6. Section 35.23, Florida Statutes, is amended to read:

35.23 Location of clerk's office.—Each clerk shall have an office ~~keep his or her records~~ at the headquarters of the district court of appeal.

Section 7. Section 35.24, Florida Statutes, is amended to read:

35.24 Maintenance ~~Custody~~ of books, records, and other materials ~~etc.~~—All books, papers, records, files and the seal of each district court of appeal shall be maintained by, and in the control of, ~~kept in the office of~~ the clerk of the ~~said~~ court.

Section 8. Subsection (2) of section 40.23, Florida Statutes, is amended to read:

40.23 Summoning jurors.—

(2) The jury service of any person who has been summoned may be postponed for a period not to exceed 6 months upon written or oral request. However, if either a public health emergency has been declared by the State Health Officer pursuant to s. 381.00315 or a state of emergency has been declared by the Governor pursuant to s. 252.36(2), the jury service of any person who has been summoned may be postponed for a period not to exceed 12 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

Section 9. Paragraph (d) of subsection (3) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(3)

(d)1. A judgment of guilty or not guilty of a petit theft must ~~shall~~ be in:

a. A written record that is signed by the judge and recorded by the clerk of the circuit court; or

b. An electronic record that contains the judge's electronic signature as defined in s. 933.40 and is recorded by the clerk of the circuit court.

2. A ~~At the time a defendant is found guilty of petit theft, the~~ judge shall cause ~~the following to occur in open court and in the judge's presence:~~

~~a. For a written judgment of guilty,~~ the fingerprints of a ~~the~~ defendant who is found guilty of petit theft to ~~against whom such judgment is rendered shall~~ be manually taken or electronically captured ~~and affixed beneath the judge's signature on the judgment~~. ~~Beneath~~ Such fingerprints must be certified and filed in the case in which the judgment of guilty is entered as provided in s. 921.241(3). ~~shall be appended a certificate to the following effect:~~

~~"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence, in open court, this the .... day of ...., ...(year)...."~~

~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

~~b. For an electronic judgment of guilty, the fingerprints of the defendant must be electronically captured and a certificate must be issued as provided in s. 921.241(3)(b).~~

3. A written or an electronic judgment of guilty of a petit

theft, or a certified copy thereof, is admissible in evidence in the courts of this state as provided in s. 921.241(4).

Section 10. Section 921.241, Florida Statutes, is amended to read:

921.241 Felony judgments and~~,~~ fingerprints ~~and social security number~~ required in record.—

(1) As used in this section, the term:

(a) "Electronic signature" has the same meaning as in s. 933.40.

(b) "Transaction control number" means the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record generated by the device used to electronically capture the fingerprints.

(2) A judgment of guilty or not guilty of a felony must ~~shall~~ be in:

(a) A written record ~~that is~~ signed by the judge and recorded by the clerk of the court; or

(b) An electronic record that contains the judge's electronic signature and is recorded by the clerk of the court.

(3) A ~~At the time a defendant is found guilty of a felony, the~~ judge shall cause the ~~following to occur in open court and in the judge's presence:~~

~~(a) For a written judgment of guilty, the~~ fingerprints of a ~~the~~ defendant who is found guilty of a felony to ~~shall~~ be manually taken or electronically captured. If the fingerprints are:

(a) Manually taken, the fingerprints must be filed in the case in which ~~and affixed beneath the judge's signature on~~ the judgment of guilty is entered. Beneath such fingerprints shall

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be appended a certification ~~certificate~~ to the following effect:

"I hereby certify that the above and foregoing fingerprints ~~on this judgment~~ are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence~~, in open court,~~ this the .... day of ...., ...(year)...."

The court officer, the employee of the court, or the employee of a criminal justice agency who manually took the fingerprints shall place his or her written signature on the certification. ~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

(b) ~~For an electronic judgment of guilty, the fingerprints of the defendant shall be~~ Electronically captured, ~~and~~ the following certification must ~~certificate shall~~ be filed in the case in which ~~included in~~ the ~~electronic~~ judgment of guilty is entered:

"I hereby certify that the digital fingerprint record associated with Transaction Control Number .... contains the fingerprints of the defendant, ..., which were electronically captured from the defendant in my presence~~, in open court,~~ this the .... day of ...., ...(year)...."

The court officer, the employee of the court, or the employee of a criminal justice agency who electronically captured the fingerprints ~~judge~~ shall place his or her written or electronic signature~~, which shall be followed by the word "Judge,"~~ on the

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certification ~~certificate~~.

(4) A written or electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as prima facie evidence that the:

(a) Manual fingerprints filed in the case in which the judgment of guilty is entered ~~appearing thereon~~ and certified ~~by the judge~~ as specified in this section ~~aforesaid~~ are the fingerprints of the defendant against whom the judgment of guilty was rendered.

(b) Digital fingerprint record associated with the transaction control number specified in the certification required by this section and filed in the case in which the judgment of guilty is entered ~~judge's certificate~~ contains the fingerprints of the defendant against whom the judgment of guilty was rendered.

~~(5) At the time the defendant's fingerprints are manually taken or electronically captured, the judge shall also cause the defendant's social security number to be taken. The defendant's social security number shall be specified in each written or electronic judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence shall be specified in the written or electronic judgment.~~

Section 11. Section 921.242, Florida Statutes, is amended to read:

921.242 Subsequent offenses under chapter 796; method of proof applicable.—

(1) A judgment of guilty with respect to any offense governed by ~~the provisions of~~ chapter 796 must ~~shall~~ be in:

(a) A written record ~~that is~~ signed by the judge and recorded by the clerk of the circuit court; or

(b) An electronic record that contains the judge's electronic signature as defined in s. 933.40 and is recorded by the clerk of the circuit court.

(2) A ~~At the time a defendant is found guilty, the~~ judge shall cause the ~~following to occur in open court and in the judge's presence:~~

~~(a) For a written judgment of guilty, the~~ fingerprints of a ~~the~~ defendant who is found guilty of any offense governed by chapter 796 to ~~against whom such judgment is rendered shall~~ be manually taken or electronically captured. ~~and affixed beneath the judge's signature on the judgment. Beneath~~ Such fingerprints must be certified and filed in the case in which the judgment of guilty is entered as provided in s. 921.241(3). ~~shall be appended a certificate to the following effect:~~

~~"I hereby certify that the above and foregoing fingerprints are of the defendant, ...(name)..., and that they were placed thereon by said defendant in my presence, in open court, this the .... day of ...., ...(year)...."~~

~~Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."~~

~~(b) For an electronic judgment of guilty, the fingerprints of the defendant must be electronically captured, and a certificate must be issued as provided in s. 921.241(3)(b).~~

(3) A written or an electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as provided in s. 921.241(4).

Section 12. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill # 748**, relating to Courts, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

April 18, 2021
Meeting Date

748
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Courts

Name William Large

Job Title President

Address 210 South Monroe Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 750
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; Community Affairs Committee; and Senator Gruters and others
SUBJECT:	Impact Fees
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.	Kim	Babin	FT	**Fav/CS**
3.	Kim	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 750 makes a number of changes regarding limitations on, and requirements for, the imposition of impact fees by local governments to fund local infrastructure to meet the demands of population growth. The bill:

- Specifies that impact fees may be utilized only for fixed capital expenditures or fixed capital outlays for major capital improvements;
- Revises requirements for crediting contributions against the collection of impact fees;
- Specifies limitations and restrictions on certain impact fee increases;
- Specifies criteria that must be met to be exempted from certain fee increase limitations and restrictions; and
- Revises annual financial reporting requirements for local governments relating to impact fees.

The Revenue Estimating Conference determined that the bill will have a negative indeterminate fiscal impact on local governments and school districts.

The bill takes effect upon becoming a law.

II. Present Situation:

Local Government Authority

The State Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

Under the State Constitution, local governments have no authority to levy taxes, other than ad valorem taxes, except as provided by general law.[4] However, local governments have authority under their home rule authority to impose special assessments and user fees.[5]

Local Government Impact Fees

In Florida, impact fees are imposed pursuant to local legislation and are generally charged as a condition for the issuance of a project's building permit. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.[6] Impact fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.[7] In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, in that the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.[8]

Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.
[4] *Collier County v. State*, 733 So. 2d 1012, 1014 (Fla. 1999).
[5] *Id.*
[6] *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).
[7] *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); s. 163.31801(2), F.S.
[8] *See St. Johns County* at 637. Codified at s. 163.31801(3)(f) and (g), F.S.

Until 2006, the characteristics and limitations of impact fees in Florida were found in case law rather than state statute.[9] In 2006, in response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act[10], found in s. 163.31801, F.S., which requires local governing authorities to satisfy certain requirements when imposing impact fees.[11] Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, meet the following criteria:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.
- The impact fee must be reasonably connected to, or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with the increased impact generated by the new residential or commercial construction.

Meeting the dual rational nexus test requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.[12] School districts have authority to impose ad valorem taxes within the district for school purposes[13] but

[9] Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Information Handbook*, Dec. 2020, 13, *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf (last visited April 15, 2021).
[10] Ch. 2006-218, s. 9, Laws of Fla.
[11] *Supra* note 9.
[12] *See, e.g.*, Miami-Dade County Code of Ordinances ch. 33K, *Educational Facilities Impact Fee Ordinance* and Orange County Code of Ordinances ch. 23, art. V, *School Impact Fees.*
[13] FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); *See* s. 1011.71, F.S.

are not general purpose governments with home rule power[14] and are not expressly authorized to impose impact fees.[15] Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.[16]

Section 163.31801(4), F.S., provides that a local government must credit against the collection of an education-based impact fee any contribution for public education facilities on a dollar-for-dollar basis at fair market value.

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

Financial Reporting

Counties, district school boards, municipalities with revenues or total expenditures and expenses exceeding $250,000, and special districts with revenues or total expenditures and expenses exceeding $100,000 must have an annual financial audit prepared by either the Auditor General or an independent certified public accountant.[17] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000, must have a financial audit prepared every three fiscal years.[18] Municipalities with revenues or total expenditures and expenses less than $100,000 and special districts with revenues or total expenditures and expenses of less than $50,000 are not required to have their financial statements audited.[19] All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months from the end of the entity's fiscal year.[20]

The financial audit report of a county, municipality, special district, or district school board filed with the Auditor General must include an affidavit signed by the chief financial officer[21] of the

[14] *See* FLA. CONST. art. VIII, ss. 1(f)-(g) and 2
[15] Section 163.31801(2), F.S.
[16] In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. *See* Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. *See* Orange County Code of Ordinances, s. 23-142.
[17] Section 218.39(1), F.S.
[18] Section 218.39(1), F.S.
[19] Section 218.39(1), F.S.
[20] Section 218.39(1), F.S.
[21] The term "chief financial officer" for a local government is not defined in statute. For counties, the county commission may designate a county budget officer, typically either the county comptroller or the clerk of the circuit court. Section 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. Section 166.241, F.S. Special district boards are responsible for district financial management. Section 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. Section 1001.42(12), F.S.

reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.[22]

In addition to their annual financial reporting requirements, counties, municipalities, and special districts must report the following information on all impact fees charged:[23]

- The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.
- The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.
- The amount assessed for each purpose and for each type of dwelling.
- The total amount of impact fees charged by type of dwelling.
- Each exception and waiver provided for construction or development of housing that is affordable.

III. Effect of Proposed Changes:

Definitions

The bill defines "infrastructure" as a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities with a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus, and the equipment necessary to outfit the vehicle or bus for its official use. For the independent special fire control districts, the term includes "new facilities" as defined in the independent special fire control district statute.[24] The bill also defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities, and expressly includes emergency medical, fire, and law enforcement facilities.

Impact Fee Credits

The bill expands the current requirement, added in 2019,[25] for local governments to credit against impact fees any contributions related to public education facilities. First, the bill subjects special districts to the requirement. Second, it expands the credit requirement to any contribution related to the improvement of public facilities or infrastructure, rather than only public education facilities under current law. Third, it provides that any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made, rather than only education-based impact fees under current law. However, if a local government or special district does not charge and collect an impact fee for the general category or class of public facilities or

[22] Section 163.31801(6), F.S.
[23] Section 163.31801(11), F.S.
[24] Section 191.009(4), F.S. That statute defines "new facilities" as land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radio telemetry equipment, and other firefighting or rescue equipment.
[25] Chapter 2019-165, s. 5, Laws of Fla.

infrastructure contributed to, the credit may not be applied. All credits against impact fee collections must be made regardless of any provision in a local government's or special district's charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

The bill provides applicability for a current provision in s. 163.31801(8), F.S., which provides for the assignability and transferability of impact fee credits between developments and parcels within the same impact fee zone or district or within certain adjoining impact fee zones or parcels. The bill provides that the provision applies to all impact fee credits regardless of whether the credits were established before or after the effective date of this act. The bill directs the Division of Law Revision to replace the phrase "the effective date of this act" with the date the act becomes a law.

Impact Fee Increases

The bill provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees that complies with the provisions of this bill.

The bill limits impact fee increases as follows:

- An impact fee increase of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
- If the increase in rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal annual installments.
- No impact fee increase may exceed 50 percent of the current impact fee rate.
- An impact fee may not be increased more than once every four years.
- An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

The bill provides an exception to the first four bulleted limitations above if a local government, school district, or special district:

- Completes, within the 12-month period before the adoption of the impact fee increase, a demonstrated-need study justifying the increase and expressly demonstrating the extraordinary circumstances necessitating the need to exceed the limitations;
- Holds at least two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the limitations; and
- Approves the impact fee increase ordinance by at least a two-thirds vote of the governing body.

A local government or school district that enacts new impact fees as a result of a current impact fee study may implement the total amount of those fees in up to four equal segments in up to four succeeding years.

The bill provides that the above provisions relating to impact fee increases operate retroactively to January 1, 2021.

Financial Reporting Requirements

The bill revises financial reporting requirements for a local government, school district, or special district by requiring its chief financial officer, or its executive officer if there is no chief financial officer, to attest in an affidavit separate from the local government's, school district's, or special district's annual financial report that:

- All impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution; and
- Funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs, as defined in s. 163.31801, F.S.

Additional Reporting Requirements

The bill adds school districts to the list of entities that must report the following information on all impact fees charged, in addition to the annual financial reporting requirements under s. 213.32, F.S.:

- The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.
- The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.
- The amount assessed for each purpose and for each type of dwelling.
- The total amount of impact fees charged by type of dwelling.
- Each exception and waiver provided for construction or development of housing that is affordable.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the State Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact. Based on joint guidelines of the Legislature, the insignificant impact limit for Fiscal Year 2020-2021 is approximately $2.2 million.[26]

[26] Neither the State Constitution nor the Florida Statutes define "insignificant fiscal impact" for purposes of s. 18(d), Art. VII of the State Constitution. Joint Senate and House guidelines define "insignificant" as an amount not greater than the average statewide population for the applicable fiscal year times $0.10. *Senate President Margolis and Speaker of the House Wetherell, County and Municipality Mandates Analysis* (1991), *cited at* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited April 15, 2021). The $2.2 million figure is based on the Florida Demographic Estimating Conference's Nov. 13, 2020, population forecast for

The mandate provisions may apply because the bill imposes limitations on a county and municipality's ability to increase impact fees. However, the bill provides an exception to the limitations if the county or municipality can demonstrate the proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test. If the impact of the limitations in the bill is determined to exceed $2.2 million in the aggregate, final passage of the bill may require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will have a negative indeterminate fiscal impact to local governments and school districts.[27]

B. Private Sector Impact:

Private developers may avoid large future increases in local government impact fees with the impact fee increase limitations in the bill.

C. Government Sector Impact:

Local governments seeking to increase impact fees will be limited in the amount of such increase annually. However, the bill provides an exception to the limitation where a local government may increase impact fees beyond the bill's limitations if the local government can establish the need for the increase in full compliance with certain statutory impact fee provisions.

2021 of 21,893,919. The conference packet is available at: http://www.edr.state.fl.us/Content/conferences/population/archives/201113demographic.pdf (last visited April 15, 2021).

[27] Revenue Estimating Conference, *Analysis of Proposed Language*, March 12, 2021, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page173-195.pdf (last visited April 15, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Specifies that in order for a local government, school district, or special district to increase impact fees beyond specific limitations imposed by the bill, the governmental authority must:
  - Complete, within 12 months before the adoption of the increase, a demonstrated-need study justifying the increase and expressly demonstrating the extraordinary circumstances necessitating the need to exceed the limitations;
  - Hold at least 2 publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the limitations; and
  - Approve the impact fee ordinance by at least a two-thirds vote of the governing body.
- Authorizes a local government or school district that enacts new impact fees as the result of a current impact fee study to implement the total amount of fees in up to four equal segments in up to four succeeding years.
- Specifies that if a local government, school district, or special district does not have a chief financial officer to execute a required affidavit, an executive officer may perform the duty.
- Provides that an existing provision relating to the assignability and transferability of certain impact fee credits applies to all impact fee credits regardless of whether the credits were established before or after the effective date of the act.
- Makes technical and conforming changes.

CS/CS by Finance and Tax on March 31, 2021:
The committee substitute:

- Adds to the definition of "infrastructure" fire department vehicles, emergency medical service vehicles, sheriff's office vehicles, police department vehicles, school buses, and the equipment necessary to outfit such vehicles or buses for their official use.
- Revises the requirement for local governments and special districts to credit certain contributions against the collection of an impact fee, in that:

- Contributions relating to the improvement of public facilities or infrastructure must be credited.
- Credits must be applied on impact fees collected for the general category or class of public facilities or infrastructure for which the contribution was made.
- Credits may not be applied if the local government or special district does not charge and collect an impact fee for the general category or class of public facility contributed to.

CS by Community Affairs on March 24, 2021:
The committee substitute:

- Removes the provision that impact fees may only be collected if the local government has planned or funded capital improvements.
- Removes the provision that local governments may not increase impact fees by more than 3 percent annually and instead institutes an alternative impact fee increase limitation scheme.
- Provides that an impact fee increase must be pursuant to a plan for the imposition, collection, and use of such fees.
- Provides an exception to the impact fee increase limitations if a proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test.
- Modifies the affidavit provision to remove the requirement that the local government's chief financial officer annually attest that impact fees collected were in full compliance with s. 163.31801, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 177
and insert:
Section 1. Section 163.31801, Florida Statutes, is amended to read:
163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—
(1) This section may be cited as the “Florida Impact Fee Act.”

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(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) For purposes of this section, the term:

(a) "Infrastructure" means a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus as defined in s. 1006.25, and the equipment necessary to outfit the vehicle or bus for its official use. For independent special fire control districts, the term "infrastructure" includes new facilities as defined in s. 191.009(4).

(b) "Public facilities" has the same meaning as in s. 163.3164 and includes emergency medical, fire, and law enforcement facilities.

(4) ~~(3)~~ At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must satisfy all of the following conditions~~:

(a) Ensure that the calculation of the impact fee is ~~must be~~ based on the most recent and localized data.

(b) ~~The local government must~~ Provide for accounting and reporting of impact fee collections and expenditures and~~. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must~~ account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs.

(d) ~~The local government must~~ Provide notice at least ~~not less than~~ 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A local government ~~county or municipality~~ is not required to wait 90 days to decrease, suspend, or eliminate an impact fee. Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of ~~an ordinance or resolution imposing~~ a new or increased impact fee.

(e) Ensure that collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

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(f) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) ~~The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Ensure that revenues generated by the impact fee are ~~may~~ not ~~be~~ used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(5)(a) ~~(4)~~ Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public ~~education~~ facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any ~~education-based~~ impact fee collected for the general category or class of public facilities

or infrastructure for which the contribution was made ~~fees on a dollar-for-dollar basis at fair market value~~.

(b) If a local government or special district does not charge and collect an impact fee for the general category or class of public facilities or infrastructure contributed, a credit may not be applied under paragraph (a).

(6)~~(5)~~ A local government, school district, or special district may increase an impact fee only as provided in this subsection.

(a) An impact fee may be increased only pursuant to a plan for the imposition, collection, and use of the increased impact fees which complies with this section.

(b) An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.

(c) An increase to a current impact fee rate which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.

(d) An impact fee increase may not exceed 50 percent of the current impact fee rate.

(e) An impact fee may not be increased more than once every 4 years.

(f) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

(g) A local government, school district, or special district may increase an impact fee rate beyond the phase-in limitations established under paragraph (b), paragraph (c),

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paragraph (d), or paragraph (e) by establishing the need for such increase in full compliance with the requirements of subsection (4), provided the following criteria are met:

1. A demonstrated-need study justifying any increase in excess of paragraph (b), paragraph (c), paragraph (d), or paragraph (e) has been completed within the 12 months prior to the adoption of the impact fee increase and expressly demonstrates the extraordinary circumstances necessitating the need to exceed the phase-in limitations;

2. The local government jurisdiction has held no less than two publicly-noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations of paragraph (b), paragraph (c), paragraph (d), or paragraph (e); and

3. The impact fee increase ordinance is approved by no less than a two-thirds vote of the governing body.

(h) This subsection shall operate retroactively to January 1, 2021.

(7) If an impact fee is increased ~~a local government increases its impact fee rates~~, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. ~~This subsection shall operate prospectively and not retrospectively.~~

(8)~~(6)~~ A local government, school district, or special district must submit with its annual financial report required under s. 218.32 or its financial audit report required under s.

783100

218.39 a separate affidavit signed by its chief financial officer or, if there is no chief financial officer, its executive officer attesting, to the best of his or her knowledge, that all impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs as defined in this section ~~Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section~~.

(9) ~~(7)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b., the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and this section. The court may not use a deferential standard for the benefit of the government.

(10) ~~(8)~~ Impact fee credits are assignable and transferable at any time after establishment from one development or parcel to any other that is within the same impact fee zone or impact fee district or that is within an adjoining impact fee zone or

impact fee district within the same local government jurisdiction and which receives benefits from the improvement or contribution that generated the credits. This subsection applies to all impact fee credits regardless of whether the credits were established before or after the effective date of this act.

(11) ~~(9)~~ A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

(12) ~~(10)~~ This section does not apply to water and sewer connection fees.

(13) ~~(11)~~ In addition to the items that must be reported in the annual financial reports under s. 218.32, a local government, school district ~~county, municipality~~, or special district must report all of the following information ~~data~~ on all impact fees charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

(e) Each exception and waiver provided for construction or

783100

development of housing that is affordable.

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 6 - 14

and insert:

fees any contribution related to public facilities or infrastructure; providing conditions under which credits may not be applied; providing limitations on impact fee increases; providing for retroactive operation; requiring specified entities to submit an affidavit attesting that impact fees were appropriately collected and expended; providing for retroactive applicability; requiring school districts to report specified information regarding impact fees; providing a directive to the Division of Law Revision; providing

523368

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (783100)

Delete line 134
and insert:
demonstrates the extraordinary circumstance and unforeseen financial hardship necessitating the

448154

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (783100)

Delete line 135
and insert:
need to exceed the phase-in limitations and expressly demonstrates the infrastructure improvements that will be made as a result of the increase;

593970

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (783100)

Delete line 143
and insert:
(h) Any local government or school district that enacts new impact fees as the result of a current impact fee study may implement the total amount of those fees in up to four equal segments in up to 4 succeeding years.
(i) This subsection shall operate retroactively to January

By the Committees on Finance and Tax; and Community Affairs; and Senator Gruters

593-03639-21 2021750c2

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; defining the terms "infrastructure" and "public facilities"; requiring local governments and special districts to credit against the collection of impact fees any contribution that relates to the improvement of public facilities or infrastructure; providing conditions under which credits may not be applied; providing limitations on impact fee increases; providing for retroactive operation; requiring specified entities to submit an affidavit attesting that impact fees were appropriately collected and expended; requiring school districts to report specified information regarding impact fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (3) through (11) of section 163.31801, Florida Statutes, are redesignated as subsections (4) through (12), respectively, a new subsection (3) is added to that section, and present subsections (3) through (6) and (11) of that section are amended, to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(3) For purposes of this section, the term:

(a) "Infrastructure" means a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03639-21 2021750c2

or improvement of public facilities that have a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus as defined in s. 1006.25, and the equipment necessary to outfit the vehicle or bus for its official use. For independent special fire control districts, the term "infrastructure" includes new facilities as defined in s. 191.009(4).

(b) "Public facilities" has the same meaning as in s. 163.3164 and includes emergency medical, fire, and law enforcement facilities.

(4)~~(3)~~ At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must satisfy all of the following conditions~~:

(a) Ensure that the calculation of the impact fee is ~~must be~~ based on the most recent and localized data.

(b) ~~The local government must~~ Provide for accounting and reporting of impact fee collections and expenditures and~~. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must~~ account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

impact fees ~~must be limited~~ to actual costs.

(d) ~~The local government must~~ Provide notice at least ~~not less than~~ 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A local government ~~county or municipality~~ is not required to wait 90 days to decrease, suspend, or eliminate an impact fee. Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of ~~an ordinance or resolution imposing~~ a new or increased impact fee.

(e) Ensure that collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(f) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) ~~The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Ensure that revenues generated by the impact fee are ~~may~~ not ~~be~~ used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is

reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(5)(a) ~~(4)~~ Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, which relates to the improvement of ~~related to~~ public ~~education~~ facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any ~~education-based~~ impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made ~~fees on a dollar-for-dollar basis at fair market value~~.

(b) If a local government or special district does not charge and collect an impact fee for the general category or class of public facility contributed, a credit may not be applied under paragraph (a).

(6) ~~(5)~~ A local government, school district, or special district may increase an impact fee only as provided in this subsection.

(a) An impact fee may be increased only pursuant to a plan for the imposition, collection, and use of the increased impact fees which complies with this section.

(b) An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two

equal annual increments beginning with the date on which the increased fee is adopted.

(c) An increase to a current impact fee rate which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.

(d) An impact fee increase may not exceed 50 percent of the current impact fee rate.

(e) An impact fee may not be increased more than once every 4 years.

(f) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

(g) Notwithstanding paragraphs (b), (c), (d), or (e), a local government, school district, or special district may increase an impact fee rate by establishing the need for such increase in full compliance with the requirements of subsection (4).

(h) If ~~a local government~~ an impact fee is increased ~~increases its impact fee rates~~, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

(i) This subsection shall operate retroactively to January 1, 2021 ~~prospectively and not retrospectively~~.

(7)~~(6)~~ A local government, school district, or special district must submit with its annual financial report under s. 218.32 or its financial audit report under s. 218.39 an

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

affidavit signed by its chief financial officer attesting that all impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs as defined in this section ~~Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section~~.

(12)~~(11)~~ In addition to the items that must be reported in the annual financial reports under s. 218.32, a local government, school district ~~county, municipality~~, or special district must report all of the following information ~~data~~ on all impact fees charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

dwelling.

(e) Each exception and waiver provided for construction or development of housing that is affordable.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2021

I respectfully request that **Senate Bill #750**, relating to Impact Fees, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 770
INTRODUCER:	Senator Burgess
SUBJECT:	Military Affairs
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	**Favorable**
2.	Ponder	McVaney	GO	**Favorable**
3.	Wells	Sadberry	AP	**Favorable**

I. Summary:

SB 770 revises several provisions related to the Florida National Guard (FLNG) and the Department of Military Affairs to update obsolete references and conform Florida Statutes to federal law related to operations of the FLNG. These changes include:

- Removing references to job titles no longer used as career service class and allowing the position of electronic security system technician to participate in the career service class;
- Revising out-of-date position titles as senior management service class and adding the Inspector General and Executive Officer;
- Specifying that the Adjutant General must serve as the Commanding General of the state's organized militia;
- Revising the requirements for appointment as Adjutant General to provide that the Adjutant General must have served in the Florida National Guard (FLNG) for *at least* five years, rather than the preceding five years in current law;
- Revising the requirements for the Assistant Adjutant General for the Army, second Assistant Adjutant General for the Army, and Assistant Adjutant General for Air to provide that each person must have served for *at least* three years, rather than the preceding five years in current law;
- Updating reference to the outdated version of the Manual for Courts-Martial (MCM) to the 2019 edition and establishing the Florida Code of Military Justice (FCMJ);
- Specifying that a court-martial in this state is an administrative procedure of the executive branch and not a court under the control of the judicial branch;
- Revising the procedures for convening general and special courts-martial to provide they must be tried pursuant to the MCM, except as otherwise provided by FLNG regulations;
- Revising procedures and personnel qualifications for convening and trial of general, special, and summary courts-martial as well as punishments that may be adjudged by these courts;
- Revising provisions relating to the imposition of nonjudicial punishment and specifying the types of nonjudicial punishment;

- Authorizing certain commanders to reduce personnel pay grades;
- Providing that the Adjutant General or a military judge may issue and execute search authorizations under certain conditions;
- Revising the provisions regarding medical officer authorization;
- Revising the membership and excusal requirements of the Armory Board; and
- Providing that members of the FLNG are subject to the FCMJ whether in civilian or military status.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill takes effect July 1, 2021.

II. Present Situation:

Career Service

The Florida Constitution requires the Legislature to create a civil service system for state employees.[1] The Department of Management Services (DMS) is responsible for developing uniform personnel rules, guidelines, records, and reports relating to employees and positions in the career service.[2] All state employees generally fall into one of four categories:

- Career service system;[3]
- Senior management service system;[4]
- Volunteers;[5] or
- Selected exempt service system.[6]

All non-exempt employees belong to the career service system.[7] Military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians in the Department of Military Affairs (DMA) are exempt from the career service system.[8] The DMA states that the job titles of military police chiefs, military police officers, firefighter trainers, and firefighter rescuers are no longer used.[9]

Senior Management Service Class

Any officer or employee who is elected, appointed, or employed by the state is covered by the Florida Retirement System (FRS).[10] The FRS is administered by DMS and participation is compulsory unless the position held is exempted by law.[11]

[1] FLA. CONST. art. III, s. 14.
[2] Section 110.201(1)(a), F.S.
[3] Chapter 110, Part II, F.S.
[4] Chapter 110, Part III, F.S.
[5] Chapter 110, Part IV, F.S.
[6] Chapter 110, Part V, F.S.
[7] Section 110.205, F.S.
[8] Section 110.205(2)(p)2., F.S.
[9] Department of Military Affairs, *2021 Agency Legislative Bill Analysis SB 770* (Feb. 3, 2021).
[10] Section 121.011(2)(a), F.S.
[11] Section 121.051, F.S.

The senior management service (SMS) class is a separate class of membership within the FRS and is for members who fill senior management level positions assigned by law to the senior management service class or authorized by law as eligible for inclusion.[12] Participation in the SMS class is mandated by statute.[13] The Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Military Personnel, Director of Administration, and additional directors in DMA are required to participate in the SMS class.[14] The DMA states that these positions no longer exist or have been changed.[15]

The Florida National Guard

The Florida National Guard (FLNG) is the organized militia of the state.[16] Its mission includes maintaining readiness to support national and state security efforts, as well as leading or assisting in humanitarian and logistical operations. These operations include hurricane preparation and recovery and currently includes assistance with the pandemic response. The Governor is the commander in chief of the FLNG and the Adjutant General is its chief of staff. [17] The FLNG has an Army component and an Air component, each of which has an Assistant Adjutant General who is also its Commander.[18]

Adjutant General

The Adjutant General is the head of the Department of Military Affairs (DMA)[19] and the chief of staff of the Florida National Guard. The Adjutant General is appointed by the Governor, subject to Senate confirmation.[20] The Adjutant General may, upon delegation of authority by the Governor, convene a general court-martial.[21]

The Florida Statutes provide the minimum qualifications for a candidate to be Adjutant General. He or she must be a federally recognized officer of the Florida National Guard who has served for the preceding 5 years.[22]

[12] Section 121.055, F.S.
[13] Section 121.055(1)(a), F.S.
[14] Section 121.055(1)(g), F.S.
[15] Department of Military Affairs, *2021 Agency Legislative Bill Analysis SB 770* (Feb. 3, 2021).
[16] Section 250.02(2), F.S. The nonorganized militia is composed of all able-bodied citizens of the state and those individuals who have declared intentions to become citizens of the United States. FLA. CONST. art. X, sec. 2(a); and s. 250.02(1), F.S.
[17] Section 250.06(1), F.S.
[18] Florida National Guard, *Assistant Adjutant General—Army and Commander*, https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Army.aspx (last visited April 11, 2021); Florida National Guard, *Assistant Adjutant General—Air and Commander*, https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Air.aspx (last visited April 11, 2021).
[19] Section 250.05(3), F.S. The Department of Military Affairs provides management oversight and administrative support to the FLNG. Florida National Guard, *Florida Department of Military Affairs*, https://fl.ng.mil/about/Pages/Florida-Department-of-Military-Affairs.aspx, (last visited April 11, 2021).
[20] Section 250.10(1), F.S.
[21] Section 250.06(6), F.S.
[22] *See* s. 250.10(1), F.S.

Federal Uniform Code of Military Justice and Manual for Courts-Martial

The United States Constitution grants Congress the power to raise and support armies, provide and maintain a navy, and provide for organizing and disciplining their members.[23] Pursuant to its constitutional authority, Congress enacted the federal Uniform Code of Military Justice (UCMJ), which contains the substantive and procedural laws governing the military justice system.[24] Jurisdiction under the UCMJ does not depend on where the offense was committed but only on the status of the accused, including an active duty servicemember of the Armed Forces or a National Guard member when in federal service.[25] Presidents have implemented the UCMJ through the Manual for Courts-Martial (MCM).[26] The MCM outlines procedural rules and punishments for violations of crimes and contains the Rules for Courts-Martial, the Military Rules of Evidence, and the punitive articles of the UCMJ.[27]

A servicemember who violates the UCMJ is subject to discipline in a military court called a court-martial. There are three types of courts-martial: summary courts-martial, special courts-martial, and general courts-martial. A summary courts-martial is designed to dispose of minor offenses (non-criminal). Only enlisted servicemembers may be tried by summary courts-martial. A single officer presides over the hearing.[28]

A special courts-martial is an intermediate trial level (generally similar to misdemeanors) composed of either a military judge alone or four members and a judge. An enlisted servicemember may ask that a portion of the court members be enlisted. There is both a prosecutor, commonly referred to as the trial counsel, and a defense counsel. In addition, the accused may be represented by civilian counsel, at no expense to the government, or by an individually requested military counsel. A judge presiding in a special courts-martial must be a qualified military judge.[29]

A general courts-martial is the military's highest level trial court. This court tries servicemembers for the most serious crimes (similar to felonies). The punishment authority of the general court-martial is limited by the maximum authorized punishment for each offense in the MCM. A judge presiding in a general courts-martial must be a qualified military judge. The accused may request that the proceedings be overseen by a military judge and eight service members; for capital cases, 12 members are required.[30]

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[23] U.S. CONST. art. I, s. VIII.
[24] 10 U.S.C. s. 801 et seq.
[25] 10 U.S.C. s. 802(a)(3) (2016). The Armed Forces includes the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard. *See* 10 U.S.C. s. 101(a)(4) (2019).
[26] Exec. Order No. 12,473 49 Fed. Reg. 17,152 (Apr. 13, 1984).
[27] 10 U.S.C. ss. 816 – 821. *See also* Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016* (Aug. 28, 2020), https://crsreports.congress.gov/product/pdf/R/R46503#:~:text=Military%20Courts-Martial%20Under%20the%20Military%20Justice%20Act%20of,the%20rights%20and%20obligations%20of%20their%20civilian%20counterparts (last visited April 11, 2021).
[28] 10 U.S.C. s. 816(d) (2017). *See also* Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016*, at pp. 6 and 21.
[29] *Id*. at pp. 6-7 and 19-21.
[30] *Id*. at pp. 7 and 19-21.

Florida Courts-Martial

Article X, s. 2 of the Florida Constitution specifies that the qualifications of members of the FLNG and "the grounds and proceedings for their discipline and removal" must conform to appropriate United States Army or Air Force regulations. All provisions of federal law which relate to the FLNG and which are not inconsistent with the state constitution are part of the military laws of Florida.[31] Members of the FLNG are subject to the UCMJ at all times during their enlistment or appointment, and ch. 250, F.S., applies to such members whether serving in-state or in another state.[32]

Courts-martial are authorized to try a servicemember of the FLNG for any crime or offense made punishable by the UCMJ. However, a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial.[33] A servicemember of the FLNG who violates the UCMJ is subject to discipline pursuant to the court-martial.

A courts-martial or court of inquiry may be held in a unit of the FLNG serving outside the state, and such court has the same jurisdiction and powers as if the courts-martial or court of inquiry were held in Florida.[34] However, a service member may not be tried for offenses committed while in civilian status.[35]

The MCM is updated periodically. Current law, s. 250.35, F.S., references the 2012 edition.

Similar to federal law, Florida has general, special, and summary courts-martial.[36] A summary court-martial may be convened by the commanding officer of each battalion, higher headquarters, or similar type unit when not in active federal service.[37] Punishment may include:

- A fine of $200 or less per offense.
- Confinement of 25 days or less.
- Forfeiture of pay and allowances.
- Reduction by one grade.[38]

Any two or more punishments may be combined; however, confinement may not be combined with a fine.[39]

General courts-martial and special courts-martial must be tried by a military judge[40] and a panel of officers as designated in regulations of the FLNG. However, a panel may include enlisted members, at the request of an enlisted defendant. The military judge must be qualified by

[31] Section 250.03, F.S.; 32 U.S.C. is the primary federal law addressing the organization of the state National Guards.
[32] Section 250.351(1), F.S.
[33] Section 250.35(2), F.S.
[34] Section 250.351(2), F.S.
[35] *See generally, U.S. v. Wolpert*, 75 M.J. 777, 781 (U.S. Army Ct. of Mil. App. 2016).
[36] Section 250.35(3), F.S.
[37] Section 250.35(7), F.S.
[38] *Id.*
[39] *Id.*
[40] Section 250.01(11), F.S., defines a "military judge" as the presiding officer of a general or special court-martial. Except as otherwise expressly provided, in the context of a summary court-martial, "military judge" includes the summary court-martial officer.

attendance at appropriate Judge Advocate General (JAG) schools and must be certified as qualified by the Adjutant General of Florida. In a general and special courts-martial, the defendant may waive trail by panel and request trial by military judge alone. The granting of the waiver is in the military judge's discretion.[41]

A special courts-martial may be convened by a commanding officer of the FLNG or a superior commander when not in active federal service.[42] A commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or any other place where troops are on duty may also convene special courts-martial for his or her command. These special courts-martial may be convened by a superior commander when advisable.[43] Special courts-martial with bad conduct discharge authority may impose punishment to include:

- A fine of $300 or less.
- Confinement of 100 days or less.
- Forfeiture of all pay and allowances.
- Reprimand or a bad conduct discharge from the service.
- Reduction by one grade of a member whom the commander had the authority to promote.[44]

General courts-martial in the FLNG may be convened by order of the President of the United States, the Governor, or the Adjutant General as delegated by the Governor.[45] Punishment may include:

- A fine of $500 or less.
- Confinement of 200 days or less.
- Forfeiture of all pay and allowances.
- Reprimand, dismissal, or dishonorable discharge from the service.
- Reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel.[46]

Any two or more of the punishments may be combined.

Only the DMA, in an appropriately convened courts-martial action provided by law, may impose a sentence of imprisonment.[47] A sentence of dismissal or dishonorable discharge from the service cannot be executed until approved by the Governor.[48]

Appeals

Article V, s. 1 of the Florida Constitution provides that the "legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District." Accordingly under Florida law, a servicemember who is found guilty and is sentenced in a general or special court-martial to imprisonment may appeal the case to the First District Court

[41] Section 250.35(3), F.S.
[42] Section 250.35(5), F.S.
[43] Section 250.35(6), F.S.
[44] Section 250.35(5), F.S.
[45] Section 250.35(4), F.S.
[46] Section 250.35(4), F.S.
[47] FLA. CONST. art. I, s. 18.
[48] Section 250.35(11), F.S.

of Appeal. The FLNG may appeal any dismissal of a general or special court-martial that does not violate the servicemember's constitutional rights may appeal the case to the First District Court of Appeal.[49]

In a summary court-martial, a servicemember may appeal a finding of guilt or sentence to the convening authority. A servicemember who is sentenced to imprisonment may appeal the finding of guilt or the sentence to the Adjutant General.[50]

Nonjudicial Punishment

As an alternative to a court-martial, a commander may impose nonjudicial punishment. This punishment may include:

- Oral or written reprimand.
- A fine of $200 or less.
- Extra duty for 14 days or less.
- Restriction for 14 days or less.
- Reduction by one grade of a member whom the commander had the authority to promote.[51]

These punishments may be combined; however a combination of extra duty and restriction may not exceed 14 days.

Mandates & Process for Military Courts - Searches

Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts. The mandates and process may be directed to a sheriff and must be in a form prescribed by the Adjutant General.[52]

When not in active federal service, the Adjutant General, his or her designee, or a military judge of the FLNG may issue a pretrial confinement warrant to secure the presence of an accused at trial, as well as subpoenas and subpoenas duces tecum, to require witnesses to produce documents.[53]

When a servicemember is sentenced to confinement by court-martial, the sheriff or jailer must provide the same care as provided to other prisoners properly committed for custody under the sentence of any civil court.[54]

Neither the Florida Statutes nor the UCMJ specify who may authorize a search or which areas may be searched. However, the Military Rules of Evidence authorize a commander or military judge to issue a search authorization, which is the military law equivalent of a search warrant.[55]

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[49] Section 250.35(10), F.S.
[50] Section 250.35(9), F.S.
[51] Section 250.35(8), F.S.
[52] Section 250.36(1), F.S.
[53] Section 250.36(3), F.S.
[54] Section 250.36(4), F.S.
[55] Military Rules of Evidence, Part III, Rule 316, https://jsc.defense.gov/Portals/99/Documents/MREsRemoved412e.pdf (last visited April 11, 2021).

Under the Fourth Amendment to the U.S. Constitution, a search generally must be conducted pursuant to a search warrant that is supported by probable cause.[56]

Medical Officer Authorization

Section 250.375, F.S., provides that physicians holding an active license to practice medicine in any other state or Puerto Rico, while serving as medical officers in the FLNG pursuant to federal or state orders, are expressly authorized to practice medicine on military personnel or civilians during an emergency, declared disaster, or during federal military training.

Armory Board

Section 250.01(5), F.S., defines the term "armory" as a building or group of buildings, used primarily for housing and training troops or for storing military property, supplies, or records. Section 250.40, F.S., creates the Armory Board, which is charged with the supervision and control of all FLNG armories, facilities, and real property within the state used for military purposes. Voting members of the Armory Board include the Governor as Commander in Chief and chair of the Armory Board, Adjutant General as vice chair, Assistant Adjutants General, and major command commanders reporting directly to the Adjutant General, in the active FLNG. Any member of the Armory Board may delegate his or her deputy commander to attend the meeting as an alternate member with voting privileges in the Armory Board member's absence.[57] Board member terms are for the period during which the member possesses the qualifications for the membership.[58]

III. Effect of Proposed Changes:

Section 1 amends s. 110.205, F.S., relating to career service exemptions, to repeal references to job titles no longer used (military police chiefs, military police officers, firefighter trainers, and firefighter rescuers). The bill also repeals reference to electronic security system technicians in the DMA, thereby allowing those positions to have the same salary and benefits as career services employees.

Section 2 amends s. 121.055, F.S., relating to the SMS class, to revise references to certain military positions required to participate in the SMS class. This section adds the DMA Inspector General and Executive Officer to the class positions and renames the Director of Military Personnel to Director of Human Resources and the Director of Administration to the Director of Legislative Affairs.

Section 3 amends s. 250.10, F.S., to revise the requirements for appointment as Adjutant General to require the Adjutant General to have served in the FLNG for *at least* 5 years, rather than the "preceding five years" as provided under current law. This section specifies that the Adjutant General must serve as the commanding general of Florida's organized militia. This section also provides that the Assistant Adjutant General for Army and the Assistant Adjutant General for Air

[56] *See California v. Carney*, 471 U.S. 386, 390-91 (1985).
[57] Section 250.40(2)(a), F.S.
[58] Section 250.40(3), F.S.

must have served for at least three years in the FLNG, rather than the "preceding five years" in current law.

Section 4 amends 250.35, F.S., to update a reference to the outdated version of the Manual for Courts-Martial (MCM) to the 2019 edition and provides that the Uniform Code of Military Justice (UCMJ), together with ch. 250, F.S., is to be referred to as the Florida Code of Military Justice (FCMJ).

This section specifies that a court-martial in this state is an administrative procedure of the executive branch and not a court under the control of the judicial branch. Servicemembers must be tried pursuant to the MCM, except as otherwise provided by FLNG regulations.

Current law provides that a panel of officers may include enlisted members, at the request of an enlisted defendant. The bill strikes the word defendant (this conforms to the UCMJ's replacement of the term defendant with accused) and provides that such a panel may include enlisted members, at the request of an enlisted person who is accused of a crime or an offense.

This section clarifies the qualifications of a military judge in a general or special court-martial and requires that a military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Convening Authority or any higher authority.

Current law allows for the Governor to delegate to convene a general courts-martial to the Adjutant General. The bill authorizes the President, the Governor, or the Adjutant General to convene a general courts-martial and prohibits the delegation of that duty. The bill also revises provisions relating to the imposition of nonjudicial punishment by providing that courts, upon the finding of guilt, may adjudge no punishment or adjudge one or more of the following punishments:

- Confinement in an appropriate penal institution for up to 367 days.
- Dismissal or discharge from the FLNG with the characterization of service deemed appropriate by the military judge or panel members, including a dishonorable or bad conduct discharge.
- A fine of up to $500 per violation.
- Forfeiture of all or just a portion of pay and allowances.
- Reduction to the lowest enlisted pay grade or any intermediate pay grade for enlisted persons (current law does not specify pay grade).
- A written reprimand filed in the official military personnel file of the person found guilty.

This section provides that special courts-martial authorized to adjudicate a bad conduct discharge in the FLNG, may be convened by order of commanding officers of the FLNG who are in the accused's chain of command and hold the rank of colonel or by any person who is authorized to convene a general court-martial. The bill prohibits the delegation of this duty. The bill also revises the type of punishment allowed for a special courts-martial, to allow the courts, upon the finding of guilt, to adjudge no punishment or adjudge one or more of the following punishments:

- Confinement in an appropriate penal institution for up to 100 days.
- Discharge from the Florida National Guard with a bad conduct discharge.
- A fine of up to $400 per violation.

- Forfeiture of all or just a portion of pay and allowances for a period of up to 1 year.
- Reduction to the lowest or any intermediate pay grade of enlisted persons.
- A written reprimand filed in the official military personnel file of the person found guilty.

The bill provides that special courts-martial *not authorized* to adjudicate a bad conduct discharge in the FLNG may be convened by order of the commanding officers of the FLNG who are in the accused's chain of command and hold the rank of a lieutenant colonel or by any person who is authorized to convene a general court-martial or special court-martial that is authorized to adjudicate a bad conduct discharge. The bill prohibits the delegation of this duty. Punishment is the similar as special courts-martial authorized to adjudicate a bad conduct discharge *except* that (i) no punishment by discharge is provided; (ii) the fine may not exceed $300; and (iii) forfeiture of pay may not exceed 60 days.

This section specifies that summary court-martial in the FLNG may be convened by order of commanding officers of the FLNG who are in the accused's chain of command and hold the rank of lieutenant colonel or by any person authorized to convene a general court-martial or special court-martial. The bill prohibits the delegation of this duty. The bill also revises the type of punishment allowed for a summary courts-martial, to allow the courts, upon the finding of guilt, to adjudge no punishment or adjudge one or more of the following punishments:

- Confinement in an appropriate penal institution for up to 25 days.
- A fine of up to $200 per violation.
- Forfeiture of all or just a portion of pay and allowances for a period of up to 60 days.
- Reduction to no more than two pay grades below the person's current pay grade.
- A reprimand.

This section clarifies that commanding officers may impose nonjudicial punishment in accordance with FLNG regulations. It also provides greater specificity as to which commanders are authorized to impose a nonjudicial punishment as follows:

- A unit commander or superior commander may punish enlisted personnel;
- Field grade commanders or general officers may punish company grade and warrant officers; and
- General officers may punish field grade officers.

The bill revises the nonjudicial punishments authorized to:

- Clarify extra duty may not exceed a period of 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.
- Provide that restriction to the armory, training site, or any other specified limitations, with or without suspension from duty, may not exceed a period of 14 days of active duty, whether state active duty, annual training or any similar duty, or 14 unit training assemblies.
- Provide for reduction by no more than two pay grades for enlisted personnel in the E-4 pay grade or below and reduction of one grade of enlisted personnel in the E-5 pay grade or above.
- Add forfeiture of base pay for a period not to exceed 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.

The bill provides that a commander or a successor in command over the person punished may, at any time, suspend any part or amount of the punishment subject to the following conditions:

- Any unexecuted punishment may be suspended at any time;
- Any executed punishment of any grade reduction, fine, or forfeiture of pay, may only be suspended within 8 months after the date of execution; and
- The suspension cannot be longer than 12 months from the date of suspension, but the expiration of the current enlistment or term of service of the servicemember involved automatically terminates the period of suspension.

The bill specifies that the regulations adopted by the FLNG may provide for plenary and summarized nonjudicial punishment.

The bill provides which commanders have the authority to reduce certain enlisted servicemember pay grades.

The bill provides that in addition to a dismissal of a general or special courts-martial case, a dismissal of any specific charge or offense may be appealed by the FLNG to the First District Court of Appeal.

The bill specifies that a finding of guilt and the sentence of a nonjudicial punishment may be appealed only to the next highest commander in the accused's chain of command and any such appeal is final.

Section 5 amends s. 250.351, F.S., regarding court-martial jurisdiction, to provide that members of the FLNG are subject to ch. 250, F.S., regardless of whether in civilian or military status. Jurisdiction is based exclusively on membership in the FLNG and is not subject to additional requirements.

This section provides that subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force. The bill specifies that courts-martial under the FCMJ have primary jurisdiction of military offenses committed when the member is not in the active service. If a nonmilitary offense violates both the FCMJ and local criminal law (foreign or domestic), a proper civilian court has primary jurisdiction. In such cases, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

This section also provides that jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense. Courts-martial under the FCMJ may be initiated for offenses committed by a FLNG member while in the active service only after the commander with authority over the offense under the UCMJ has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

Section 6 amends s. 250.36, F.S., to provide for the issuance and execution of search authorizations by the Adjutant General, his or her designee, or a military judge when not in active service and when the FLNG or the Department of Military Affairs has control over the location where property or the person to be searched is situated or found. If the location is not

under military control, the commander has control over such property of persons subject to military law or law of war.

Section 7 amends s. 250.375, F.S., to provide that in addition to any state, a physician who holds a license to practice medicine in any territory of the United States or the District of Columbia, while serving as a medical officer with or in support of the FLNG, may practice medicine on military personnel or civilians during an emergency, declared disaster, or during federal military training.

Section 8 amends s. 250.40, F.S., to revise the Armory Board membership to specify that the Assistant Adjutant General must be from the Army. The bill provides that a member of the Armory Board may request excusal from a board meeting by the Adjutant General or his or her designee. The excused member may delegate the authority to a deputy commander or executive officer to attend the meeting as an alternate member with voting privileges.

Section 9 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Lines 253 to 255 state "[a] court-martial in this state is an administrative *procedure* of the executive branch and not a court under the control of the judicial branch." The constitution and ch. 255, F.S., expressly provides for judicial review in the First District Court of Appeal. The current language is a bit confusing as worded and may be read to be in conflict with the authority for judicial review. It is suggested that an amendment be considered to expressly state that courts-martial are a *proceeding* within the executive branch and not a court as established under Article V of the State Constitution.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.205, 121.055, 250.10, 250.35, 250.351, 250.36, 250.375, and 250.40.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Burgess

20-00714-21 2021770__

A bill to be entitled

An act relating to military affairs; amending s. 110.205, F.S.; deleting a provision requiring that certain military personnel have the same salary and benefits as career service employees; amending s. 121.055, F.S.; revising the list of positions in the Department of Military Affairs subject to compulsory membership in the Senior Management Service Class of the Florida Retirement System; amending s. 250.10, F.S.; modifying minimum qualifications and duties of the Adjutant General; modifying the minimum qualifications for additional officers appointed by the Adjutant General; amending s. 250.35, F.S.; designating the provisions of ch. 250, F.S., and the Uniform Code of Military Justice as the Florida Code of Military Justice; specifying that a court-martial is an administrative procedure under the executive branch of state government; revising procedures applicable to various court-martial proceedings; revising the types of punishments a person found guilty in a court-martial proceeding is subject to; authorizing certain commanders to suspend punishment, subject to specified limitations; authorizing Florida National Guard regulations to provide for nonjudicial punishment; specifying the authority of certain commanders to reduce grades of enlisted personnel, subject to specified limitations; modifying procedures governing appeals of a court-martial finding and sentence; amending s. 250.351, F.S.; revising

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provisions governing the applicability of ch. 250, F.S., and the Florida Code of Military Justice; specifying conditions under which subject matter jurisdiction is established in certain cases; amending s. 250.36, F.S.; authorizing the Adjutant General, the Adjutant General's designee, or a military judge to issue and execute search authorizations under specified circumstances; amending s. 250.375, F.S.; revising authorization for certain physicians serving as medical officers with, or in support of, the Florida National Guard to practice medicine under certain circumstances; amending s. 250.40, F.S.; revising the composition of the Armory Board; authorizing board members to request excusal from an Armory Board meeting; providing for the designation of an alternate board member in the event of an excusal; modifying a provision governing the length of the term of board members; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (p) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(p)~~1.~~ All military personnel of the Department of Military Affairs. Unless otherwise fixed by law, the salary and benefits

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for such military personnel shall be set by the Department of Military Affairs in accordance with the appropriate military pay schedule.

~~2. The military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians shall have salary and benefits the same as career service employees.~~

Section 2. Paragraph (g) of subsection (1) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(g) Effective July 1, 1996, participation in the Senior Management Service Class is ~~shall be~~ compulsory for any member of the Florida Retirement System employed with the Department of Military Affairs in the positions of the Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Human Resources, Director of Legislative Affairs, Inspector General, Executive Officer ~~Military Personnel, Director of Administration~~, and additional directors as designated by the agency head, not to exceed a total of 10 positions. In lieu of participation in the Senior Management Service Class, such members may participate in the Senior Management Service Optional Annuity Program ~~as~~ established in subsection (6) if enrolled in the program before July 1, 2017.

Section 3. Subsections (1), (2), (4), and (5) of section

250.10, Florida Statutes, are amended to read:

250.10 Appointment and duties of the Adjutant General.—

(1) In case of a vacancy, the Governor shall, subject to confirmation by the Senate, appoint a federally recognized officer of the Florida National Guard, who has served in the Florida National Guard for at least ~~the preceding~~ 5 years and attained the rank of colonel or higher, to be the Adjutant General of the state with the rank of not less than brigadier general or such higher rank as authorized by applicable tables of organization of the Department of the Army or the Department of the Air Force. The Adjutant General and all other military personnel of the Florida National Guard on full-time military duty with the Department of Military Affairs, except military police and firefighters, who are paid from state funds shall receive the pay and allowances of their respective grade as prescribed by applicable pay tables of the national military establishment for similar grade and period of service of personnel, unless a different rate of pay and allowances is specified in an appropriation act of the Legislature. An officer, with his or her consent, may be ordered to state active duty for administrative duty with the Department of Military Affairs at a grade lower than the officer currently holds.

(2) The Adjutant General shall:

(a) Serve as the commanding general of Florida's organized militia.

(b) Supervise the receipt, preservation, repair, distribution, issue, and collection of all arms and military equipment of the state.

(c) ~~(b)~~ Supervise all troops and branches of the Florida

National Guard, including their organization, armament, discipline, training, recruiting, inspection, instruction, pay, subsistence, and supplies.

(d) ~~(c)~~ Maintain records of all military personnel of the Florida National Guard, and maintain copies of all orders, reports, and communications received and issued by him or her.

(e) ~~(d)~~ Cause the law and orders relating to the Florida National Guard to be indexed, printed, and bound, and prepare and publish blank books, forms, and stationery when necessary, and furnish them at the expense of the state.

(f)1. ~~(e)1.~~ Prepare and publish by order of the Governor orders, rules, and regulations, consistent with law, to bring the organization, armament, equipment, training, and discipline of the Florida National Guard to a state of efficiency as near as possible to that of the regular United States Army and Air Force, and the Adjutant General shall attest all orders of the commander in chief relating to the Florida National Guard.

2. Establish by directive an organized and supervised physical fitness program for military personnel of the Department of Military Affairs, provided that the program does not exceed 1 hour per day, for a maximum of 3 hours per week, and originates and terminates at the normal worksite. All fees, membership dues, equipment, and clothing relating to such physical fitness program shall be at no cost to the state. Administrative leave, not to exceed 3 hours per week, shall be provided by the department to all personnel authorized to participate in the physical fitness program.

3. Establish by directive a post exchange store for members of the Florida National Guard, their families, guests, and other

authorized users. The post exchange store shall be located at the Camp Blanding Training Site. The primary purpose of the store is to provide for the morale, recreation, and welfare of all servicemembers training at the Camp Blanding Training Site. The operation of the post exchange store must be in accordance with state and federal laws, rules, and regulations. Profits of the post exchange store, if any, shall be deposited in the Camp Blanding Management Trust Fund and shall be used to enhance the facilities and services provided by the Camp Blanding Training Site. The Adjutant General may establish an account with a federally insured financial institution in the state to facilitate the operations of the post exchange store.

(g) ~~(f)~~ Prepare reports required by the Secretary of Defense.

(h) ~~(g)~~ Perform other duties required of the Adjutant General by the commander in chief.

(i) ~~(h)~~ Employ personnel as necessary for the proper conduct of the Department of Military Affairs. The Adjutant General may accept personnel provided by the Federal Government.

(j) ~~(i)~~ Establish and maintain as part of the Adjutant General's office a repository of records of the services of Florida troops during all wars, and be the custodian of all records, relics, trophies, colors, and histories relating to such wars which are possessed or acquired by the state.

(k) ~~(j)~~ Maintain a seal of office, approved by the commander in chief, and all copies of papers in his or her office, duly certified and authenticated under the seal, are admissible in evidence in all cases in like manner as if the original were produced.

(l) ~~(k)~~ Provide, upon request, a summary to the Governor on the number and condition of the Florida National Guard and the number and condition of the arms and property in the custody of the state, and transmit to the Governor at that time a detailed report of all funds and moneys received and disbursed by the Department of Military Affairs. The Adjutant General may also recommend needed legislation as he or she deems proper.

(m) ~~(l)~~ Subject to annual appropriations, administer youth About Face programs and adult Forward March programs at sites to be selected by the Adjutant General. Both programs must provide schoolwork assistance, focusing on the skills needed to master basic high school competencies and functional life skills, including teaching students to work effectively in groups; providing basic instruction in computer skills; teaching basic problem-solving, decisionmaking, and reasoning skills; teaching how the business world and free enterprise work through computer simulations; and teaching home finance and budgeting and other daily living skills.

1. About Face is a summer and year-round after-school life-preparation program for economically disadvantaged and at-risk youths from 13 through 17 years of age. The program must provide training in academic study skills, and the basic skills that businesses require for employment consideration.

2. Forward March is a job-readiness program for economically disadvantaged participants who are directed to Forward March by the local workforce development boards. The Forward March program shall provide training on topics that directly relate to the skills required for real-world success. The program shall emphasize functional life skills, computer

literacy, interpersonal relationships, critical-thinking skills, business skills, preemployment and work maturity skills, job-search skills, exploring careers activities, how to be a successful and effective employee, and some job-specific skills. The program also shall provide extensive opportunities for participants to practice generic job skills in a supervised work setting. Upon completion of the program, Forward March shall return participants to the local workforce development boards for placement in a job placement pool.

(n) ~~(m)~~ Order troops to state active duty for training, subject to approved appropriations or grants.

(o) ~~(n)~~ Issue decorations and awards pursuant to military regulations and instructions.

(4)(a) The Adjutant General shall, subject to confirmation by the Senate, employ a federally recognized officer of the Florida National Guard, who has served in the Florida Army Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be the Assistant Adjutant General for Army.

(b) The Adjutant General may, subject to confirmation by the Senate, employ an additional, federally recognized officer of the Florida National Guard, who has served in the Florida Army Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be a second Assistant Adjutant General for Army.

Each officer shall perform the duties required by the Adjutant General.

(5) The Adjutant General shall, subject to confirmation by

the Senate, employ a federally recognized officer of the Florida National Guard, who has served in the Florida Air Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be the Assistant Adjutant General for Air. The officer shall perform the duties required by the Adjutant General.

Section 4. Section 250.35, Florida Statutes, is amended to read:

250.35 Florida Code of Military Justice ~~Courts-martial~~.—

(1) The Uniform Code of Military Justice (UCMJ), 10 U.S.C. ss. 801 et seq., and the Manual for Courts-Martial (2019 ~~2012~~ Edition) are adopted for use by the Florida National Guard, except as otherwise provided by this chapter. The UCMJ, together with the provisions of this chapter, shall be referred to as the Florida Code of Military Justice (FCMJ).

(2) Courts-martial may try a member of the Florida National Guard for any crime or offense made punishable under the FCMJ ~~by the Uniform Code of Military Justice (2012 Edition)~~, except that a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial.

(3) A court-martial in this state is an administrative procedure of the executive branch and not a court under the control of the judicial branch.

(4) Courts-martial in the state consist of ~~shall be of three kinds, namely:~~ general courts-martial, special courts-martial, and summary courts-martial. General courts-martial and special courts-martial shall be tried by a military judge and a panel of officers pursuant to the Manual for Courts-Martial, except as otherwise provided by Florida ~~as designated in~~

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~~applicable~~ National Guard regulations. However, a panel may include enlisted members, at the request of an enlisted person who is accused of a crime or an offense ~~defendant~~. The military judge in a general court-martial or special court-martial must be qualified by attendance at appropriate Judge Advocate General schools or ~~and~~ must be certified as qualified by the Adjutant General of Florida. In a general and special court-martial, the accused ~~defendant~~ may waive trial by panel and request trial by military judge alone. The granting of such waiver is ~~shall be~~ in the military judge's discretion. The military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Convening Authority or any higher authority.

(5) ~~(4)~~ General courts-martial in the Florida National Guard may be convened by order of the President of the United States, the Governor, or the Adjutant General. This duty may not be delegated. ~~as delegated by the Governor, and~~ Such courts may, upon a finding of guilt, adjudge no punishment or adjudge any one or more of the following punishments:

(a) Confinement in an appropriate penal institution for a period not to exceed 367 days.

(b) Dismissal or discharge from the Florida National Guard with a characterization of service deemed appropriate by the military judge or enlisted members, including a dishonorable or bad conduct discharge.

(c) A fine not to exceed $500 per violation.

(d) Forfeiture of all pay and allowances, or a portion thereof.

(e) Reduction to the lowest or any intermediate pay grade

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of enlisted persons.

(f) A written reprimand filed in the official military personnel file of the person found guilty ~~adjudge a fine not exceeding $500, confinement not in excess of 200 days; forfeiture of all pay and allowances; reprimand, dismissal, or dishonorable discharge from the service; and reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel. Any two or more of such punishments may be combined in the sentence authorized in this section~~.

(6)~~(5)~~ Special courts-martial authorized to adjudicate a bad conduct discharge in ~~When not in the active service of the United States, the commanding officer of each major command of~~ the Florida National Guard ~~or his or her superior commander~~ may be convened by order of commanding officers of the Florida National Guard who are in the accused's chain of command and hold the rank of colonel, or any person who is authorized to convene a general court-martial ~~convene special courts-martial empowered to adjudicate a bad conduct discharge from the service~~, subject to the procedural protections provided in 10 U.S.C. s. 819. This duty may not be delegated. Such a court-martial may, upon a finding of guilt, adjudge no punishment or adjudge any one or more of the following punishments:

(a) Confinement in an appropriate penal institution for a period not to exceed 100 days.

(b) Discharge from the Florida National Guard with a bad conduct discharge.

(c) A fine not to exceed $400 per violation.

(d) Forfeiture of all pay and allowances, or a portion thereof, for a period not to exceed 1 year.

(e) Reduction to the lowest or any intermediate pay grade of enlisted persons.

(f) A written reprimand filed in the official military personnel file of the person found guilty ~~Special courts-martial with bad conduct discharge authority have the same powers of punishment as do general courts-martial, except that fines adjudged by special courts-martial may not exceed $300 and confinement may not exceed 100 days. Special courts-martial with bad conduct discharge authority may adjudicate a bad conduct discharge from the service, but may not adjudicate a dismissal or dishonorable discharge from the service~~.

(7)~~(6)~~ Special courts-martial not authorized to adjudicate a bad conduct discharge in the Florida National Guard may be convened by order of the commanding officers of the Florida National Guard who are in the accused's chain of command and hold the rank of lieutenant colonel, or any person who is authorized to convene a general court-martial or special court-martial that is authorized to adjudicate a bad conduct discharge. This duty may not be delegated. Such a court-martial may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments:

(a) Confinement in an appropriate penal institution for a period not to exceed 100 days.

(b) A fine not to exceed $300 per violation.

(c) Forfeiture of all pay and allowances, or a portion thereof, for a period not to exceed 60 days.

(d) Reduction to the lowest or any intermediate pay grade of enlisted persons.

(e) A written reprimand filed in the official military

personnel file of the person found guilty ~~When not in the active service of the United States, the commanding officer of each garrison, fort, post, camp, air base, auxiliary air base, any other place where troops are on duty, division, brigade, group, regiment, battalion, wing, or squadron may convene special courts-martial for his or her command; but such special courts-martial may be convened by superior commanders when advisable. Special courts-martial have the same powers of punishment as general courts-martial, except that fines adjudged by special courts-martial may not exceed $300 and confinement may not exceed 100 days, and dismissal or discharge from the service may not be adjudicated~~.

(8) ~~(7)~~ Summary courts-martial in the Florida National Guard may be convened by order of commanding officers of the Florida National Guard who are in the accused's chain of command and hold the rank of lieutenant colonel, or any person authorized to convene a general court-martial or special court-martial. This duty may not be delegated. Such courts-martial may, upon a finding of guilt, adjudge no punishment or adjudge any one or more of the following punishments:

(a) Confinement in an appropriate penal institution for a period not to exceed 25 days.

(b) A fine not to exceed $200 per violation.

(c) Forfeiture of all pay and allowances, or a portion thereof, for a period not to exceed 60 days.

(d) Reduction to no more than two pay grades below the person's current pay grade.

(e) A reprimand ~~When not in the active service of the United States, the commanding officer of each battalion, higher~~

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~~headquarters, or similar type unit may convene summary courts-martial for such place or command. Any person who may convene a general court-martial or special court-martial may convene a summary court-martial. Summary courts-martial may adjudge a fine not in excess of $200 per offense, confinement not in excess of 25 days, forfeiture of pay and allowances, and reduction by one grade of members whom the convening authority had the authority to promote to their present grade. Any two or more of such punishments may be combined in the sentence authorized to be imposed by such courts, except that confinement may not be combined with a fine~~.

(9) ~~(8)~~ Commanding officers ~~When not in the active service of the United States, commanders~~ may impose nonjudicial punishment in accordance with Florida National Guard regulations. Enlisted personnel may receive nonjudicial punishment from the unit commander or from any higher commander in their chain of command. Company grade and warrant officers may receive nonjudicial punishment from any commander who is a field grade or general officer in their chain of command. Field grade officers may receive nonjudicial punishment from any commander who is a general officer in their chain of command. Such commanders may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments ~~10 U.S.C. s. 815, except that punishment may not exceed~~:

(a) Oral or written reprimand.

(b) Extra duty for a period not to exceed 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.

(c) Restriction to the armory, training site, or any other

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specified limitations, with or without suspension from duty, for a period not to exceed 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.

(d) A fine not to exceed ~~Fines of~~ $200 per violation.

(e) Reduction of up to two grades for enlisted personnel in the E-4 pay grade or below and reduction of one grade of enlisted personnel in the E-5 pay grade or above ~~by one grade of a member whom the commander had the authority to promote~~.

(f) Forfeiture of base pay for a period not to exceed 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.

(g) Any combination of paragraphs (a)-(f) ~~(a)-(e)~~, except that a combination of punishment imposed under paragraphs (b) and (c) may not exceed 14 days or 14 unit training assemblies.

(10) The commander who imposes nonjudicial punishment, or a successor in command over the person being punished, may suspend any part or amount of the punishment at any time, subject to the following conditions:

(a) Any unexecuted punishment may be suspended at any time.

(b) An executed punishment of any grade reduction, fine, or forfeiture of pay may only be suspended within a period of 8 months after the date of execution.

(c) A punishment may not be suspended for a period exceeding 12 months from the date of suspension, and the expiration of the affected servicemember's current enlistment or term of service automatically terminates the period of suspension.

(11) Florida National Guard regulations may provide for

plenary and summarized nonjudicial punishment.

(12) A commander is authorized to reduce the grade of enlisted personnel in ranks through courts-martial or nonjudicial punishment, subject to the following conditions:

(a) Unless jurisdiction is withheld by a higher level commander, commanders in command positions with the rank of captain are authorized to reduce grades of personnel serving in grades E-2 through E-4.

(b) Unless jurisdiction is withheld by a higher level commander, commanders in command positions with the rank of lieutenant colonel are authorized to reduce grades of personnel serving in grades E-2 through E-6.

(c) Unless jurisdiction is withheld by a higher level commander, commanders in command positions with the rank of colonel and above are authorized to reduce grades of personnel serving in grades E-2 through E-9.

(13)(a) ~~(9)~~ A finding of guilt and the sentence of a summary court-martial may be appealed to the convening authority. If a sentence of imprisonment has been adjudged, the findings and sentence may be appealed to the Adjutant General.

(b) ~~(10)(a)~~ A finding of guilt and the sentence of a court-martial convened under this chapter, as approved by the convening authority and the Adjutant General if a sentence of imprisonment has been adjudged, may be appealed to the First District Court of Appeal.

(c) ~~(b)~~ Any dismissal of a general or special court-martial case, or any specific charge or offense, by the military judge which does not violate the accused's ~~defendant's~~ constitutional rights may be appealed by the Florida National Guard to the

First District Court of Appeal.

(d) A finding of guilt and the sentence of a nonjudicial punishment may be appealed only to the next highest commander in the accused's chain of command. Any such appeal is final.

(14)~~(11)~~ When the Florida National Guard is not in the active service of the United States, a sentence of dismissal from the service or dishonorable discharge from the service, imposed by court-martial, may not be executed until approved by the Governor.

Section 5. Section 250.351, Florida Statutes, is amended to read:

250.351 Court-martial; jurisdiction.—

(1) Members of the Florida National Guard are subject to this chapter and the Florida ~~Uniform~~ Code of Military Justice, including any provision authorizing punishment, at all times during their enlistment or appointment, regardless of whether in civilian or military status or serving in this state or outside the state. Jurisdiction is based exclusively on membership in the Florida National Guard and is not subject to any additional requirements.

(2) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force. Courts-martial under the Florida Code of Military Justice have primary jurisdiction of military offenses committed when the member is not in the active service of the United States. A proper civilian court has primary jurisdiction of a nonmilitary offense when an act or omission violates both the Florida Code of Military Justice and local criminal law, foreign or domestic. In such cases, a court-

martial may be initiated only after the civilian authority has declined to prosecute or has dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense. Courts-martial under the Florida Code of Military Justice may be initiated for offenses committed by a Florida National Guard member while in the active service of the United States only after the commander with authority over the offense under the Uniform Code of Military Justice has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

(3) Courts-martial ~~A court-martial or court of inquiry~~ may be convened and held in a unit of the Florida National Guard serving outside the state, and the court has the same jurisdiction and powers as if the court-martial ~~or court of inquiry~~ were held within the state. An offense committed outside the state may be tried and punished outside the state or within the state.

Section 6. Section 250.36, Florida Statutes, is amended to read:

250.36 Mandates and process.—

(1) Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts. Such mandates and process may be directed to the sheriff of any county and must be in the form prescribed by the Adjutant General in the rules issued by him or her under this chapter. All officers to whom such mandates and process are directed must execute the same and make returns of their acts thereunder according to the requirements of the form

of process. Any sheriff or other officer who neglects or refuses to perform the duty enjoined upon him or her by this chapter is subject to the same liabilities, penalties, and punishments as are prescribed by the law for neglect or refusal to perform any other duty of his or her office.

(2) When not in the active service of the United States, the Adjutant General, or his or her designee, or a military judge ~~of the Florida National Guard~~ may issue a pretrial confinement warrant for the purpose of securing the presence of an accused at trial. The warrant must be directed to the sheriff of the county, directing the sheriff to arrest the accused and bring the accused before the court for trial if the accused has disobeyed an order in writing to appear before the court which was delivered to the accused in person or mailed to the accused's last known address, along with a copy of the charges. Pretrial confinement may not exceed 48 hours. However, the Adjutant General or military judge may extend pretrial confinement for not more than 15 days in order to facilitate the presence of the accused at trial. For purposes of this subsection, the term "military judge" does not include a summary court-martial officer who is not qualified to act as a military judge in general or special courts-martial.

(3) When not in the active service of the United States, the Adjutant General, or his or her designee, or a military judge ~~of the Florida National Guard~~ may issue subpoenas and subpoenas duces tecum and enforce by attachment the attendance of witnesses and the production of documents and other items of evidentiary value.

(4) When not in the active service of the United States,

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the Adjutant General, or his or her designee, or a military judge may issue and execute search authorizations when the Florida National Guard or the Department of Military Affairs has control over the location where the property or the person to be searched is situated or found. If the location is not under military control, the commander has control over such property or persons subject to military law or law of war.

(5) When a sentence of confinement is imposed by any court-martial of the Florida National Guard, the Adjutant General or his or her designee whose approval makes effective the sentence imposed by the court-martial shall issue a warrant directing the sheriff of the appropriate county to take the convicted person into custody and confine him or her in the jail of such county for the period specified in the sentence of the court. Any sheriff receiving such warrant must promptly execute the warrant by taking the convicted person into custody and confining him or her in jail. The sheriff or jailer in charge of any county jail shall receive any person committed for confinement in such jail under proper process from a court-martial, and provide for the care, subsistence, and safekeeping of such prisoner just as the sheriff or jailer would a prisoner properly committed for custody under the sentence of any civil or criminal court.

(6)~~(5)~~ All sums of money collected through fines adjudged by a general, special, or summary court-martial or through the imposition of nonjudicial punishment of the Florida National Guard shall be paid over at once by the officer collecting the fine to the commanding officer of the organization to which the member belongs and be deposited in accordance with s. 250.40(5)(c)1.

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Section 7. Section 250.375, Florida Statutes, is amended to read:

250.375 Medical officer authorization.—Physicians who hold an active license to practice medicine in any ~~other~~ state, any territory of the United States, or the District of Columbia ~~Puerto Rico~~, while serving as medical officers with, or in support of, ~~in~~ the Florida National Guard, pursuant to federal or state orders, are expressly authorized to practice medicine on military personnel or civilians during an emergency, declared disaster, or during federal military training.

Section 8. Subsections (2) and (3) and paragraph (c) of subsection (5) of section 250.40, Florida Statutes, are amended to read:

250.40 Armory Board; creation; membership, terms, and compensation; duties and responsibilities.—

(2)(a) Voting members of the Armory Board include the Governor as Commander in Chief and chair of the board, the Adjutant General as vice chair, the Assistant Adjutants General of the Army, and major subordinate command commanders ~~reporting directly to the Adjutant General,~~ in the active Florida National Guard. ~~If necessary due to exigencies of military duty, any member of the board may delegate his or her deputy commander to attend the meetings as an alternate member with voting privileges.~~

(b) Any member of the Armory Board may request excusal from a meeting from the Adjutant General or his or her designee. Any excused member may delegate his or her deputy commander or executive officer to attend such meeting as an alternate member with voting privileges.

(c) The Governor may appoint one representative from his or her staff to attend meetings of the Armory Board. The appointee shall serve as a nonvoting advisory member and liaison to the board.

(d) ~~(c)~~ The State Quartermaster shall act as the recorder and secretary of the Armory Board. In addition, the State Quartermaster shall execute the policy, decisions, and official actions of the board. When the board is in recess, the State Quartermaster shall conduct the day-to-day business of the board. The State Quartermaster and his or her staff are not liable, civilly or criminally, for any lawful act done by them in the performance of their duty, while acting in good faith, and while acting in the scope of either state or federal duty.

(3) The term of each member of the Armory Board is the period during which the member possesses the title and qualifications for such membership as provided in this chapter ~~under subsection (1)~~.

(5) The Armory Board must:

(c) Receive from counties, municipalities, and other sources donations of land, services, or money to aid in providing, operating, improving, and maintaining armories and other facilities used for military purposes. The national military policy recognizes the Florida National Guard as an important component of the United States Army and Air Force, and a member of the total force, sharing in the defense of the country. The Florida National Guard is available to assist the state and local governments in the event of an emergency. Therefore, it is reasonable and equitable that the expense of maintaining the Florida National Guard be shared by the federal,

state, and local governments. As the Federal Government is providing liberally for the equipment and training of the Florida National Guard and the state for its administration, management, and maintenance, local governments are encouraged to provide services at no cost to Florida National Guard armories.

1. Any contributions of money, any moneys derived from the rental of armories and other facilities, the armory-operations allowances provided in s. 250.20, and all money collected through fines imposed by a court-martial or nonjudicial proceeding of the Florida National Guard, as provided in s. 250.36(6) ~~s. 250.36(5)~~, shall be received on behalf of the Armory Board by the post commander of such facility and must be deposited into a federal depository, approved by the Department of Military Affairs, in an account in a banking institution in the county in which such facility is located.

2. The funds received shall be disbursed for the purposes enumerated in this subsection at the discretion of the post commander.

3. Any real property donated shall be held as other property for use by the state, and counties and municipalities may make donations of lands by deed or long-term lease and contributions of moneys for the purposes set forth in this section, and may issue bonds or certificates of indebtedness to provide funds for such purposes. Boards of county commissioners may levy taxes, not to exceed 1 mill, to provide funds for the construction of armories or for the retirement of bonds or certificates of indebtedness issued to provide funds for the construction of armories. Counties and municipalities may construct armories upon state-owned land, which may be made

available for such purpose by action of the Armory Board. Counties and municipalities may also grant to the Armory Board, by deed or long-term leases, property that is acquired or buildings that are constructed for military purposes. Each local government is encouraged to provide economic incentives to reduce the cost of locating Florida National Guard facilities in its jurisdiction. A local government may appropriate funds to pay expenses of the Florida National Guard unit in its jurisdiction. Such funds will be received, accounted for, and dispersed as other funds received by the unit.

Section 9. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 26, 2021

I respectfully request that **Senate Bill #770**, relating to Military Affairs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 794
INTRODUCER:	Senator Bean
SUBJECT:	Independent Living Services
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Favorable**
2.	Jahnke	Bouck	ED	**Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 794 modifies the membership and responsibilities of the Florida Independent Living Council (FILC). Specifically, the bill removes the Division of Blind Services (DBS) from the membership of the FILC, and revises the total number of members from 14 to 11. The bill also permits the FILC to choose representative members from a wide range of persons with developmental disabilities from diverse backgrounds.

The bill revises certain required and discretionary tasks of the FILC and prohibits the FILC from engaging in certain prohibited activities related to lobbying.

The bill increases the percentage of total revenues collected from the Tax Collection Enforcement Diversion Program (Diversion Program) used to administer the James Patrick Memorial Work Incentive Personal Attendant Services Program (JPPAS Program) from 50 percent to 75 percent.

The bill will have a positive fiscal impact on the JPPAS program by increasing the proportion of funds from the Diversion Program to the JPPAS Program, and a negative fiscal impact on other segments of state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Independent Living

The term "independent living" is not defined in Florida Statutes. "Independent living" may refer to an elderly person with the physical and mental capacity to live independently but who wants

companionship or otherwise needs supportive services. It may also encompass a living arrangement for people with disabilities who need supportive services.[1]

The Federal Rehabilitation Act of 1973, as amended, created a framework for states to obtain funding for independent living programs, known as Centers for Independent Living, which work to support community living and independence for people with disabilities.[2] There are 16 Centers for Independent Living in Florida which together serve all 67 counties.[3] To receive funding, states must develop a State Plan for Independent Living (SPIL), which is a three year plan for providing independent living services in the state, through a designated Statewide Independent Living Council (SILC).

Independent living communities are communities in which healthy individuals may live on their own but that do not offer assisted living or nursing services. Independent living communities may offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.[4]

Florida Independent Living Council

In 1988, the Legislature created the FILC which serves as Florida's SILC.[5] The FILC's responsibilities include jointly developing and submitting the SPIL.[6] The FILC works to ensure that persons with disabilities have an opportunity for input into the development of the SPIL and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities. The FILC describes the independent living philosophy as "promot[ing] consumer control of services, self-determination and equal access and participation in every aspect of community life, to the level that individual wishes."[7] The 2017-2019 SPIL, in part, identified the need for safe, affordable, accessible housing as being critical for Florida's Centers for Independent Living and noted a lack of housing is commonly identified as the main barrier to independent living.[8]

Currently, the FILC is comprised of 14 members, including, among other members, directors of independent living centers, a representative from the Division of Vocational Rehabilitation (VR), a representative from the Division of Blind Services (DBS), and various individuals with developmental disabilities.[9] The FILC must coordinate activities with the Florida Rehabilitation Council and other councils that address the needs of specific disability populations under federal

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[1] aPlaceforMom, *Independent Living in Florida, available at* https://www.aplaceformom.com/independent-living/florida (last visited March 13, 2021).
[2] Administration for Community Living, *Centers for Independent Living, available at* https://acl.gov/programs/aging-and-disability-networks/centers-independent-living (last visited March 13, 2021).
[3] The Department of Education, Division of Vocational Rehabilitation, *Independent Living Program, available at* http://www.rehabworks.org/indep_living.shtml (last visited March 13, 2021).
[4] Senior Living.org, *Selecting an Independent Living Community*, available at https://www.seniorliving.org/independent-living/ (last visited March 13, 2021).
[5] Ch. 88-214, L.O.F.
[6] Section 413.395(1), F.S.
[7] The Florida Independent Living Council (FILC), *About Independent Living, available at* https://www.floridasilc.org/independent-living/ (last visited March 13, 2021).
[8] The FILC, *State Plan for Independent Living for Florida for 2017-2019*, p. 22, *available at* https://www.floridasilc.org/documents/State_Plan.pdf (last visited March 13, 2021).
[9] Section 413.395(3)-(5), F.S.

law. The FILC must also submit periodic reports to the Commissioner of the Federal Rehabilitation Administration Services, and provide access to such records at the request of the Commissioner.[10]

The Florida Division of Vocational Rehabilitation

The VR within the Department of Education (DOE) administers the vocational rehabilitation program in Florida. The VR provides services to help individuals with a disability find, advance in, or retain employment, and provides services to youth and students with a disability to aid in the transition from high school to a meaningful career path. In FY 2018-19, the VR served 48,439 individuals, including 26,086 customers who were between the ages of 14 through 21.[11]

An individual with a disability[12] is presumed eligible for vocational rehabilitation services if the person requires rehabilitation services to prepare for, enter, engage in, or retain gainful employment.[13] After determining eligibility, the VR must complete an assessment to determine rehabilitation needs and ensure that an individualized plan for employment (IPE)[14] is prepared.[15] The IPE must be designed to achieve the specific employment outcome of the individual and may include services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.[16]

Division of Blind Services

The DBS is housed within the DOE.[17] The purpose of the DBS is to ensure the greatest possible efficiency and effectiveness of services to individuals who are blind.[18] It is the intent of the Legislature to establish a coordinated program of services that are available throughout Florida to such individuals. The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.[19] The DBS's program of services include a blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and braille and talking books library.[20]

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[10] Section 413.395(11)(c), F.S.
[11] The Florida Department of Education, Division of Vocational Rehabilitation , *2018-2019 Annual Report* (2019), p. 6, *available at* http://www.rehabworks.org/rehab/AnnualReport19.pdf (last visited March 13, 2021).
[12] Section 413.20(7), F.S., defines "disability" to mean "a physical or mental impairment that constitutes or results in a substantial impediment to employment."
[13] Section 413.30(1), F.S.
[14] An individualized plan for employment includes a "comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services." Section 413.20(3), F.S.
[15] *See* s. 413.30(4) and (5), F.S.
[16] The Florida Department of Education, Division of Vocational Rehabilitation, *Frequently Asked Questions, available at* http://www.rehabworks.org/faq.shtml (last visited March 13, 2021).
[17] Section 20.15(3)(e), F.S.
[18] *See* s. 413.011(3), F.S.
[19] Section 413.011(2), F.S.
[20] *See* The Florida Division of Blind Services, *About Blind Services*, available at http://dbs.myflorida.com/Information/index.html (last visited March 10, 2021).

The DBS was administratively housed within the VR upon inception.[21] The DBS has since been established as a separate entity within the DOE and has a separate representative council, known as the Rehabilitative Council for the Blind (RCB).[22] The RCB is an advisory council[23] responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitative Act of 1973,[24] as amended, to recommend improvements to such programs and services, and to perform specified functions.

James Patrick Memorial Work Incentive Personal Attendant Services Program

The James Patrick Memorial Work Incentive Personal Attendant Services Program (JPPAS) Program was created by the Legislature in 2002 as a pilot project. In 2008, it was established in ch. 413.402, F.S., as a statewide program. The administration and financial oversight of the JPPAS Program was originally conducted as a partnership between the Florida Endowment Foundation for Vocational Rehabilitation and FACIL. In 2017, ch. 413.402, F.S. was amended, transferring administration and financial oversight to FACIL.[25]

The JPPAS Program provides a monthly stipend to participants in an effort to offset the cost of the personal care assistance used to help with daily activities such as bathing, dressing, toileting, and eating. As of December 31, 2020, 79 individuals were enrolled in the JPPAS Program.[26]

The JPPAS Program is funded with delinquent sales taxes collected by state attorney's offices in the following eight Florida circuits:

- The Fourth Judicial Circuit (Clay, Duval, Nassau);
- The Sixth Judicial Circuit (Pasco, Pinellas);
- The Ninth Judicial Circuit (Orange, Osceola);
- The Eleventh Judicial Circuit (Miami-Dade);
- The Thirteenth Judicial Circuit (Hillsborough);
- The Fifteenth Judicial Circuit (Palm Beach); and
- The Seventh Judicial Circuit (Broward).[27]

Persons eligible to participate in the program must:

- Be at least 18 years of age, a legal resident of this state, and be significantly and chronically disabled;
- Require a personal care attendant for assistance with or support for at least two activities of daily living such as bathing and dressing and as defined in s. 429.02, F.S.;

[21] Ch. 88-214, L.O.F.
[22] Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. *See also* The Florida Division of Blind Services, *Rehabilitation Council*, available at http://dbs.myflorida.com/Rehab-Council/index.html (last visited March 1, 2021).
[23] Section 20.03(7), F.S., defines "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional area of state government and to provide recommendations and policy alternatives."
[24] 29 U.S.C. § 701(b).
[25] The Florida Association of Centers for Independent Living, *James Patrick Memorial Work Incentive Personal Attendant Services Program Summary July 1, 2019 - June 30, 2020*, p. 1 (On file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The JPPAS Program Summary").
[26] *Id*.
[27] The JPPAS Program Summary at p. 1-2.

- Require a personal care attendant in order to maintain substantial gainful employment; and
- Be able to acquire and direct a personal care attendant.[28]

Tax Collection Enforcement Diversion Program

The primary source of funding for the JPPAS Program is the Diversion Program.[29] In conjunction with the establishment of the JPPAS program, the DOR was directed, in cooperation with FACIL and state attorneys, to select judicial circuits in which to operate the Diversion Program to collect unpaid sales taxes from delinquent business owners.[30] Fifty percent of the collections from the Diversion Program are deposited into the operating account of the Florida Achieving a Better Life Experience (ABLE) Trust[31] to be used to operate the JPPAS program and to contract with the state attorneys participating in the tax diversion program, and the remaining 50 percent is deposited into General Revenue.[32]

The annual budget for the JPPAS Program is determined by the State Revenue Estimating Conference's estimates of delinquent tax collections and revenue from the Bikers Care special motorcycle license tag.[33] The estimate adopted for the Diversion Program for the 2020-2021 fiscal year is $3,247,129 in total tax collections.[34] FACIL expects to receive approximately $70,000 in additional revenue from Florida Bikers Tag license plate sales.[35] This means the estimated budget for the JPPAS Program for Fiscal Year 2020-2021 is approximately $1,693,565, (50 percent of the total estimated collections ($1,623,565) plus the additional $70,000 from Florida Bikers Tag license plate sales).

III. Effect of Proposed Changes:

The bill amends s. 413.395, F.S., removing a representative of the DBS from the membership of the FILC. The bill also reduces the total number of members on the FILC from 14 members to 11 members, at least three of whom must be employees of a center for independent living. The bill requires that at least six of the members must be persons with significant disabilities who are not employed by any state agency or any center for independent living.

The bill also requires the membership of the FILC to include a broad range of persons with disabilities from diverse backgrounds. Under the bill, the FILC must select a chairperson from among the FILC's voting membership. The bill provides that the FILC must meet at the request of the VR alone, and removes the requirement for a joint request of the VR and the DBS. The

[28] Section 413.402(1)(a)-(d), F.S.
[29] The JPPAS Program Summary at p. 1.
[30] Section 413.4021, F.S.
[31] The Florida ABLE Program was created in 2015 to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities. *See* s. 2, ch. 2015-56, L.O.F.
[32] Section 413.4021(1), F.S. The contract amount for each state attorney cannot exceed $50,000.
[33] The JPPAS Program Summary at p. 2.
[34] The Office of Economic and Demographic Research (EDR), *Tax Collection Enforcement Diversion Program January 5, 2021 Executive Summary* (2021), *available at* http://edr.state.fl.us/Content/conferences/generalrevenue/taxcollectiondivprog.pdf (last visited March 10, 2021) (hereinafter cited as "The EDR Summary").
[35] The JPPAS Program Summary at p. 2.

bill also removes requirement that both the VR and the DBS make the FILC meeting reports available to the public, and requires only the VR to make such reports available.

The bill revises the duties of the FILC by requiring the FILC to develop and submit a state plan for independent living in conjunction with the directors of independent living centers, rather than with the VR, and by requiring the state plan to be in accordance with federal guidelines following the receipt of public input from individuals with developmental disabilities and other relevant stakeholders throughout the state. The FILC must coordinate activities with state entities which provide services similar to or complementary of independent living services, including entities which offer or facilitate the provision of long-term community-based services and supports. The bill eliminates the current requirement that the FILC coordinate activities with the Florida Rehabilitation Council.

Under the bill the FILC must conduct regular meetings and submit periodic reports to the Administration for Community Living within the United States Department of Health and Human Services, as well as keep access to and provide such reports to the administrator as frequently as is necessary to verify the reports. The bill changes the recipient of the reports from the Commissioner of the Federal Rehabilitation Administration Services to the head of the Administration for Community Living within the United States Department of Health and Human Services.

The bill authorizes the FILC to conduct the following activities described in the state plan for independent living:

- Working with independent living centers to coordinate services with public and private entities in an effort to improve independent living services for developmentally disabled persons;
- Developing resources to augment activities provided in the SPIL and the provision of relevant services by independent living centers; and
- Other activities consistent with and comparable to other enumerated activities as the FILC deems appropriate and as authorized in the SPIL.

The bill also requires the FILC to:

- Coordinate with independent living centers to avoid conflicting or overlapping activities within established service areas;
- Refrain from engaging in the direct provision of independent living services to developmentally disabled individuals, including the independent living core services.
- Comply with state and federal laws and regulations which restrict and prohibit lobbying activities.

The bill amends s. 413.4021, F.S., to direct 75 percent of the delinquent tax collection revenues to the JPPAS program (instead of 50 percent).

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant fiscal impact[36, 37] which for Fiscal Year 2021-2022, is forecast at approximately $2.2 million or less.[38]

While the bill diverts funding away from General Revenue, the bill does not appear to affect the authority of local governments to raise revenues. Therefore, the local governments mandate provision does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

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[36] Fla. Const. art. VII, s. 18(d).

[37] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact at p. 1, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited March 10, 2021).

[38] Based on the EDR's Estimating Conference's April 1, 2021, estimated population adopted on Nov. 13, 2020. The EDR, *Demographic Estimating Conference* at p. T-1, *available at* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited March 10, 2021).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The January 5, 2021, Revenue Estimating Conference reported that collections for the Diversion Program declined by 3.8 percent in the 2019-20 fiscal year and are projected to remain flat, at approximately $3.25 million per year, for the next five years. The bill would create a positive, significant fiscal impact on the JPPAS program by increasing funding levels from 50 percent of the Diversion Program proceeds to 75 percent. Increasing funding from 50 percent of Diversion Program revenues ($1.62 million) to 75 percent ($2.44 million) would result in approximately $690,000 more annually in each of the next five years for the JPPAS program, and a proportionate increase in years thereafter. The bill would divert an additional 25 percent of Diversion Program funds away from General Revenue to the JPPAS program, resulting in a negative fiscal impact on other segments of state government.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.395 and 413.4021.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[39] The EDR Summary.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Bean

4-00730B-21 2021794__

A bill to be entitled

An act relating to independent living services; amending s. 413.395, F.S.; removing a provision requiring the Florida Independent Living Council to assist the Division of Blind Services of the Department of Education; revising the membership of the council; revising the council's duties and responsibilities; authorizing the council to conduct certain activities as described in the state plan for independent living; requiring the council to coordinate with centers for independent living; prohibiting the council from engaging in certain activities; requiring the council to comply with state and federal laws and regulations relating to lobbying; amending s. 413.4021, F.S.; increasing the percentage of certain revenues used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 413.395, Florida Statutes, is amended to read:

413.395 Florida Independent Living Council.—

(1) There is created the Florida Independent Living Council to assist the division ~~and the Division of Blind Services of the Department of Education~~, as well as other state agencies and local planning and administrative entities assisted under Title

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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VII of the act, in the expansion and development of statewide independent living policies, programs, and concepts and to recommend improvements for such programs and services. The council shall function independently of the division and, unless the council elects to incorporate as a not-for-profit corporation, is assigned to the division for administrative purposes only. The council may elect to be incorporated as a Florida corporation not for profit and, upon such election, shall be assisted in the incorporation by the division for the purposes stated in this section. The appointed members of the council may constitute the board of directors for the corporation.

(2) The council shall consist of 11 members, including a minimum of three persons who are employees of a center for independent living ~~14 members, excluding ex officio, nonvoting members~~. At least six members of the council must be persons who have significant disabilities who are not employed by any state agency or center for independent living. The members of the council shall be appointed by the Governor after soliciting recommendations from the council.

(3) The council shall include:

(a) At least one director of a center for independent living who is chosen by the directors of the centers for independent living within the state.

(b) As ex officio, nonvoting members:

1. A representative from the division.

~~2. A representative from the Division of Blind Services.~~

2.~~3.~~ Representatives from one or more other state agencies that provide services to persons who have disabilities.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(4) The council may include:

(a) Other representatives from the centers for independent living.

(b) Parents and guardians of persons who have disabilities.

(c) Advocates of and for persons who have disabilities.

(d) Representatives from private businesses.

(e) Representatives from organizations that provide services for persons who have disabilities.

(f) Other appropriate individuals.

(5) The council shall be composed of members:

(a) Who provide statewide representation.

(b) Who represent a broad range of persons who have disabilities from diverse backgrounds.

(c) Who are knowledgeable about the centers for independent living and independent living services.

(d) A majority of whom are:

1. Persons who have disabilities.

2. Not employed by any state agency or center for independent living.

(6) The council shall select a chairperson from among the voting membership of the council.

(7) Each member of the council shall serve for a term of 3 years, except that:

(a) A member appointed to fill a vacancy occurring before ~~prior to~~ the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term.

(b) The terms of service of the members initially appointed shall be, as specified by the Governor, for such fewer number of years as will provide for the expiration of terms on a staggered

basis.

(c) A ~~No~~ member of the council may not serve more than two consecutive full terms.

(8) Any vacancy occurring in the membership of the council shall be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.

(9) The ~~chairperson of the~~ council shall designate a representative who shall also serve as a member of the Florida Rehabilitation Council.

(10) The council may meet at the call of the chairperson, at the ~~joint~~ request of the division ~~and the Division of Blind Services~~, or at such times as may be prescribed by rule, but not fewer ~~less~~ than twice each calendar year. The council shall make a report of each meeting, which shall include a record of its discussions and recommendations. The division ~~and the Division of Blind Services~~ shall make such reports available to the public.

(11) The council shall:

(a) Jointly develop and submit, in conjunction with the directors of the centers for independent living ~~division~~, the state plan for independent living in accordance with federal guidelines and after receiving public input from persons who have disabilities and other stakeholders in the state.

(b) Monitor, review, and evaluate the implementation of the state plan for independent living.

(c) Coordinate activities with ~~the Florida Rehabilitation Council and~~ other entities in the state that provide services similar or complementary to independent living services,

including entities that facilitate the provision of or provide long-term community-based services and supports ~~councils that address the needs of specific disability populations and issues under other federal law~~.

(d) Meet regularly and ensure that all regularly scheduled meetings of the council are open to the public with sufficient advance notice.

(e) Submit to the administrator ~~Commissioner~~ of the Administration for Community Living within the United States Department of Health and Human Services ~~Federal Rehabilitation Administration Services~~ such periodic reports as the administrator ~~commissioner~~ may reasonably request and keep such records, and afford access to such records, as the administrator ~~commissioner~~ finds necessary to verify such reports.

(12)(a) The council may conduct the following activities, as authorized and described in the state plan for independent living:

1. Work with centers for independent living to coordinate services with public and private entities to improve independent living services provided to persons who have disabilities.

2. Develop resources to support the activities described in the state plan for independent living and the provision of independent living services by centers for independent living.

3. Other activities consistent with the purpose of this section and comparable to other activities in this section, as the council determines to be appropriate and as authorized in the state plan for independent living.

(b) The council:

1. Shall coordinate with centers for independent living to

avoid conflicting or overlapping activities within the centers' established service areas.

2. May not engage in activities that constitute the direct provision of independent living services to persons who have disabilities, including the independent living core services.

3. Shall comply with state and federal laws and regulations relating to restrictions and prohibitions on lobbying activities.

Section 2. Subsection (1) of section 413.4021, Florida Statutes, is amended to read:

413.4021 Program participant selection; tax collection enforcement diversion program.—The Department of Revenue, in coordination with the Florida Association of Centers for Independent Living and the Florida Prosecuting Attorneys Association, shall select judicial circuits in which to operate the program. The association and the state attorneys' offices shall develop and implement a tax collection enforcement diversion program, which shall collect revenue due from persons who have not remitted their collected sales tax. The criteria for referral to the tax collection enforcement diversion program shall be determined cooperatively between the state attorneys' offices and the Department of Revenue.

(1) Notwithstanding s. 212.20, 75 ~~50~~ percent of the revenues collected from the tax collection enforcement diversion program shall be deposited into the special reserve account of the Florida Association of Centers for Independent Living, to be used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program and to contract with the state attorneys participating in the

tax collection enforcement diversion program in an amount of not more than $75,000 for each state attorney.

Section 3. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 29, 2021

I respectfully request that **Senate Bill #794**, relating to Independent Living Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 838 (412016)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Boyd and others
SUBJECT:	Clerks of the Circuit Court
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 838 amends laws related to the funding of the clerks of court to:

- Require the Clerk of Courts Operations Corporation to establish and maintain a budget reserve of up to 16 percent of the budget from the previous year.

The bill amends laws related to monies owed to a clerk of court to:

- Specify that fines, costs, service charges, and court costs are due immediately upon assessment.
- Require a person owing monies to the clerk who cannot immediately pay to contact the clerk and set up a payment plan.
- Require an offender to contact the clerk within 30 days after release from incarceration to arrange for payment of any outstanding court obligations.
- Require creation of a statewide uniform payment plan form for monies owed to a clerk.
- Require notice of the availability of payment plans to individuals receiving a traffic infraction or a notice of suspension of driving privilege.

On March 5, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) adopted a positive indeterminate impact for various state and local funds related to the bills changes to payment plans. Additionally, the REC estimates an out year negative indeterminate impact to the General Revenue Fund and a positive indeterminate impact to the clerks under certain circumstances. See Section V.

The portions of the bill related to clerk funding are effective upon becoming a law, the remaining portions of the bill are effective October 1, 2021.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court[1] to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*[2] clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[3] In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.[4]

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including all of the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.[5]

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

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[1] FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.
[2] *See* BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.")
[3] FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*
[4] *See generally* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Mar. 5, 2021). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("comptroller" means "An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.")
[5] Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Mar. 5, 2021).

> (b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.[6]

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including "the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions."[7] Additionally, counties pay "reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."[8]

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.[9]
- Petitions for Habeas Corpus filed by persons detained as mental health patients.[10]
- Filing an ex parte order for involuntary examination (Baker Act).[11]
- Petitions for involuntary inpatient placement for mental health.[12]

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[6] FLA. CONST. art. V, s. 14(b) (emphasis added).
[7] FLA. CONST. art. V, s. 14(c).
[8] *Id.* Additionally, Art. V, s. 14(a) provides that funding for state court systems as well as state attorney's offices, public defender's offices, and court-appointed counsel will generally be paid from "state revenues appropriated by general law; and section 14(d) clarifies that the court system has no appropriations authority.
[9] Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.
[10] Section 394.459, F.S.
[11] Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or *Baker* Act).
[12] Section 394.467, F.S.

- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.[13]
- Petitions for involuntary assessment and stabilization for substance abuse impairment.[14]
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).[15]
- Petitions for protective injunctions against domestic violence,[16] repeat, dating, or sexual violence,[17] or stalking.[18]

History of the Clerks of Court Funding Model

1998 Article V Revision ("Revision 7") and Implementing Legislation

Article V, section 14, was amended in 1998 to "substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state."[19] The statement of intent accompanying the revision of Art. V, s. 14(b), also known as "Revision 7," reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks' office in the event "filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year"; and (2) for the disposition of excess revenues collected by the clerks' offices in a given fiscal year.[20]

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

> The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.[21]

[13] Section 394.917, F.S.
[14] Section 397.6814, F.S.
[15] Section 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.
[16] Section 741.30, F.S.
[17] Section 784.046, F.S.
[18] Section 784.0485, F.S.
[19] *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) ("In its Statement of Intent, the Constitution Revision Commission explained: 'The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*' [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.").
[20] William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.
[21] *Id.*

Revision 7's 1998 amendment to Art. V of the Florida Constitution had to be implemented by July 1, 2004.[22] In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."[23]

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted sections 28.35, 28.36, and 28.37, F.S.[24]:

- Section 28.35, F.S., created the Florida Clerks of Court Operations Corporation (Corporation),[25] which is responsible to provide accountability, procedural review, and oversight to the clerks of court budgeting process throughout the state.
- Section 28.36, F.S., established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- Section 28.37, F.S., ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008[26]

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.[27] A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,[28] a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.[29] If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.[30]

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[22] *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).
[23] Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).
[24] 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.
[25] *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.
[26] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[27] Section 142.01, F.S.
[28] Section 28.37(2), F.S. (2008).
[29] Section 28.36(3)(b), (c), F.S. (2008).
[30] Section 28.36(4), F.S. (2008).

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.[31] Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.[32]
During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.[33]

Clerks in the General Appropriations Act: 2009-2012[34]

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).[35] The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.[36]

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated $44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated $57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019[37]

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Chapter 2013-44, Laws of Florida, added the following:

[31] Section 28.36(3), F.S. (2008).
[32] Section 28.37(4), F.S. (2008).
[33] Section 28.36(6), F.S. (2008).
[34] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[35] Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).
[36] Section 28.37(5), F.S.
[37] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.[38]
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.[39]

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and either: (1) approve, (2) disapprove, or (3) amend and approve the budgets by October 1 of each year.[40] In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.[41]

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.[42] In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding $10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed $20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

[38] Section 28.35(2)(f), F.S.
[39] Section 28.35(2)(f)6., F.S.
[40] Section 11.90(6)(d), F.S.
[41] Chapter 2017-126, s. 1, Laws of Fla.
[42] Chapter 2019-58, Laws of Fla.

In that same act, the 2019 Legislature was looking ahead to 2022, and included the following language:

> Section 32. Before the 2022 Regular Session of the Legislature, the Legislature shall review and consider the results of the analysis submitted pursuant to Specific Appropriation 2754 of the 2019-2020 General Appropriations Act regarding the review of the Clerk of Court Processes for the purpose of considering the extension or reenactment of provisions in this act relating to clerk funding.[43]

Specific appropriation 2754 reads in relevant part:

> From the funds in Specific Appropriation 2754, the Office of Program Policy Analysis and Government Accountability is directed to contract with an independent third party consulting firm to assist with a review of the Clerk of Court processes including collection and compilation of empirical evidence based on observation of a random sample of clerks' offices employees; comparison of clerks' office work patterns to propose efficiency and productivity standards; and assessment and comparison of organizational arrangements and deployment of personnel resources among all clerks' offices. Sample groups must include a broad number of large and small counties and include entities from all areas of the state. The analysis shall be submitted to the chair of the Senate Appropriations Committee and the chair of the House of Representatives Appropriations Committee by November 15, 2019.

The report contains 26 recommendations for operational efficiency and cost savings in five categories.[44] It is unknown how many recommendations have been implemented.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment plans with individuals. Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.[45]

III. Effect of Proposed Changes:

Clerk of Court Budgeting and Finances

The bill amends s. 28.37, F.S., regarding funds collected in the Clerk of the Courts Trust Fund. Currently, if the clerks have a budget surplus at the end of their fiscal year, 50 percent of the

[43] Chapter 2019-58, s. 32, Laws of Fla.
[44] Florida Clerks of Court Study, *Final Report* (November 15, 2019), *available at* https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS
[45] Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual would pay no more than $26.80 a month on a clerk's payment plan.

surplus must be transferred to General Revenue, with a maximum retainage in the trust fund of $20 million. After the county fiscal year 2021-22, 100 percent of the annual surplus with no retainage is to be transferred to General Revenue. The bill repeals the current sweeps and retainage laws and requires instead that 50 percent of the surplus be transferred to the General Revenue Fund. Of the remaining 50 percent, a minimum of 10 percent must be held in reserve in the Clerk of the Courts Trust Fund, and the remainder may be used to increase clerk budgets. The reserve may not exceed 16 percent of the total budget authority of the clerks from the current county fiscal year.[46]

The bill amends s. 28.36, F.S., to allow the Florida Clerks of Court Operations Corporation to create a budget reserve in the Clerks of the Court Trust Fund of up to 16 percent of the total budget authority during the current county fiscal year. The budget reserve will only accrue should the clerks have a budget surplus that is not otherwise subject to being swept by the Department of Revenue. The budget reserve may only be used to:

- Offset a current year deficit caused by a revenue shortfall;
- Provide supplemental funding related to a declared emergency; and
- Provide for a minimum continuation budget where the clerks have projected a deficit and the legislature did not appropriate funds sufficient to create a minimum continuation budget. A minimum continuation budget is the current county fiscal year budget unless the corporation requires a lesser budget.

The bill requires the corporation to request a budget amendment from the Governor in order to access the reserve. This is in line with the requirements for Executive Branch agencies seeking to establish trust fund budget from a reserve.

The bill amends s. 28.36, F.S., to allow a clerk of the court to request, and the Florida Clerks of Court Operations Corporation to approve, an increase in a clerk's budget authority for a financial impact resulting from increases in use of hearing officers and senior judges.

Monies Owed to a Clerk of Court

The bill amends s. 28.246, F.S., to direct the clerks of court to offer a payment plan to every person who owes money to the clerk and cannot immediately pay. The clerk is responsible for setting the terms of individual plans, although the trial court may review the reasonableness of the plan.

The bill amends s. 28.42, F.S., to require the Florida Clerks of Court Operations Corporation to create a uniform payment plan form. The form must be created by October 1, 2021, and must be used by each clerk starting January 1, 2022. The bill amends traffic and licensing laws at ss. 318.15, 318.20, and 322.45, F.S., to require notice of the availability of payment plans through the clerk of court. The notice must be included with a notice of suspension of a license and must be appended to a citation.

[46] For the latest county fiscal year (FY 2019-20), the total budget authority of the clerks was approximately $403 million. If this bill were in effect, the maximum reserve would be approximately $64.5 million.

The bill amends s. 28.246, F.S., to require that an individual released from incarceration contact the clerk within 30 days after release to either pay the outstanding fines and fees in full or set up a payment plan.

The bill amends the criminal fine statute at s. 775.083, F.S., to add that the clerk of the court is the entity that collects fines, fees, service charges, and court costs. This reflects current law. The bill also adds the requirement that an offender must contact the clerk to pay, or set up a payment plan, upon assessment by the court.

The portions of the bill related to budgeting and financial matters of the clerks of court are effective upon becoming law, the remainder of the bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 5th, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) evaluated SB 838 and its companion HB 903. The conference adopted a positive indeterminate impact for various state and local trust funds, the General Revenue Fund, Clerks of Court Trust Fund, and Clerk's Fine and Forfeiture Funds as it relates to the bill's changes to payment plans.[47]

Currently, if the Article V Estimating Conference forecasts that revenue will exceed the clerks' total budget, 50 percent of the surplus is transferred to General Revenue and the clerks retain the other 50 percent up to a maximum of $20 million. This procedure is set to expire at the end of County Fiscal Year (CFY) 2021-22 after which time, 100 percent of any surplus revenue will be transferred to the General Revenue Fund. Because the bill permanently codifies the existing revenue split, if clerk revenues surpass the total clerks' budget, the REC estimates there will be an indeterminate negative impact to the General Revenue Fund and a positive indeterminate impact to the clerks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246, 28.35, 28.36, 28.37, 28.42, 318.15, 318.20, 322.245, and 775.083.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 17, 2021:
The committee substitute removed provisions modifying the duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices.

CS by Judiciary on March 9, 2021:
The committee substitute removed a provision that would have allowed a clerk of court to request a budget increase due to requirements of the courts, changed the effective date of portions of the bill other than clerk budgeting to October 1, 2021, and made technical corrections and clarifications.

[47] Office of Economic and Demographic Research, Results of the Revenue Estimating Impact Conference held March 5, 2021, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/16/2021	.	
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The Committee on Appropriations (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Effective upon this act becoming a law, paragraph (i) of subsection (5) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is

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represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has

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not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(27)(c) ~~s. 28.24(26)(c)~~.

Section 2. Effective upon this act becoming a law, subsection (7) of section 28.222, Florida Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7)(a) All instruments recorded in the Official Records must remain ~~shall always be~~ open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom.~~; but~~

(b) The clerk is ~~shall~~ not ~~be~~ required to perform any service in connection with such inspection or making of extracts without payment of service charges as provided in s. 28.24.

(c) The clerk, in his or her capacity as county recorder, must retain the service charge payments under s. 28.24, except that those service charge payments that relate to court records or functions and meet the description of court-related functions in s. 28.35(3)(a) must be distributed for those court-related functions.

Section 3. Effective upon this act becoming a law, section 28.22205, Florida Statutes, is amended to read:

28.22205 Electronic filing process.—Each clerk of court shall implement an electronic filing process. The purpose of the electronic filing process is to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in

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the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management. The Legislature requests that the Supreme Court set statewide standards for electronic filing to be used by the clerks of court to implement electronic filing. The standards should specify the required information for the duties of the clerks of court and the judiciary for case management. Revenues provided to counties and the clerk of court under s. 28.24(13)(e) ~~s. 28.24(12)(e)~~ for information technology may also be used to implement electronic filing processes.

Section 4. Effective upon this act becoming a law, section 28.24, Florida Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall charge for services rendered manually or electronically by the clerk's office in recording documents and instruments and in performing other specified duties. These charges may not exceed those specified in this section, except as provided in s. 28.345.

(1) For purposes of this section, the term "court record" means the contents of a court file and includes:

(a) Progress dockets and other similar records generated to document activity in a case.

(b) Transcripts filed with the clerk.

(c) Documentary exhibits in the custody of the clerk.

(d) Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.

(e) Electronic records, video recordings, and stenographic tapes of court proceedings.

(2) For examining, comparing, correcting, verifying, and

certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page: 5.00, from which the clerk shall remit 0.50 per page to the Department of Revenue for deposit into the General Revenue Fund.

(3) ~~(2)~~ For preparing, numbering, and indexing an original record of appellate proceedings, per instrument: 3.50, from which the clerk shall remit 0.50 per instrument to the Department of Revenue for deposit into the General Revenue Fund.

(4)(a) ~~(3)~~ For certifying copies of any instrument that is a court record in the public records: 2.00, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For certifying copies of any instrument that is not a court record in the public records, per page: 2.00.

(5)(a) ~~(4)~~ For verifying any instrument presented for certification prepared by someone other than clerk, per page: 3.50, from which the clerk shall remit 0.50 per page to the Department of Revenue for deposit into the General Revenue Fund.

(b) For verifying any instrument that is not a court record presented for certification prepared by someone other than the clerk, per page: 3.50.

(6)(a) ~~(5)(a)~~ For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8 1/2 inches, per page:.....1.00.

(b) For making copies by photographic process of any instrument in the public records of more than 14 inches by 8 1/2 inches, per page:.....5.00.

(7) ~~(6)~~ For making microfilm copies of any public records:

(a) That are court records:

1. 16 mm 100' microfilm roll: 42.00, from which the clerk shall remit 4.50 to the Department of Revenue for deposit into the General Revenue Fund.

2. ~~(b)~~ 35 mm 100' microfilm roll: 60.00, from which the clerk shall remit 7.50 to the Department of Revenue for deposit into the General Revenue Fund.

3. ~~(c)~~ Microfiche, per fiche: 3.50, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) That are not court records:

1. 16 mm 100' microfilm roll: 42.00.

2. 35 mm 100' microfilm roll: 60.00.

3. Microfiche, per fiche: 3.50.

(8) ~~(7)~~ For copying any instrument in the public records by other than photographic process, per page: ~~.....~~ 6.00.

(9)(a) ~~(8)~~ For writing any paper that is a court record other than a paper otherwise ~~herein~~ specifically mentioned in this section, ~~same as for copying,~~ including signing and sealing: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For writing any paper that is not a court record other than a paper otherwise specifically mentioned in this section, including signing and sealing: 7.00.

(10) ~~(9)~~ For indexing each entry not recorded: ~~.....~~ 1.00.

(11) ~~(10)~~ For receiving money into the registry of court:

(a)1. First $500: 3~~,~~ percent. ~~.....3~~

2. Each subsequent $100: 1.5~~,~~ percent. ~~.....1.5~~

(b) Eminent domain actions, per deposit: 170.00, from which

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the clerk shall remit 20.00 per deposit to the Department of Revenue for deposit into the General Revenue Fund.

(12)~~(11)~~ For examining, certifying, and recording plats and for recording condominium exhibits larger than 14 inches by 8 1/2 inches:

(a) First page:~~.....~~30.00.

(b) Each additional page:~~.....~~15.00.

(13)~~(12)~~ For recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches, including required notice to property appraiser where applicable:

(a) First page or fraction thereof:~~.....~~5.00.

(b) Each additional page or fraction thereof:~~.....~~4.00.

(c) For indexing instruments recorded in the official records which contain more than four names, per additional name:~~.....~~1.00.

(d) An additional service charge must be paid to the clerk of the circuit court to be deposited in the Public Records Modernization Trust Fund for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records:

1. First page:~~.....~~1.00.

2. Each additional page:~~.....~~0.50.

Said fund must be held in trust by the clerk and used exclusively for equipment and maintenance of equipment, personnel training, and technical assistance in modernizing the public records system of the office. In a county where the duty of maintaining official records exists in an office other than the office of the clerk of the circuit court, the clerk of the

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circuit court is entitled to 25 percent of the moneys deposited into the trust fund for equipment, maintenance of equipment, training, and technical assistance in modernizing the system for storing records in the office of the clerk of the circuit court. The fund may not be used for the payment of travel expenses, membership dues, bank charges, staff-recruitment costs, salaries or benefits of employees, construction costs, general operating expenses, or other costs not directly related to obtaining and maintaining equipment for public records systems or for the purchase of furniture or office supplies and equipment not related to the storage of records. On or before December 1, 1995, and on or before December 1 of each year immediately preceding each year during which the trust fund is scheduled for legislative review under s. 19(f)(2), Art. III of the State Constitution, each clerk of the circuit court shall file a report on the Public Records Modernization Trust Fund with the President of the Senate and the Speaker of the House of Representatives. The report must itemize each expenditure made from the trust fund since the last report was filed; each obligation payable from the trust fund on that date; and the percentage of funds expended for each of the following: equipment, maintenance of equipment, personnel training, and technical assistance. The report must indicate the nature of the system each clerk uses to store, maintain, and retrieve public records and the degree to which the system has been upgraded since the creation of the trust fund.

(e) An additional service charge of $4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, except judgments received from the courts

and notices of lis pendens, recorded in the official records. From the additional $4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to the Florida Association of Court Clerks and Comptrollers, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System; $1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h); and $2 shall be distributed to the board of county commissioners to be used exclusively to fund court-related technology, and court technology needs as defined in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, public defender, and criminal conflict and civil regional counsel in that county. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided in this section ~~herein~~ for the court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other

than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, may not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

2. If the state becomes legally responsible for the costs of court-related technology needs as defined in s. 29.008(1)(f)2. and (h), whether by operation of general law or by court order, $4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(14)(a) ~~(13)~~ Oath, administering, attesting, and sealing of court records~~,~~ not otherwise provided for in this section ~~herein~~: 3.50, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) Oath, administering, attesting, and sealing of records that are not court records not otherwise provided for in this section: 3.50.

(15)(a) ~~(14)~~ For validating certificates or~~,~~ any authorized bonds that are court records, each: 3.50, from which the clerk shall remit 0.50 each to the Department of Revenue for deposit into the General Revenue Fund.

(b) For validating certificates or any authorized bonds that are not court records, each: 3.50.

(16) ~~(15)~~ For preparing affidavit of domicile:~~.....~~5.00.

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(17)~~(16)~~ For exemplified certificates, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(18)(a)~~(17)~~ For authenticated certificates that are court records, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For authenticated certificates that are not court records, including the signing and sealing of them: 7.00.

(19)(a)~~(18)(a)~~ For issuing and filing a subpoena for a witness, not otherwise provided for in this section, including the ~~herein (includes~~ writing, preparing, signing, and sealing of it~~)~~: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For signing and sealing only: 2.00, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(20)(a)~~(19)~~ For approving a court bond: 8.50, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For approving a bond: 8.50.

(21)(a)~~(20)~~ For searching court ~~of~~ records, for each year's search: 2.00, from which the clerk shall remit 0.50 for each year's search to the Department of Revenue for deposit into the General Revenue Fund.

(b) For searching records that are not court records, for each year's search: 2.00.

(22)~~(21)~~ For processing an application for a tax deed sale

(includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds:~~.....~~60.00.

(23)~~(22)~~ For disbursement of excess proceeds of tax deed sale, first $100 or fraction thereof:~~.....~~10.00.

(24)~~(23)~~ Upon receipt of an application for a marriage license, for preparing and administering of oath; issuing, sealing, and recording of the marriage license; and providing a certified copy:~~.....~~30.00.

(25)~~(24)~~ For solemnizing matrimony:~~.....~~30.00.

(26)~~(25)~~ For sealing any court file or expungement of any record: 42.00, from which the clerk shall remit 4.50 to the Department of Revenue for deposit into the General Revenue Fund.

(27)(a)~~(26)(a)~~ For receiving and disbursing all restitution payments, per payment: 3.50, from which the clerk shall remit 0.50 per payment to the Department of Revenue for deposit into the General Revenue Fund.

(b) For receiving and disbursing all partial payments, other than restitution payments, for which an administrative processing service charge is not imposed pursuant to s. 28.246, per month:~~.....~~5.00.

(c) For setting up a payment plan, a one-time administrative processing charge in lieu of a per month charge under paragraph (b):~~.....~~25.00.

(28)~~(27)~~ Postal charges incurred by the clerk of the circuit court in any mailing by certified or registered mail must be paid by the party at whose instance the mailing is made.

(29)~~(28)~~ For furnishing an electronic copy of information contained in a computer database: a fee as provided for in

chapter 119.

Section 5. Subsection (2) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(2) Upon the institution of any appellate proceeding from any lower court to the circuit court of any such county, including appeals filed by a county or municipality as provided in s. 34.041(5), or from the county or circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings a filing fee, as follows: ~~not to exceed $280, from which the clerk shall remit $20 to the Department of Revenue for deposit into the General Revenue Fund,~~

(a) For filing a notice of appeal from the county court to the circuit court, a filing fee not to exceed $280. ~~and, in addition to the filing fee required under s. 25.241 or s. 35.22, $100~~

(b) For filing a notice of appeal from the county or circuit court to the district court of appeal or to the Supreme Court, in addition to the filing fee required under s. 25.241 or s. 35.22, a filing fee not to exceed $100, of which the clerk shall remit $20 to the Department of Revenue for deposit into the General Revenue Fund. If the party is determined to be indigent, the clerk shall defer payment of the fee otherwise required by this subsection.

Section 6. Subsections (4) and (5) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments;

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distribution of funds.—

(4)(a) Each ~~The~~ clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

(5) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and

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fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

(c) That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(27)(b) ~~s. 28.24(26)(b)~~ or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(27)(c) ~~s. 28.24(26)(c)~~.

Section 7. Effective upon this act becoming a law, paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 28.35, Florida Statutes, are amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(f) Approving the proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not

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exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, plus the total of unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year, ~~and~~ plus the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), and plus any appropriations for court-related functions ~~s. 28.37(3)(b)~~. The corporation may amend any individual clerk of the court budget to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-

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related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for items not included on the standard list of court-related functions specified in paragraph (3)(a).

5. Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.

6. Use revenue estimates based on the official estimate for funds from fees, service charges, court costs, and fines for court-related functions accruing to the clerks of the court made by the Revenue Estimating Conference, as well as any unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year and the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), plus any appropriations for the purpose of funding court-related functions ~~s. 28.37(3)(b)~~.

7. Identify pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.

8. Identify increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.

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9. Identify the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.

For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerks of the courts budgets for court-related functions established pursuant to this section and s. 28.36.

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 8. Effective upon this act becoming a law, present subsections (3) and (4) of section 28.36, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsection (1), paragraph (b) of subsection (2), and present subsection (4) of that section are amended, to read:

28.36 Budget procedure.—There is established a budget procedure for the court-related functions of the clerks of the court.

(1) Only those functions listed in s. 28.35(3)(a) may be funded from fees, service charges, court costs, and fines retained by the clerks of the court.

(2) Each proposed budget shall further conform to the following requirements:

(b) The proposed budget must be balanced such that the total of the estimated revenues available equals or exceeds the total of the anticipated expenditures. Such revenues include revenue projected to be received from fees, service charges, court costs, and fines for court-related functions during the fiscal period covered by the budget, plus the total of unspent budgeted funds for court-related functions carried forward by the clerk of the court from the previous county fiscal year and plus the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b) ~~s. 28.37(3)(b)~~ which has been allocated to each respective clerk of the court by the Florida Clerks of Court Operations Corporation. For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerk of the courts' budget for court related functions established pursuant to s. 28.35 and this section. The anticipated expenditures must be itemized as required by the corporation.

(3)(a) The Florida Clerks of Court Operations Corporation shall establish and manage a reserve for contingencies within the Clerks of the Court Trust Fund which must consist of an amount not to exceed 16 percent of the total budget authority for the clerks of court during the current county fiscal year,

to be carried forward at the end of the fiscal year. Funds to be held in reserve include transfers of cumulative excess, as provided in s. 28.37(4)(b), from the Clerks of the Court Trust Fund and may also include revenues provided by law or moneys appropriated by the Legislature.

(b) The corporation shall provide a reporting of the balance and use of these funds during each county fiscal year as part of the corporation's annual report submitted under s. 28.35(2)(h).

(c) The corporation may use the reserve to ensure the clerks of court can perform the court-related functions as provided in s. 28.35(3)(a). Moneys in the Clerks of the Court Trust Fund which are held in reserve may be used by the corporation under the following circumstances:

1. To offset a current deficit between the revenue available and the original budget authority. A deficit is deemed to occur when the revenue available to the clerks of court falls below the original revenue projection for that county fiscal year.

2. To provide funding for an emergency, as defined in s. 252.34(4). The emergency must have been declared by the Governor, pursuant to s. 252.36, or otherwise declared by law.

3. To provide funds in the development of the total aggregate budget of the clerks of court to ensure that a minimum continuation budget is met. For purposes of this subparagraph, a minimum continuation budget is the budget approved for the current county fiscal year or some lesser amount adopted by the corporation.

(d) To use the reserve, the corporation must request a

budget amendment pursuant to s. 216.292.

(5)~~(4)~~ The corporation may approve increases or decreases to the previously authorized budgets approved for ~~individual~~ clerks of the court pursuant to s. 28.35 for court-related functions, if:

(a) The additional budget authority is necessary to pay the cost of performing new or additional functions required by changes in law or court rule; or

(b) The additional budget authority is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature, or for increases in the use of hearing officers and senior judges assigned by the courts.

Section 9. Effective upon this act becoming a law, section 28.37, Florida Statutes, is amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and court costs collected by the clerks of the court and from adequate and appropriate supplemental funding from state revenues as appropriated by the Legislature.

(2) As used in this section, the term:

(a) "Cumulative excess" means revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

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(b) "Original revenue projection" means the official estimate, as determined by the Revenue Estimating Conference, of revenues from fines, fees, service charges, and court costs available for court-related functions for the county fiscal year covered by the projection.

(3) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must ~~shall~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(4)(a) ~~(3)(a)~~ Each year, no later than January 25, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit in the Clerks of the Court Trust Fund the cumulative excess of all fines, fees, service charges, and court costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(4) ~~s. 28.36(3)~~, which exceed the amount needed to meet their authorized budget amounts established under s. 28.35.

(b) No later than February 1, 2022, and each February 1 thereafter, the Department of Revenue shall transfer 50 percent of the cumulative excess of the original revenue projection from

the Clerks of the Court Trust Fund to the General Revenue Fund. The remaining 50 percent in the Clerks of the Court Trust Fund may be used in the development of the total combined budgets of the clerks of the court as provided in s. 28.35(2)(f)6. However, a minimum of 10 percent of the clerk-retained portion of the cumulative excess amount must be held in reserve until such funds reach an amount equal to at least 16 percent of the total budget authority from the current county fiscal year, as provided in s. 28.36(3)(a)

~~1. No later than February 1, 2020, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a) in excess of $10 million~~.

~~2. No later than February 1, 2021, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~3. No later than February 1, 2022, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund~~

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~~to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~4. No later than February 1, 2023, and each February 1 thereafter, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a).~~

(5) ~~(4)~~ The Department of Revenue shall collect any funds that the Florida Clerks of Court Operations Corporation determines upon investigation were due but not remitted to the Department of Revenue. The corporation shall notify the clerk of the court and the Department of Revenue of the amount due to the Department of Revenue. The clerk of the court shall remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of the court.

(6) ~~(5)~~ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a), must ~~shall~~ be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions, as provided

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in s. 28.35(3)(a).

Section 10. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; payment plan form.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246(4). The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

(3) By January 1, 2022, each clerk of court shall use the uniform payment plan form developed pursuant to subsection (2)

when establishing payment plans.

Section 11. Effective upon this act becoming law, subsection (5) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

(5) The Justice Administrative Commission shall reimburse ~~provide~~ funds to the clerks of the court to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs as provided in this section. Each clerk of the court must submit a request for reimbursement ~~shall forward~~ to the Florida Clerks of Court Operations Corporation within 20 days after each quarter attesting to the clerk's actual costs ~~Justice Administrative Commission a quarterly estimate of funds necessary~~ to compensate jurors, to ~~and~~ pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs ~~during the upcoming quarter~~. The Florida Clerks of Court Operations Corporation must review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management. The Florida Clerks of Court Operations Corporation must ~~shall~~ forward to the Justice Administrative Commission ~~a quarterly estimate of~~ the amount necessary to reimburse each clerk of the court for its personnel and other costs related to jury management unless the total request for reimbursement by the clerks exceeds the quarterly funds available to the Justice Administrative Commission, in which case the Florida Clerks of Court Operations Corporation shall adjust the cumulative total to match the available funds before submitting the request to the Justice Administrative Commission. Upon receipt of each request for reimbursement ~~such~~

~~estimates~~, the Justice Administrative Commission must review ~~shall determine~~ the amount deemed necessary for payment to the clerks of the court for the most recently completed ~~during the upcoming~~ quarter, determine if the total payment amount is available, and submit a request for payment to the Chief Financial Officer. ~~If the Justice Administrative Commission believes that the amount appropriated by the Legislature is insufficient to meet such costs during the remaining part of the state fiscal year, the commission may apportion the funds appropriated in the General Appropriations Act for those purposes among the several counties, basing the apportionment upon the amount expended for such purposes in each county during the prior fiscal year, in which case, the Chief Financial Officer shall issue the appropriate apportioned amount by warrant to each county.~~ The clerks of the court are responsible for any compensation to jurors, for payments for meals or lodging provided to jurors, and for jury-related personnel costs that exceed the funding provided in the General Appropriations Act for these purposes.

Section 12. Effective upon this act becoming a law, section 45.035, Florida Statutes, is amended to read:

45.035 Clerk’s fees.—In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.033 ~~ss. 45.031-45.034~~ and this section:

(1) The clerk shall receive a service charge of $70, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, for services in making, recording, and certifying the sale and title, which service

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charge shall be assessed as costs and shall be advanced by the plaintiff before the sale.

(2) If there is a surplus resulting from the sale, the clerk may receive the following service charges, which shall be deducted from the surplus:

(a) The clerk may withhold the sum of $28 from the surplus which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.

(b) The clerk is entitled to a service charge of $15 for each disbursement of surplus proceeds, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund.

(3) If the sale is conducted by electronic means, as provided in s. 45.031(10), the clerk shall receive an additional service charge not to exceed $70 for services in conducting or contracting for the electronic sale, which service charge shall be assessed as costs and paid when filing for an electronic sale date. If the clerk requires advance electronic deposits to secure the right to bid, such deposits shall not be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~. The portion of an advance deposit from a winning bidder required by s. 45.031(3) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~.

Section 13. Effective upon this act becoming a law, subsection (2) of section 55.141, Florida Statutes, is amended to read:

55.141 Satisfaction of judgments and decrees; duties of clerk.—

(2) Upon such payment, the clerk shall execute and record

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in the official records a satisfaction of judgment upon payment of the recording charge prescribed in s. 28.24(13) ~~s. 28.24(12)~~. Upon payment of the amount required in subsection (1) and the recording charge required by this subsection and execution and recordation of the satisfaction by the clerk, any lien created by the judgment is satisfied and discharged.

Section 14. Effective upon this act becoming a law, subsection (6) of section 57.082, Florida Statutes, is amended to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(27)(c) ~~s. 28.24(26)(c)~~. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

Section 15. Effective upon this act becoming a law, paragraph (c) of subsection (5) of section 197.502, Florida

Statutes, is amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(5)

(c) Upon receiving the tax deed application from the tax collector, the clerk shall record a notice of tax deed application in the official records, which constitutes notice of the pendency of a tax deed application with respect to the property and remains effective for 1 year from the date of recording. A person acquiring an interest in the property after the tax deed application notice has been recorded is deemed to be on notice of the pending tax deed sale, and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application for that property. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of the fees as authorized in s. 28.24(9) and (13) ~~s. 28.24(8) and (12)~~. The contents of the notice shall be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1), and added to the opening bid.

Section 16. Effective upon this act becoming a law, section 197.532, Florida Statutes, is amended to read:

197.532 Fees for mailing additional notices, when application is made by holder.—When the certificateholder makes a written request of the clerk and furnishes the names and addresses at the time of the filing of the application, the clerk shall send a copy of the notice referred to in s. 197.522 to anyone to whom the certificateholder may request him or her

to send it, and the clerk shall include in such notice the statement required in s. 197.522. The certificateholder shall pay the clerk the service charges as prescribed in s. 28.24(6) ~~s. 28.24(5)~~ for preparing and mailing each copy of notice requested by the holder. When the charges are made, they shall be added by the clerk to the amount required to redeem the land from sale.

Section 17. Effective upon this act becoming a law, subsection (3) and paragraphs (a) and (b) of subsection (4) of section 197.542, Florida Statutes, are amended to read:

197.542 Sale at public auction.—

(3) If the sale is canceled for any reason or the buyer fails to make full payment within the time required, the clerk shall readvertise the sale within 30 days after the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the costs of resale. The sale shall be held within 30 days after readvertising. Only one advertisement is necessary. The amount of the opening bid shall be increased by the cost of advertising, additional clerk's fees as provided for in s. 28.24(22) ~~s. 28.24(21)~~, and interest as provided for in subsection (1). If, at the subsequent sale, there are no bidders at the tax deed sale and the certificateholder fails to pay the moneys due within 30 days after the sale, the clerk may not readvertise the sale and shall place the property on a list entitled "lands available for taxes." The clerk must receive full payment before the issuance of the tax deed.

(4)(a) A clerk may conduct electronic tax deed sales in lieu of public outcry. The clerk must comply with the procedures provided in this chapter, except that electronic proxy bidding

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shall be allowed and the clerk may require bidders to advance sufficient funds to pay the deposit required by subsection (2). The clerk shall provide access to the electronic sale by computer terminals open to the public at a designated location. A clerk who conducts such electronic sales may receive electronic deposits and payments related to the sale. The portion of an advance deposit from a winning bidder required by subsection (2) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~.

(b) This subsection does not restrict or limit the authority of a charter county to conduct electronic tax deed sales. In a charter county where the clerk of the circuit court does not conduct all electronic sales, the charter county shall be permitted to receive electronic deposits and payments related to sales it conducts, as well as to subject the winning bidder to a fee, consistent with the schedule in s. 28.24(11) ~~s. 28.24(10)~~.

Section 18. Effective upon this act becoming a law, paragraph (b) of subsection (2) of section 197.582, Florida Statutes, is amended to read:

197.582 Disbursement of proceeds of sale.—

(2)

(b) The mailed notice must include a form for making a claim under subsection (3). Service charges at the rate set forth in s. 28.24(11) ~~s. 28.24(10)~~ and the costs of mailing must be paid out of the surplus funds held by the clerk. If the clerk or comptroller certifies that the surplus funds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of surplus funds as a

service charge. For purposes of identifying unclaimed property pursuant to s. 717.113, excess proceeds shall be presumed payable or distributable on the date the notice is sent.

Section 19. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court must ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department must ~~shall~~ immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order also must inform the person that he or she may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, service charges, and court costs. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside of this state ~~Florida~~, must ~~shall~~ remain on the records of the department for a period of 7 years from the date imposed and must ~~shall~~ be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept

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the resubmission of such suspension.

Section 20. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form must ~~shall~~ contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification form must ~~shall~~ contain a statement that, if the official determines that no infraction has been committed, no costs or penalties may ~~shall~~ be imposed and any costs or penalties that ~~which~~ have been paid will ~~shall~~ be returned. Additionally, the notification form must include information on paying the civil penalty to the clerk of the court and the ability to establish a payment plan pursuant to s. 28.246(4). A uniform traffic citation that is produced electronically must also include the information required by this section.

Section 21. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the

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criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the ~~traffic~~ court must provide ~~shall mail to~~ the person, either electronically or by mail sent to ~~at~~ the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to $25 to the clerk, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice must ~~shall~~ be sent ~~mailed~~ no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court must ~~shall~~ electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order of suspension must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service

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charges, and court costs.

(5)(a) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department must ~~shall~~ suspend the license of the person named in the notice. The department shall mail an order of suspension in accordance with s. 322.251(1), (2), and (6), which must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

Section 22. Effective upon this act becoming a law, paragraph (d) of subsection (3) of section 569.23, Florida Statutes, is amended to read:

569.23 Security requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.—

(3)

(d) The clerk of the Supreme Court shall collect fees for receipt of deposits under this subsection as authorized by ss. 28.231 and 28.24(11)(a) ~~28.24(10)(a)~~. In addition, for as long as any cash remains on deposit with the clerk pursuant to this subsection, the clerk of the Supreme Court is entitled to regularly receive as an additional fee the net investment income earned thereon. The clerk shall use the services of the Chief Financial Officer, as needed, for the custody and management of all bonds, other surety, or cash posted or deposited with the

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clerk. All fees collected pursuant to this subsection shall be deposited in the State Courts Revenue Trust Fund for use as specified by law.

Section 23. Effective upon this act becoming a law, subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(9) ~~s. 28.24(8)~~ and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(13) ~~s. 28.24(12)~~. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of .... County, Florida,
By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 24. Present subsection (3) of section 775.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

775.083 Fines.—

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full or to apply for enrollment in a payment plan pursuant to s. 28.246(4).

Section 25. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2021.

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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to clerks of the court; amending s. 27.52, F.S.; conforming a cross-reference; amending s. 28.222, F.S.; requiring certain service charges to be distributed in a specified manner; amending s. 28.22205, F.S.; conforming a cross-reference; amending s. 28.24, F.S.; defining the term "court record"; specifying the amount of charges for certain services rendered by, and instruments filed with, the clerk of the circuit court which are not court records; amending s. 28.241, F.S.; revising the distribution of revenue from filing fees from the institution of certain appellate proceedings; amending s. 28.246, F.S.; clarifying the responsibility of an individual released from incarceration regarding enrolling in a payment plan for any outstanding court obligations; modifying the manner of calculating a monthly payment amount under a payment plan; requiring the clerk to establish all terms of a payment plan; conforming cross-references; amending s. 28.35, F.S.; conforming cross-references and provisions to changes made by the act; amending s. 28.36, F.S.; conforming a cross-reference; requiring the corporation to establish and manage a contingency reserve within the Clerks of the Court Trust Fund for specified purposes; prescribing

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reporting requirements; specifying circumstances under which moneys held in reserve may be used; prescribing procedures for the release of such funds; amending s. 28.37, F.S.; modifying a provision regarding state court system funding; defining terms; conforming a cross-reference; revising provisions governing the transfer of certain funds from the Clerks of the Court Trust Fund to the General Revenue Fund by the Department of Revenue; amending s. 28.42, F.S.; requiring the clerks of court to develop a uniform payment plan form by a specified date; prescribing requirements for the form; requiring the clerks to use such form by a specified date; amending s. 40.29, F.S.; requiring the clerks of the court to submit requests for reimbursement for jury-related costs to the Florida Clerks of Court Operations Corporation within specified timeframes; requiring the corporation to review such requests for reimbursement; requiring the corporation to submit certain information to the Justice Administrative Commission; requiring the commission to review the information and submit a request for payment to the Chief Financial Officer under certain circumstances; removing a provision authorizing the commission to apportion funds among the counties for certain purposes; amending ss. 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, and 197.582, F.S.; conforming cross-references; amending ss. 318.15, 318.20, and 322.245, F.S.; requiring orders and notifications for certain traffic citations

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and suspensions to include information regarding payment plans; amending ss. 569.23 and 712.06, F.S.; conforming cross-references; amending s. 775.083, F.S.; specifying that the clerk of the court of each county is responsible for collecting fines, fees, service charges, and court costs; requiring a person ordered to pay court obligations to contact the clerk to arrange for payment; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hooper) recommended the following:

Senate Substitute for Amendment (187280) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Effective July 1, 2021, subsection (7) of section 28.222, Florida Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7)(a) All instruments recorded in the Official Records must remain ~~shall always be~~ open to the public, under the

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supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom.~~; but~~

(b) The clerk is ~~shall~~ not ~~be~~ required to perform any service in connection with such inspection or making of extracts without payment of service charges as provided in s. 28.24.

(c) The clerk, in his or her capacity as county recorder, must retain the service charge payments under s. 28.24, except that those service charge payments that relate to court records or functions and meet the description of court-related functions in s. 28.35(3)(a) must be distributed for those court-related functions.

Section 2. Effective July 1, 2021, section 28.24, Florida Statutes, is amended to read:

28.24 Service charges.—The clerk of the circuit court shall charge for services rendered manually or electronically by the clerk's office in recording documents and instruments and in performing other specified duties. These charges may not exceed those specified in this section, except as provided in s. 28.345.

(1) For purposes of this section, the term "court record" means the contents of a court file and includes:

(a) Progress dockets and other similar records generated to document activity in a case.

(b) Transcripts filed with the clerk.

(c) Documentary exhibits in the custody of the clerk.

(d) Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.

(e) Electronic records, video recordings, and stenographic tapes of court proceedings.

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(2) For examining, comparing, correcting, verifying, and certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page: 5.00, from which the clerk shall remit 0.50 per page to the Department of Revenue for deposit into the General Revenue Fund.

(3) ~~(2)~~ For preparing, numbering, and indexing an original record of appellate proceedings, per instrument: 3.50, from which the clerk shall remit 0.50 per instrument to the Department of Revenue for deposit into the General Revenue Fund.

(4)(a) ~~(3)~~ For certifying copies of any instrument that is a court record in the public records: 2.00, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For certifying copies of any instrument that is not a court record in the public records, per page: 2.00.

(5)(a) ~~(4)~~ For verifying any instrument presented for certification prepared by someone other than clerk, per page: 3.50, from which the clerk shall remit 0.50 per page to the Department of Revenue for deposit into the General Revenue Fund.

(b) For verifying any instrument that is not a court record presented for certification prepared by someone other than the clerk, per page: 3.50.

(6)(a) ~~(5)(a)~~ For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8 1/2 inches, per page:.....1.00.

(b) For making copies by photographic process of any instrument in the public records of more than 14 inches by 8 1/2 inches, per page:.....5.00.

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(7)~~(6)~~ For making microfilm copies of any public records:

(a) That are court records:

1. 16 mm 100' microfilm roll: 42.00, from which the clerk shall remit 4.50 to the Department of Revenue for deposit into the General Revenue Fund.

2.~~(b)~~ 35 mm 100' microfilm roll: 60.00, from which the clerk shall remit 7.50 to the Department of Revenue for deposit into the General Revenue Fund.

3.~~(c)~~ Microfiche, per fiche: 3.50, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) That are not court records:

1. 16 mm 100' microfilm roll: 42.00.

2. 35 mm 100' microfilm roll: 60.00.

3. Microfiche, per fiche: 3.50.

(8)~~(7)~~ For copying any instrument in the public records by other than photographic process, per page:~~.....~~6.00.

(9)(a)~~(8)~~ For writing any paper that is a court record other than a paper otherwise ~~herein~~ specifically mentioned in this section, ~~same as for copying,~~ including signing and sealing: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For writing any paper that is not a court record other than a paper otherwise specifically mentioned in this section, including signing and sealing: 7.00.

(10)~~(9)~~ For indexing each entry not recorded:~~.....~~1.00.

(11)~~(10)~~ For receiving money into the registry of court:

(a)1. First $500: 3~~,~~ percent.~~.....3~~

2. Each subsequent $100: 1.5~~,~~ percent.~~.....1.5~~

(b) Eminent domain actions, per deposit: 170.00, from which the clerk shall remit 20.00 per deposit to the Department of Revenue for deposit into the General Revenue Fund.

(12) ~~(11)~~ For examining, certifying, and recording plats and for recording condominium exhibits larger than 14 inches by 8 1/2 inches:

(a) First page: ~~.....~~ 30.00.

(b) Each additional page: ~~.....~~ 15.00.

(13) ~~(12)~~ For recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches, including required notice to property appraiser where applicable:

(a) First page or fraction thereof: ~~.....~~ 5.00.

(b) Each additional page or fraction thereof: ~~.....~~ 4.00.

(c) For indexing instruments recorded in the official records which contain more than four names, per additional name: ~~.....~~ 1.00.

(d) An additional service charge must be paid to the clerk of the circuit court to be deposited in the Public Records Modernization Trust Fund for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records:

1. First page: ~~.....~~ 1.00.

2. Each additional page: ~~.....~~ 0.50.

Said fund must be held in trust by the clerk and used exclusively for equipment and maintenance of equipment, personnel training, and technical assistance in modernizing the public records system of the office. In a county where the duty of maintaining official records exists in an office other than

the office of the clerk of the circuit court, the clerk of the circuit court is entitled to 25 percent of the moneys deposited into the trust fund for equipment, maintenance of equipment, training, and technical assistance in modernizing the system for storing records in the office of the clerk of the circuit court. The fund may not be used for the payment of travel expenses, membership dues, bank charges, staff-recruitment costs, salaries or benefits of employees, construction costs, general operating expenses, or other costs not directly related to obtaining and maintaining equipment for public records systems or for the purchase of furniture or office supplies and equipment not related to the storage of records. On or before December 1, 1995, and on or before December 1 of each year immediately preceding each year during which the trust fund is scheduled for legislative review under s. 19(f)(2), Art. III of the State Constitution, each clerk of the circuit court shall file a report on the Public Records Modernization Trust Fund with the President of the Senate and the Speaker of the House of Representatives. The report must itemize each expenditure made from the trust fund since the last report was filed; each obligation payable from the trust fund on that date; and the percentage of funds expended for each of the following: equipment, maintenance of equipment, personnel training, and technical assistance. The report must indicate the nature of the system each clerk uses to store, maintain, and retrieve public records and the degree to which the system has been upgraded since the creation of the trust fund.

(e) An additional service charge of $4 per page shall be paid to the clerk of the circuit court for each instrument

listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records. From the additional $4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to the Florida Association of Court Clerks and Comptrollers, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System; $1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h); and $2 shall be distributed to the board of county commissioners to be used exclusively to fund court-related technology, and court technology needs as defined in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, public defender, and criminal conflict and civil regional counsel in that county. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided in this section ~~herein~~ for the court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of

maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, may not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

2. If the state becomes legally responsible for the costs of court-related technology needs as defined in s. 29.008(1)(f)2. and (h), whether by operation of general law or by court order, $4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(14)(a) ~~(13)~~ Oath, administering, attesting, and sealing of court records~~,~~ not otherwise provided for in this section ~~herein~~: 3.50, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(b) Oath, administering, attesting, and sealing of records that are not court records not otherwise provided for in this section: 3.50.

(15)(a) ~~(14)~~ For validating certificates or~~,~~ any authorized bonds that are court records, each: 3.50, from which the clerk shall remit 0.50 each to the Department of Revenue for deposit into the General Revenue Fund.

(b) For validating certificates or any authorized bonds that are not court records, each: 3.50.

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(16)~~(15)~~ For preparing affidavit of domicile:~~.....~~5.00.

(17)~~(16)~~ For exemplified certificates, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(18)(a)~~(17)~~ For authenticated certificates that are court records, including the signing and sealing of them: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For authenticated certificates that are not court records, including the signing and sealing of them: 7.00.

(19)(a)~~(18)(a)~~ For issuing and filing a subpoena for a witness, not otherwise provided for in this section, including the ~~herein (includes~~ writing, preparing, signing, and sealing of it~~)~~: 7.00, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For signing and sealing only: 2.00, from which the clerk shall remit 0.50 to the Department of Revenue for deposit into the General Revenue Fund.

(20)(a)~~(19)~~ For approving a court bond: 8.50, from which the clerk shall remit 1.00 to the Department of Revenue for deposit into the General Revenue Fund.

(b) For approving a bond: 8.50.

(21)(a)~~(20)~~ For searching court ~~of~~ records, for each year's search: 2.00, from which the clerk shall remit 0.50 for each year's search to the Department of Revenue for deposit into the General Revenue Fund.

(b) For searching records that are not court records, for each year's search: 2.00.

(22)~~(21)~~ For processing an application for a tax deed sale (includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds:~~.....~~60.00.

(23)~~(22)~~ For disbursement of excess proceeds of tax deed sale, first $100 or fraction thereof:~~.....~~10.00.

(24)~~(23)~~ Upon receipt of an application for a marriage license, for preparing and administering of oath; issuing, sealing, and recording of the marriage license; and providing a certified copy:~~.....~~30.00.

(25)~~(24)~~ For solemnizing matrimony:~~.....~~30.00.

(26)~~(25)~~ For sealing any court file or expungement of any record: 42.00, from which the clerk shall remit 4.50 to the Department of Revenue for deposit into the General Revenue Fund.

(27)(a)~~(26)(a)~~ For receiving and disbursing all restitution payments, per payment: 3.50, from which the clerk shall remit 0.50 per payment to the Department of Revenue for deposit into the General Revenue Fund.

(b) For receiving and disbursing all partial payments, other than restitution payments, for which an administrative processing service charge is not imposed pursuant to s. 28.246, per month:~~.....~~5.00.

(c) For setting up a payment plan, a one-time administrative processing charge in lieu of a per month charge under paragraph (b):~~.....~~25.00.

(28)~~(27)~~ Postal charges incurred by the clerk of the circuit court in any mailing by certified or registered mail must be paid by the party at whose instance the mailing is made.

(29)~~(28)~~ For furnishing an electronic copy of information

contained in a computer database: a fee as provided for in chapter 119.

Section 3. Effective July 1, 2021, subsection (2) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(2) Upon the institution of any appellate proceeding from any lower court to the circuit court of any such county, including appeals filed by a county or municipality as provided in s. 34.041(5), or from the county or circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings a filing fee, as follows: ~~not to exceed $280, from which the clerk shall remit $20 to the Department of Revenue for deposit into the General Revenue Fund,~~

(a) For filing a notice of appeal from the county court to the circuit court, a filing fee not to exceed $280. ~~and, in addition to the filing fee required under s. 25.241 or s. 35.22, $100~~

(b) For filing a notice of appeal from the county or circuit court to the district court of appeal or to the Supreme Court, in addition to the filing fee required under s. 25.241 or s. 35.22, a filing fee not to exceed $100, of which the clerk shall remit $20 to the Department of Revenue for deposit into the General Revenue Fund. If the party is determined to be indigent, the clerk shall defer payment of the fee otherwise required by this subsection.

Section 4. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary

penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)(a) Each ~~The~~ clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

Section 5. Effective upon this act becoming a law, paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 28.35, Florida Statutes, are amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(f) Approving the proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, plus the total of unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year, ~~and~~ plus the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), and plus any appropriations for court-related functions ~~s. 28.37(3)(b)~~. The corporation may amend any individual clerk of the court budget to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual

budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for items not included on the standard list of court-related functions specified in paragraph (3)(a).

5. Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.

6. Use revenue estimates based on the official estimate for funds from fees, service charges, court costs, and fines for court-related functions accruing to the clerks of the court made by the Revenue Estimating Conference, as well as any unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year and the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), plus any appropriations for the purpose of funding court-related functions ~~s. 28.37(3)(b)~~.

7. Identify pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.

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8. Identify increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.

9. Identify the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.

For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerks of the courts budgets for court-related functions established pursuant to this section and s. 28.36.

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 6. Effective upon this act becoming a law, present subsections (3) and (4) of section 28.36, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsection (1), paragraph (b) of subsection (2), and present subsection (4) of that section are amended, to read:

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28.36 Budget procedure.—There is established a budget procedure for the court-related functions of the clerks of the court.

(1) Only those functions listed in s. 28.35(3)(a) may be funded from fees, service charges, court costs, and fines retained by the clerks of the court.

(2) Each proposed budget shall further conform to the following requirements:

(b) The proposed budget must be balanced such that the total of the estimated revenues available equals or exceeds the total of the anticipated expenditures. Such revenues include revenue projected to be received from fees, service charges, court costs, and fines for court-related functions during the fiscal period covered by the budget, plus the total of unspent budgeted funds for court-related functions carried forward by the clerk of the court from the previous county fiscal year and plus the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b) ~~s. 28.37(3)(b)~~ which has been allocated to each respective clerk of the court by the Florida Clerks of Court Operations Corporation. For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerk of the courts' budget for court related functions established pursuant to s. 28.35 and this section. The anticipated expenditures must be itemized as required by the corporation.

(3)(a) The Florida Clerks of Court Operations Corporation shall establish and manage a reserve for contingencies within

the Clerks of the Court Trust Fund which must consist of an amount not to exceed 16 percent of the total budget authority for the clerks of court during the current county fiscal year, to be carried forward at the end of the fiscal year. Funds to be held in reserve include transfers of cumulative excess, as provided in s. 28.37(4)(b), from the Clerks of the Court Trust Fund and may also include revenues provided by law or moneys appropriated by the Legislature.

(b) The corporation shall provide a reporting of the balance and use of these funds during each county fiscal year as part of the corporation's annual report submitted under s. 28.35(2)(h).

(c) The corporation may use the reserve to ensure the clerks of court can perform the court-related functions as provided in s. 28.35(3)(a). Moneys in the Clerks of the Court Trust Fund which are held in reserve may be used by the corporation under the following circumstances:

1. To offset a current deficit between the revenue available and the original budget authority. A deficit is deemed to occur when the revenue available to the clerks of court falls below the original revenue projection for that county fiscal year.

2. To provide funding for an emergency, as defined in s. 252.34(4). The emergency must have been declared by the Governor, pursuant to s. 252.36, or otherwise declared by law.

3. To provide funds in the development of the total aggregate budget of the clerks of court to ensure that a minimum continuation budget is met. For purposes of this subparagraph, a minimum continuation budget is the budget approved for the

current county fiscal year or some lesser amount adopted by the corporation.

(d) To use the reserve, the corporation must request a budget amendment pursuant to s. 216.292.

(5) ~~(4)~~ The corporation may approve increases or decreases to the previously authorized budgets approved for ~~individual~~ clerks of the court pursuant to s. 28.35 for court-related functions, if:

(a) The additional budget authority is necessary to pay the cost of performing new or additional functions required by changes in law or court rule; or

(b) The additional budget authority is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature or increases in the use of hearing officers and senior judges assigned by the courts.

Section 7. Effective upon this act becoming a law, section 28.37, Florida Statutes, is amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and court costs collected by the clerks of the court and from adequate and appropriate supplemental funding from state revenues as appropriated by the Legislature.

(2) As used in this section, the term:

(a) "Cumulative excess" means revenues derived from fines,

fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

(b) "Original revenue projection" means the official estimate, as determined by the Revenue Estimating Conference, of revenues from fines, fees, service charges, and court costs available for court-related functions for the county fiscal year covered by the projection.

(3) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must ~~shall~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(4)(a) ~~(3)(a)~~ Each year, no later than January 25, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit in the Clerks of the Court Trust Fund the cumulative excess of all fines, fees, service charges, and court costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(4) ~~s. 28.36(3)~~, which exceed the amount needed to meet their authorized budget amounts established under s. 28.35.

(b) No later than February 1, 2022, and each February 1 thereafter, the Department of Revenue shall transfer 50 percent of the cumulative excess of the original revenue projection from the Clerks of the Court Trust Fund to the General Revenue Fund. The remaining 50 percent in the Clerks of the Court Trust Fund may be used in the development of the total combined budgets of the clerks of the court as provided in s. 28.35(2)(f)6. However, a minimum of 10 percent of the clerk-retained portion of the cumulative excess amount must be held in reserve until such funds reach an amount equal to at least 16 percent of the total budget authority from the current county fiscal year, as provided in s. 28.36(3)(a)

~~1. No later than February 1, 2020, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a) in excess of $10 million~~.

~~2. No later than February 1, 2021, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer~~

~~may not be more than $20 million.~~

~~3. No later than February 1, 2022, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~4. No later than February 1, 2023, and each February 1 thereafter, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a).~~

(5) ~~(4)~~ The Department of Revenue shall collect any funds that the Florida Clerks of Court Operations Corporation determines upon investigation were due but not remitted to the Department of Revenue. The corporation shall notify the clerk of the court and the Department of Revenue of the amount due to the Department of Revenue. The clerk of the court shall remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of the court.

(6) ~~(5)~~ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties

or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a), must ~~shall~~ be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions, as provided in s. 28.35(3)(a).

Section 8. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; payment plan form.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246(4). The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for

nonpayment.

(3) By January 1, 2022, each clerk of court shall use the uniform payment plan form developed pursuant to subsection (2) when establishing payment plans.

Section 9. Effective July 1, 2021, subsection (5) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

(5) The Justice Administrative Commission shall reimburse ~~provide~~ funds to the clerks of the court to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs as provided in this section. Each clerk of the court must submit a request for reimbursement ~~shall forward~~ to the Florida Clerks of Court Operations Corporation within 20 days after each quarter attesting to the clerk's actual costs ~~Justice Administrative Commission a quarterly estimate of funds necessary~~ to compensate jurors, to ~~and~~ pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs ~~during the upcoming quarter~~. The Florida Clerks of Court Operations Corporation must review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management. The Florida Clerks of Court Operations Corporation must ~~shall~~ forward to the Justice Administrative Commission ~~a quarterly estimate of~~ the amount necessary to reimburse each clerk of the court for its personnel and other costs related to jury management unless the total request for reimbursement by the clerks exceeds the quarterly funds available to the Justice Administrative Commission, in which case the Florida Clerks of Court Operations Corporation shall adjust the cumulative total to match the available funds

before submitting the request to the Justice Administrative Commission. Upon receipt of each request for reimbursement ~~such estimates~~, the Justice Administrative Commission must review ~~shall determine~~ the amount deemed necessary for payment to the clerks of the court for the most recently completed ~~during the upcoming~~ quarter, determine if the total payment amount is available, and submit a request for payment to the Chief Financial Officer. ~~If the Justice Administrative Commission believes that the amount appropriated by the Legislature is insufficient to meet such costs during the remaining part of the state fiscal year, the commission may apportion the funds appropriated in the General Appropriations Act for those purposes among the several counties, basing the apportionment upon the amount expended for such purposes in each county during the prior fiscal year, in which case, the Chief Financial Officer shall issue the appropriate apportioned amount by warrant to each county.~~ The clerks of the court are responsible for any compensation to jurors, for payments for meals or lodging provided to jurors, and for jury-related personnel costs that exceed the funding provided in the General Appropriations Act for these purposes.

Section 10. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance

with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court must ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department must ~~shall~~ immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order also must inform the person that he or she may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, service charges, and court costs. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside of this state ~~Florida~~, must ~~shall~~ remain on the records of the department for a period of 7 years from the date imposed and must ~~shall~~ be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 11. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form must ~~shall~~ contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification form must ~~shall~~ contain a statement that, if the official determines

that no infraction has been committed, no costs or penalties may ~~shall~~ be imposed and any costs or penalties that ~~which~~ have been paid will ~~shall~~ be returned. Additionally, the notification form must include information on paying the civil penalty to the clerk of the court and the ability to establish a payment plan pursuant to s. 28.246(4). A uniform traffic citation that is produced electronically must also include the information required by this section.

Section 12. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the ~~traffic~~ court must provide ~~shall mail to~~ the person, either electronically or by mail sent to ~~at~~ the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to $25 to the clerk, from which the clerk shall remit $10 to the Department of Revenue for

deposit into the General Revenue Fund, his or her driver license will be suspended. The notice must ~~shall~~ be sent ~~mailed~~ no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court must ~~shall~~ electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order of suspension must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

(5)(a) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department must ~~shall~~ suspend the license of the person named in the notice. The department shall mail an order of suspension in accordance with s. 322.251(1), (2), and (6), which must also contain information specifying that the person may contact the clerk of the court to

establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

Section 13. Present subsection (3) of section 775.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

775.083 Fines.—

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full or to apply for enrollment in a payment plan pursuant to s. 28.246(4).

Section 14. Effective July 1, 2021, paragraph (i) of subsection (5) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for

costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.

3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(27)(c) ~~s. 28.24(26)(c)~~.

Section 15. Effective July 1, 2021, section 28.22205, Florida Statutes, is amended to read:

28.22205 Electronic filing process.—Each clerk of court

shall implement an electronic filing process. The purpose of the electronic filing process is to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management. The Legislature requests that the Supreme Court set statewide standards for electronic filing to be used by the clerks of court to implement electronic filing. The standards should specify the required information for the duties of the clerks of court and the judiciary for case management. Revenues provided to counties and the clerk of court under s. 28.24(13)(e) ~~s. 28.24(12)(e)~~ for information technology may also be used to implement electronic filing processes.

Section 16. Effective July 1, 2021, subsection (5) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(5) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and fines required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

(c) That portion of fees, service charges, court costs, and

fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(27)(b) ~~s. 28.24(26)(b)~~ or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(27)(c) ~~s. 28.24(26)(c)~~.

Section 17. Effective July 1, 2021, section 45.035, Florida Statutes, is amended to read:

45.035 Clerk's fees.—In addition to other fees or service charges authorized by law, the clerk shall receive service charges related to the judicial sales procedure set forth in ss. 45.031-45.033 ~~ss. 45.031-45.034~~ and this section:

(1) The clerk shall receive a service charge of $70, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, for services in making, recording, and certifying the sale and title, which service charge shall be assessed as costs and shall be advanced by the plaintiff before the sale.

(2) If there is a surplus resulting from the sale, the

clerk may receive the following service charges, which shall be deducted from the surplus:

(a) The clerk may withhold the sum of $28 from the surplus which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.

(b) The clerk is entitled to a service charge of $15 for each disbursement of surplus proceeds, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund.

(3) If the sale is conducted by electronic means, as provided in s. 45.031(10), the clerk shall receive an additional service charge not to exceed $70 for services in conducting or contracting for the electronic sale, which service charge shall be assessed as costs and paid when filing for an electronic sale date. If the clerk requires advance electronic deposits to secure the right to bid, such deposits shall not be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~. The portion of an advance deposit from a winning bidder required by s. 45.031(3) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~.

Section 18. Effective July 1, 2021, subsection (2) of section 55.141, Florida Statutes, is amended to read:

55.141 Satisfaction of judgments and decrees; duties of clerk.—

(2) Upon such payment, the clerk shall execute and record in the official records a satisfaction of judgment upon payment of the recording charge prescribed in s. 28.24(13) ~~s. 28.24(12)~~. Upon payment of the amount required in subsection (1) and the recording charge required by this subsection and execution and

recordation of the satisfaction by the clerk, any lien created by the judgment is satisfied and discharged.

Section 19. Effective July 1, 2021, subsection (6) of section 57.082, Florida Statutes, is amended to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(27)(c) ~~s. 28.24(26)(c)~~. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

Section 20. Effective July 1, 2021, paragraph (c) of subsection (5) of section 197.502, Florida Statutes, is amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(5)

(c) Upon receiving the tax deed application from the tax

collector, the clerk shall record a notice of tax deed application in the official records, which constitutes notice of the pendency of a tax deed application with respect to the property and remains effective for 1 year from the date of recording. A person acquiring an interest in the property after the tax deed application notice has been recorded is deemed to be on notice of the pending tax deed sale, and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application for that property. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of the fees as authorized in s. 28.24(9) and (13) ~~s. 28.24(8) and (12)~~. The contents of the notice shall be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1), and added to the opening bid.

Section 21. Effective July 1, 2021, section 197.532, Florida Statutes, is amended to read:

197.532 Fees for mailing additional notices, when application is made by holder.—When the certificateholder makes a written request of the clerk and furnishes the names and addresses at the time of the filing of the application, the clerk shall send a copy of the notice referred to in s. 197.522 to anyone to whom the certificateholder may request him or her to send it, and the clerk shall include in such notice the statement required in s. 197.522. The certificateholder shall pay the clerk the service charges as prescribed in s. 28.24(6) ~~s. 28.24(5)~~ for preparing and mailing each copy of notice requested by the holder. When the charges are made, they shall

968 be added by the clerk to the amount required to redeem the land
969 from sale.
970 Section 22. Effective July 1, 2021, subsection (3) and
971 paragraphs (a) and (b) of subsection (4) of section 197.542,
972 Florida Statutes, are amended to read:
973 197.542 Sale at public auction.—
974 (3) If the sale is canceled for any reason or the buyer
975 fails to make full payment within the time required, the clerk
976 shall readvertise the sale within 30 days after the buyer's
977 nonpayment or, if canceled, within 30 days after the clerk
978 receives the costs of resale. The sale shall be held within 30
979 days after readvertising. Only one advertisement is necessary.
980 The amount of the opening bid shall be increased by the cost of
981 advertising, additional clerk's fees as provided for in s.
982 28.24(22) ~~s. 28.24(21)~~, and interest as provided for in
983 subsection (1). If, at the subsequent sale, there are no bidders
984 at the tax deed sale and the certificateholder fails to pay the
985 moneys due within 30 days after the sale, the clerk may not
986 readvertise the sale and shall place the property on a list
987 entitled "lands available for taxes." The clerk must receive
988 full payment before the issuance of the tax deed.
989 (4)(a) A clerk may conduct electronic tax deed sales in
990 lieu of public outcry. The clerk must comply with the procedures
991 provided in this chapter, except that electronic proxy bidding
992 shall be allowed and the clerk may require bidders to advance
993 sufficient funds to pay the deposit required by subsection (2).
994 The clerk shall provide access to the electronic sale by
995 computer terminals open to the public at a designated location.
996 A clerk who conducts such electronic sales may receive

electronic deposits and payments related to the sale. The portion of an advance deposit from a winning bidder required by subsection (2) shall, upon acceptance of the winning bid, be subject to the fee under s. 28.24(11) ~~s. 28.24(10)~~.

(b) This subsection does not restrict or limit the authority of a charter county to conduct electronic tax deed sales. In a charter county where the clerk of the circuit court does not conduct all electronic sales, the charter county shall be permitted to receive electronic deposits and payments related to sales it conducts, as well as to subject the winning bidder to a fee, consistent with the schedule in s. 28.24(11) ~~s. 28.24(10)~~.

Section 23. Effective July 1, 2021, paragraph (b) of subsection (2) of section 197.582, Florida Statutes, is amended to read:

197.582 Disbursement of proceeds of sale.—

(2)

(b) The mailed notice must include a form for making a claim under subsection (3). Service charges at the rate set forth in s. 28.24(11) ~~s. 28.24(10)~~ and the costs of mailing must be paid out of the surplus funds held by the clerk. If the clerk or comptroller certifies that the surplus funds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of surplus funds as a service charge. For purposes of identifying unclaimed property pursuant to s. 717.113, excess proceeds shall be presumed payable or distributable on the date the notice is sent.

Section 24. Effective July 1, 2021, paragraph (d) of subsection (3) of section of 569.23, Florida Statutes, is

amended to read:

569.23 Security requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.—

(3)

(d) The clerk of the Supreme Court shall collect fees for receipt of deposits under this subsection as authorized by ss. 28.231 and 28.24(11)(a) ~~28.24(10)(a)~~. In addition, for as long as any cash remains on deposit with the clerk pursuant to this subsection, the clerk of the Supreme Court is entitled to regularly receive as an additional fee the net investment income earned thereon. The clerk shall use the services of the Chief Financial Officer, as needed, for the custody and management of all bonds, other surety, or cash posted or deposited with the clerk. All fees collected pursuant to this subsection shall be deposited in the State Courts Revenue Trust Fund for use as specified by law.

Section 25. Effective July 1, 2021, subsection (3) of section 712.06, Florida Statutes, is amended to read:

712.06 Contents of notice; recording and indexing.—

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(9) ~~s. 28.24(8)~~ and the necessary costs of mailing,

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in addition to the recording charges as prescribed in s. 28.24(13) ~~s. 28.24(12)~~. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of .... County, Florida,
By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 26. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2021.

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1084
1085 ================ T I T L E A M E N D M E N T ================
1086 And the title is amended as follows:
1087 Delete everything before the enacting clause
1088 and insert:
1089 A bill to be entitled
1090 An act relating to clerks of the circuit court;
1091 amending s. 28.222, F.S.; requiring certain service
1092 charges to be distributed in a specified manner;
1093 amending s. 28.24, F.S.; defining the term "court
1094 record"; specifying the amount of charges for certain
1095 services rendered by, and instruments filed with, the
1096 clerk of the circuit court which are not court
1097 records; amending s. 28.241, F.S.; revising the
1098 distribution of revenue from filing fees from the
1099 institution of certain appellate proceedings; amending
1100 s. 28.246, F.S.; clarifying the responsibility of an
1101 individual released from incarceration regarding
1102 enrolling in a payment plan for any outstanding court
1103 obligations; modifying the manner of calculating a
1104 monthly payment amount under a payment plan; requiring
1105 the clerk to establish all terms of a payment plan;
1106 amending s. 28.35, F.S.; conforming cross-references
1107 and provisions to changes made by the act; amending s.
1108 28.36, F.S.; conforming a cross-reference and a
1109 provision to changes made by the act; requiring the
1110 corporation to establish and manage a contingency
1111 reserve within the Clerks of the Court Trust Fund for
1112 specified purposes; prescribing reporting

requirements; specifying circumstances under which moneys held in reserve may be used; prescribing procedures for the release of such funds; amending s. 28.37, F.S.; modifying a provision regarding state court system funding; defining terms; conforming a cross-reference; revising provisions governing the transfer of certain funds from the Clerks of the Court Trust Fund to the General Revenue Fund by the Department of Revenue; amending s. 28.42, F.S.; requiring the clerks to develop a uniform payment plan form by a specified date; prescribing requirements for the form; requiring the clerks to use such form by a specified date; amending s. 40.29, F.S.; requiring the clerks of the court to submit requests for reimbursement for jury-related costs to the Florida Clerks of Court Operations Corporation within specified timeframes; requiring the corporation to review such requests for reimbursement; requiring the corporation to submit certain information to the Justice Administrative Commission; requiring the commission to review the information and submit a request for payment to the Chief Financial Officer under certain circumstances; removing a provision authorizing the commission to apportion funds among the counties for certain purposes; amending ss. 318.15, 318.20, and 322.245, F.S.; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans; amending s. 775.083, F.S.; designating the

clerk as the entity responsible for collecting payment of certain court obligations; requiring a person ordered to pay such obligations to contact the clerk in order to pay or establish a payment plan, unless otherwise provided; amending ss. 27.52, 28.22205, 28.246, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 569.23, and 712.06, F.S.; conforming cross-references; providing effective dates.

412016

576-03013-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to clerks of the circuit court; amending s. 28.246, F.S.; clarifying the responsibility of an individual released from incarceration regarding enrolling in a payment plan for any outstanding court obligations; modifying the manner of calculating a monthly payment amount under a payment plan; requiring the clerk to establish all terms of a payment plan; amending s. 28.35, F.S.; conforming provisions to changes made by the act; amending s. 28.36, F.S.; conforming a cross-reference; requiring the corporation to establish and manage a contingency reserve within the Clerks of the Court Trust Fund for specified purposes; prescribing reporting requirements; specifying circumstances under which moneys held in reserve may be used; prescribing procedures for the release of such funds; amending s. 28.37, F.S.; modifying a provision regarding state court system funding; defining terms; conforming a cross-reference; revising provisions governing the transfer of certain funds from the Clerks of the Court Trust Fund to the General Revenue Fund by the Department of Revenue; amending s. 28.42, F.S.; requiring the clerks to develop a uniform payment plan form by a specified date; prescribing requirements for the form; requiring the clerks to use such form by a specified date; amending ss. 318.15, 318.20, and

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322.245, F.S.; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans; amending s. 775.083, F.S.; designating the clerk as the entity responsible for collecting payment of certain court obligations; requiring a person ordered to pay such obligations to contact the clerk in order to pay or establish a payment plan, unless otherwise provided; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)(a) Each ~~The~~ clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30

days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The clerk shall establish all terms of a payment plan and the court may review the reasonableness of the payment plan.

Section 2. Effective upon this act becoming a law, paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 28.35, Florida Statutes, are amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(f) Approving the proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, plus the total of unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year, ~~and~~ plus the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), and plus any appropriations for court-related functions ~~s. 28.37(3)(b)~~. The corporation may amend any individual clerk of the court budget

to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for items not included on the standard list of court-related functions specified in paragraph (3)(a).

5. Identify those clerks projected to have court-related

revenues insufficient to fund their anticipated court-related expenditures.

6. Use revenue estimates based on the official estimate for funds from fees, service charges, court costs, and fines for court-related functions accruing to the clerks of the court made by the Revenue Estimating Conference, as well as any unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year and the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), plus any appropriations for the purpose of funding court-related functions ~~s. 28.37(3)(b)~~.

7. Identify pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.

8. Identify increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.

9. Identify the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.

For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerks of the courts budgets for court-related functions established pursuant to this section and s. 28.36.

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or

court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 3. Effective upon this act becoming a law, present subsections (3) and (4) of section 28.36, Florida Statutes, are redesignated as subsections (4) and (5), a new subsection (3) is added to that section, and subsection (1), paragraph (b) of subsection (2), and present subsection (4) of that section are amended, to read:

28.36 Budget procedure.—There is established a budget procedure for the court-related functions of the clerks of the court.

(1) Only those functions listed in s. 28.35(3)(a) may be funded from fees, service charges, court costs, and fines retained by the clerks of the court.

(2) Each proposed budget shall further conform to the following requirements:

(b) The proposed budget must be balanced such that the total of the estimated revenues available equals or exceeds the total of the anticipated expenditures. Such revenues include revenue projected to be received from fees, service charges, court costs, and fines for court-related functions during the fiscal period covered by the budget, plus the total of unspent

budgeted funds for court-related functions carried forward by the clerk of the court from the previous county fiscal year and plus the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b) ~~s. 28.37(3)(b)~~ which has been allocated to each respective clerk of the court by the Florida Clerks of Court Operations Corporation. For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerk of the courts' budget for court related functions established pursuant to s. 28.35 and this section. The anticipated expenditures must be itemized as required by the corporation.

(3)(a) The Florida Clerks of Court Operations Corporation shall establish and manage a reserve for contingencies within the Clerks of the Court Trust Fund which must consist of an amount not to exceed 16 percent of the total budget authority for the clerks of court during the current county fiscal year, to be carried forward at the end of the fiscal year. Funds to be held in reserve include transfers of cumulative excess, as provided in s. 28.37(4)(b), from the Clerks of the Court Trust Fund and may also include revenues provided by law or moneys appropriated by the Legislature.

(b) The corporation shall provide a reporting of the balance and use of these funds during each county fiscal year as part of the corporation's annual report submitted under s. 28.35(2)(h).

(c) The corporation may use the reserve to ensure the clerks of court can perform the court-related functions as

provided in s. 28.35(3)(a). Moneys in the Clerks of the Court Trust Fund which are held in reserve may be used by the corporation under the following circumstances:

1. To offset a current deficit between the revenue available and the original budget authority. A deficit is deemed to occur when the revenue available to the clerks of court falls below the original revenue projection for that county fiscal year.

2. To provide funding for an emergency, as defined in s. 252.34(4). The emergency must have been declared by the Governor, pursuant to s. 252.36, or otherwise declared by law.

3. To provide funds in the development of the total aggregate budget of the clerks of court to ensure that a minimum continuation budget is met. For purposes of this subparagraph, a minimum continuation budget is the budget approved for the current county fiscal year or some lesser amount adopted by the corporation.

(d) To use the reserve, the corporation must request a budget amendment pursuant to s. 216.292.

(5)~~(4)~~ The corporation may approve increases or decreases to the previously authorized budgets approved for ~~individual~~ clerks of the court pursuant to s. 28.35 for court-related functions, if:

(a) The additional budget authority is necessary to pay the cost of performing new or additional functions required by changes in law or court rule; or

(b) The additional budget authority is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature, or for increases in

the use of hearing officers and senior judges assigned by the courts.

Section 4. Effective upon this act becoming a law, section 28.37, Florida Statutes, is amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and court costs collected by the clerks of the court, and from adequate and appropriate supplemental funding from state revenues as appropriated by the Legislature.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Cumulative excess" means revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

(b) "Original revenue projection" means the official estimate, as determined by the Revenue Estimating Conference, of revenues from fines, fees, service charges, and court costs available for court-related functions for the county fiscal year covered by the projection.

(3) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must ~~shall~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(4)(a)~~(3)(a)~~ Each year, no later than January 25, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit in the Clerks of the Court Trust Fund the cumulative excess of all fines, fees, service charges, and court costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(4) ~~s. 28.36(3)~~, which exceed the amount needed to meet their authorized budget amounts established under s. 28.35.

(b) No later than February 1, 2022, and each February 1 thereafter, the Department of Revenue shall transfer 50 percent of the cumulative excess of the original revenue projection from the Clerks of the Court Trust Fund to the General Revenue Fund. The remaining 50 percent in the Clerks of the Court Trust Fund may be used in the development of the total combined budgets of the clerks of the court as provided in s. 28.35(2)(f)6. However, a minimum of 10 percent of the clerk-retained portion of the cumulative excess amount must be held in reserve until such funds reach an amount equal to at least 16 percent of the total budget authority from the current county fiscal year, as provided in s. 28.36(3)(a)

~~1. No later than February 1, 2020, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund~~

~~to the General Revenue Fund the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a) in excess of $10 million~~.

~~2. No later than February 1, 2021, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~3. No later than February 1, 2022, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~4. No later than February 1, 2023, and each February 1 thereafter, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the~~

~~cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a).~~

(5)~~(4)~~ The Department of Revenue shall collect any funds that the Florida Clerks of Court Operations Corporation determines upon investigation were due but not remitted to the Department of Revenue. The corporation shall notify the clerk of the court and the Department of Revenue of the amount due to the Department of Revenue. The clerk of the court shall remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of the court.

(6)~~(5)~~ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a), must ~~shall~~ be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions, as provided in s. 28.35(3)(a).

Section 5. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of filing fees, charges, costs, and fines; payment plan form.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge,

cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246(4). The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

(3) By January 1, 2022, each clerk of court shall use the uniform payment plan form developed pursuant to subsection (2) when establishing payment plans.

Section 6. Paragraph (a) of subsection (1) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of

the court must ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department must ~~shall~~ immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order also must inform the person that he or she may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, service charges, and court costs. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside of this state ~~Florida~~, must ~~shall~~ remain on the records of the department for a period of 7 years from the date imposed and must ~~shall~~ be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 7. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form must ~~shall~~ contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification form must ~~shall~~ contain a statement that, if the official determines that no infraction has been committed, no costs or penalties may ~~shall~~ be imposed and any costs or penalties that ~~which~~ have been

paid will ~~shall~~ be returned. Additionally, the notification form must include information on paying the civil penalty to the clerk of the court and the ability to establish a payment plan pursuant to s. 28.246(4). A uniform traffic citation that is produced electronically must also include the information required by this section.

Section 8. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the ~~traffic~~ court must provide ~~shall mail to~~ the person, either electronically or by mail sent to ~~at~~ the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to $25 to the clerk, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice must ~~shall~~ be sent ~~mailed~~ no later

than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court must ~~shall~~ electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person’s driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order of suspension must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

(5)(a) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department must ~~shall~~ suspend the license of the person named in the notice. The department shall mail an order of suspension in accordance with s. 322.251(1), (2), and (6), which must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court

costs.

Section 9. Present subsection (3) of section 775.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

775.083 Fines.—

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full, or to apply for enrollment in a payment plan, pursuant to s. 28.246(4).

Section 10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 838
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Boyd and others
SUBJECT:	Clerks of the Circuit Court
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Dale	Harkness	ACJ	**Recommend: Fav/CS**
3.	Dale	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 838 amends laws related to the funding of the clerks of court to:

- Require the Clerk of Courts Operations Corporation to establish and maintain a budget reserve of up to 16 percent of the budget from the previous year;
- Specify that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply for performing services related to a "court record";
- Revise the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that $20 of the $100 fee be transferred to the General Revenue Fund; and
- Revise the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system.

The bill amends laws related to monies owed to a clerk of court to:

- Specify that fines, costs, service charges, and court costs are due immediately upon assessment.
- Require a person owing monies to the clerk who cannot immediately pay to contact the clerk and set up a payment plan.
- Require an offender to contact the clerk within 30 days after release from incarceration to arrange for payment of any outstanding court obligations.
- Require creation of a statewide uniform payment plan form for monies owed to a clerk.

- Require notice of the availability of payment plans to individuals receiving a traffic infraction or a notice of suspension of driving privilege.

On March 5, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) adopted a positive indeterminate impact for various state and local funds related to the bill's changes to payment plans. Additionally, the REC estimates an out-year negative indeterminate impact to the General Revenue Fund and a positive indeterminate impact to the clerks under certain circumstances. See Section V. Fiscal Impact Statement.

For the sections relating to the clerks' budget process changes, the effective date is upon becoming law. For the sections relating to the payment of juror costs, service charges, and correcting service charge cross-references, the bill is effective July 1, 2021. For the sections pertaining to payment plans, the bill's effective date is October 1, 2021.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court[1] to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*[2] clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[3] In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.[4]

Florida Clerks of Court Operations Corporation

The Legislature created the Florida Clerks of Court Operations Corporation (CCOC) in 2003. It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state. All clerks of the circuit court are members and hold their position and authority as ex officio members. The responsibilities assigned to the Corporation are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.[5]

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[1] FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.
[2] *See* BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.")
[3] FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*
[4] *See generally* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Mar. 5, 2021). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("comptroller" means "An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.")
[5] Section 28.35(1), F.S

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.[6] The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.[7]

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001[8] within the Department of Revenue (DOR). The Trust Fund was transferred to the JAC in 2009 when the clerks' budget was placed in the state budget process. The Trust Fund was transferred back to the DOR in 2013 when the clerks' budget was removed from the General Appropriations Act (GAA). The Trust Fund exists as a one sentence item in the statutes with no mention of a purpose.

According to the CCOC, the Trust Fund is used as a repository for funds from counties that have a projected revenue surplus. Section 28.37(2), F.S., provides that, since November 1, 2013, all fines, fees, service charges, and costs that are collected by the clerks for the previous month which exceed one-twelfth of the clerks' total budget for performing court-related functions must be remitted to DOR for deposit into the Clerks of the Court Trust Fund. Those funds are distributed by DOR to clerks in counties that have a projected revenue deficit. The CCOC also uses the Trust Fund to annually reconcile the clerks' expenditures. In the reconciliation process at the end of the year, a clerk's total revenues are compared to total expenditures. Some clerks will receive additional money to meet expenses, and other clerks will be required to return money because he or she had a surplus of revenue after covering expenses.

Additionally, during the 2019 legislative session, s. 28.37, F.S., was amended to require:

[6] Florida Clerks of Court Operations Corporation, Welcome to Florida Clerks of Court Operations Corporation (CCOC), available at https://flccoc.org/.
[7] Section 28.35(2)(c), (d), (e), and (f), F.S.
[8] Section 213.131, F.S

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding $10 million be transferred to the General Revenue Fund;
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of the Court Trust Fund after the transfer may not exceed $20 million; and
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund.

Service Charges Collected by a Clerk of Court

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.[9] Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are "court-related" functions, while other services are "county-related" functions performed by the clerk in its capacity as County Recorder,[10] such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested. For example, s. 28.24(3), F.S., describes a charge for certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of this record is a court-related function, while if the requested record is in the Official Records, the clerk's providing of certified copies of this record is a county-related function.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to collect a $250 filing fee for appeals from the county to circuit courts and a $50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.[11] Clerks were required to remit $50 of these fees to the DOR for deposit into the General Revenue Fund.[12] Therefore, the clerks were able to retain $200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.[13]

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from $250 to $280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from $50 to $100.[14] The amendment required the clerks to remit $80 from both fees to the DOR for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of $80 to the DOR for deposit into the Clerks of Court Trust Fund.[15] Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at $200, but the clerks were now allowed to retain $20 of the DCA and Supreme Court

[9] Section 28.24, F.S.
[10] See s. 28.222(1), F.S.
[11] See Ch. 2008-111, s. 8, Laws of Fla.
[12] *See Id.*
[13] Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021).
[14] *Id.*
[15] *Id.*

appellate fee.[16] But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks' budgets based on increased revenue generated by the amendments.[17] As a result, the new money collected in excess of the $80 filing fee, i.e. the $20 retained from the fees for appeals to the DCAs or Supreme Court, sent to the DOR for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, all of the $100 fee for appeals from the circuit courts to the DCAs or Supreme Court was deposited in the General Revenue Fund.[18]

In 2017, the Legislature again amended s. 28.241(2), F.S., removing the requirement that clerks remit $80 of the appellate filing fees to the DOR for deposit in the General Revenue Fund.[19] But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting $20 of the $100 DCA and Supreme Court appellate fee to the DOR for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the $280 fee for appeals from the county to the circuit courts, and retain $80 of the $100 fee for appeals from the circuit courts to the DCAs or Supreme Court.[20]

When the Legislature amended s. 28.241(2), F.S., in 2019, the clerks were required to remit $20 from the $280 filing fee for appeals from the county court to the circuit courts to the DOR for deposit into the General Revenue Fund.[21] The 2019 amendments to s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.[22]

Effective January 1, 2021, most appeals from the county court are filed in the district court of appeal, rather than with the circuit court.[23]

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including all of the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.

[16] *Id.*
[17] See Ch. 2008-111, s. 47, Laws of Fla.
[18] Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021).
[19] Chapter 2017-126, s 2, Laws of Fla.
[20] Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021)
[21] Chapter 2019-58, s 8, Laws of Fla.
[22] Id. at s. 30.
[23] Chapter 2020-61, Laws of Fla.

- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.[24]

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

> (b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.[25]

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including "the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions."[26] Additionally, counties pay "reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."[27]

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

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[24] Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *About Us*, *Clerks Duties & Services*, available at https://www.flclerks.com/page/ClerksDuties (last visited Mar. 5, 2021).
[25] FLA. CONST. art. V, s. 14(b) (emphasis added).
[26] FLA. CONST. art. V, s. 14(c).
[27] *Id.* Additionally, Art. V, s. 14(a) provides that funding for state court systems as well as state attorney's offices, public defender's offices, and court-appointed counsel will generally be paid from "state revenues appropriated by general law; and section 14(d) clarifies that the court system has no appropriations authority.

- Various services and filings for indigent parties to pending litigation.[28]
- Petitions for Habeas Corpus filed by persons detained as mental health patients.[29]
- Filing an ex parte order for involuntary examination (Baker Act).[30]
- Petitions for involuntary inpatient placement for mental health.[31]
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.[32]
- Petitions for involuntary assessment and stabilization for substance abuse impairment.[33]
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).[34]
- Petitions for protective injunctions against domestic violence,[35] repeat, dating, or sexual violence,[36] or stalking.[37]

History of the Clerks of Court Funding Model

1998 Article V Revision ("Revision 7") and Implementing Legislation

Article V, section 14, was amended in 1998 to "substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state."[38] The statement of intent accompanying the revision of Art. V, s. 14(b), also known as "Revision 7," reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks' office in the event "filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year"; and (2) for the disposition of excess revenues collected by the clerks' offices in a given fiscal year.[39]

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

> The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions. The determination by the [L]egislature as to

[28] Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.
[29] Section 394.459, F.S.
[30] Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or *Baker* Act).
[31] Section 394.467, F.S.
[32] Section 394.917, F.S.
[33] Section 397.6814, F.S.
[34] Section 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.
[35] Section 741.30, F.S.
[36] Section 784.046, F.S.
[37] Section 784.0485, F.S.
[38] *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) ("In its Statement of Intent, the Constitution Revision Commission explained: 'The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*' [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.").
[39] William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.

> the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.[40]

Revision 7's 1998 amendment to Art. V of the Florida Constitution had to be implemented by July 1, 2004.[41] In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."[42]

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted sections 28.35, 28.36, and 28.37, F.S.[43]:

- Section 28.35, F.S., created the Florida Clerks of Court Operations Corporation (Corporation),[44] which is responsible to provide accountability, procedural review, and oversight to the clerks of court budgeting process throughout the state.
- Section 28.36, F.S., established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- Section 28.37, F.S., ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008[45]

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.[46] A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,[47] a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had the discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with

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[40] *Id.*
[41] *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).
[42] Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).
[43] 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.
[44] *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.
[45] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[46] Section 142.01, F.S.
[47] Section 28.37(2), F.S. (2008).

estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.[48] If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.[49]

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.[50] Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.[51]
During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had the authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.[52]

Clerks in the General Appropriations Act: 2009-2012[53]

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs, and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).[54] The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.[55]

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional money from the General Revenue Fund. The 2011 Legislature appropriated $44.2 million from the General Revenue Fund to address FY 2010-2011

[48] Section 28.36(3)(b), (c), F.S. (2008).
[49] Section 28.36(4), F.S. (2008).
[50] Section 28.36(3), F.S. (2008).
[51] Section 28.37(4), F.S. (2008).
[52] Section 28.36(6), F.S. (2008).
[53] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[54] Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).
[55] Section 28.37(5), F.S.

revenue deficits, and the 2012 Legislature appropriated $57.6 million to address FY 2011-2012 deficits.

***Return to Pre-2009 Funding Model: 2013-2019*[56]**

In 2013, the Legislature reversed many of the 2009 funding model changes but expanded the oversight and accountability in the clerks' budget process. Chapter 2013-44, Laws of Florida, added the following:

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.[57]
- Corporation budget standards: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.[58]

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC) and directed the LBC to review the budgets of the clerks and either: (1) approve, (2) disapprove, or (3) amend and approve the budgets by October 1 of each year.[59] In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.[60]

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.[61] In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

[56] This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).
[57] Section 28.35(2)(f), F.S.
[58] Section 28.35(2)(f)6., F.S.
[59] Section 11.90(6)(d), F.S.
[60] Chapter 2017-126, s. 1, Laws of Fla.
[61] Chapter 2019-58, Laws of Fla.

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding $10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of the Court Trust Fund after the transfer may not exceed $20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

In that same act, the 2019 Legislature was looking ahead to 2022 and included the following language:

> Section 32. Before the 2022 Regular Session of the Legislature, the Legislature shall review and consider the results of the analysis submitted pursuant to Specific Appropriation 2754 of the 2019-2020 General Appropriations Act regarding the review of the Clerk of Court Processes for the purpose of considering the extension or reenactment of provisions in this act relating to clerk funding.[62]

Specific appropriation 2754 reads in relevant part:

> From the funds in Specific Appropriation 2754, the Office of Program Policy Analysis and Government Accountability is directed to contract with an independent third party consulting firm to assist with a review of the Clerk of Court processes including collection and compilation of empirical evidence based on observation of a random sample of clerks' offices employees; comparison of clerks' office work patterns to propose efficiency and productivity standards; and assessment and comparison of organizational arrangements and deployment of personnel resources among all clerks' offices. Sample groups must include a broad number of large and small counties and include entities from all areas of the state. The analysis shall be submitted to the chair of the Senate Appropriations Committee and the chair of the House of Representatives Appropriations Committee by November 15, 2019.

The report contains 26 recommendations for operational efficiency and cost savings in five categories.[63] It is unknown how many recommendations have been implemented.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment

[62] Chapter 2019-58, s. 32, Laws of Fla.
[63] Florida Clerks of Court Study, *Final Report* (November 15, 2019), *available at* https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS

plans with individuals. Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.[64]

Jury Management

Court clerks' responsibilities include managing the jury process. This includes determining the qualifications of jurors, issuing jury summons, providing selection lists, reporting, and compensating jurors when necessary to prevent financial hardship.[65] It is estimated that Florida clerks summon almost 2 million jurors annually.[66]

Juror Cost Reimbursement

Under Revision 7 to article V of the Florida Constitution, juror compensation and related expenses were initially a state court system responsibility and paid for with state revenues appropriated by general law.[67] The 2004 Legislature amended s. 28.35, F.S., to require the clerks to pay the payment to jurors and witnesses as well as juror meals and lodging.[68] Each clerk prepared quarterly estimates of needed funds for the Office of State Court Administrator (OSCA). Based on these estimates, OSCA approved the payment for each clerk. In 2008, the Legislature amended the law to clarify that the clerks were financially responsible for paying juror meals and lodging as well as juror and witness payments.[69]

In recognition of clerk revenue deficits, the 2016 Legislature passed a provision to reimburse the clerks for juror expenses and jury-related personnel costs during the 2016-2017 fiscal year.[70] The Legislature also appropriated $11.7 million in recurring general revenue in the General Appropriations Act within the Justice Administrative Commission to support funding these jury expenses.

Budget Procedure for Payment of Jury Costs

The Justice Administration Commission (JAC) is required by s. 40.29(5), F.S., to provide funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs. As noted above, since 2016, the Legislature has provided $11.7 million annually from General Revenue to cover the projected costs of managing the jury process.[71] The funds are released quarterly.

The process established in s. 40.29, F.S., for clerks to submit information to the JAC to request funding, has been modified slightly from statute by agreement between the clerks and the CCOC. The process is as follows:

[64] Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual would pay no more than $26.80 a month on a clerk's payment plan.
[65] See s. 40.001, F.S.
[66] Florida Clerks of Court Operations Corporation, Senate Bill 590 Analysis (February 6, 2020), on file with Senate Appropriations Subcommittee on Criminal and Civil Justice.
[67] Chapter 2003-402, s. 40, Laws of Fla.
[68] Chapter 2004-265, Laws of Fla.
[69] Chapter 2008-111, Laws of Fla
[70] Chapter 2016-62, s. 66, Laws of Fla
[71] For the Fiscal Year 2020-2021 appropriation, see ch. 2020-111, s. 4, Laws of Fla., Specific Appropriation 736).

- Each clerk of the circuit court forwards to the CCOC a quarterly estimate of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the upcoming quarter. Each clerk must include a signed and dated certification letter by the 10th of the month immediately before the beginning of the requested quarter.
- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and processes the payment through the Department of Financial Services for pre-imbursement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based upon the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer will then issue the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA.

III. Effect of Proposed Changes:

Service Charges Collected by a Clerk of Court

The bill amends various service charges in s 28.24, F.S., to provide that service charges related to a "court record" is required to have a designated portion of the service charge transferred to the General Revenue Fund. A service charge not related to a court record is fully retained by the clerk. No service charge is increased or decreased by the bill.

The bill defines the term "court record" to mean the contents of a court file, to include:
- Progress dockets and other similar records generated to document activity in a case.
- Transcripts filed with the clerk.
- Documentary exhibits in the custody of the clerk.
- Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.
- Electronic records, video recordings, and stenographic tapes of court proceedings.

The bill amends s. 28.222, F.S., regarding the clerk's role as county recorder, to provide that a service charge related to an instrument recorded in the Official Records is fully retained by the clerk, except that a service charge related to a court record or a court function in the Official Records is subject to the partial distribution to the General Revenue Fund. The bill also amends several sections of statute to correct cross-references to specific service charges.

Appellate Filing Fees

The bill amends s. 28.241, F.S., to provide that the $20 distribution to the General Revenue Fund from the filing fee paid to a clerk of court of the lower court when filing an appeal does not apply

to an appeal from the county court to the circuit court. Thus, the bill provides that a clerk of court retains the entire $100 fee.

The bill also clarifies in that subsection that the $100 filing fee payable to the clerk of court as the lower court in the appeal is in addition to the filing fee payable to the appellate court.

Clerk of Court Budgeting and Finances

The bill amends s. 28.37, F.S., regarding funds collected in the Clerk of the Courts Trust Fund. Currently, if the clerks have a budget surplus at the end of their fiscal year, 50 percent of the surplus must be transferred to the General Revenue Fund, with a maximum retainage in the trust fund of $20 million. After the county fiscal year 2021-22, 100 percent of the annual surplus with no retainage is to be transferred to the General Revenue Fund. The bill repeals the current sweeps and retainage laws and requires instead that 50 percent of the surplus be transferred to the General Revenue Fund. Of the remaining 50 percent, a minimum of 10 percent must be held in reserve in the Clerk of the Courts Trust Fund, and the remainder may be used to increase clerk budgets. The reserve may not exceed 16 percent of the total budget authority of the clerks from the current county fiscal year.[72]

The bill amends s. 28.36, F.S., to allow the Florida Clerks of Court Operations Corporation to create a budget reserve in the Clerks of the Court Trust Fund of up to 16 percent of the total budget authority during the current county fiscal year. The budget reserve will only accrue should the clerks have a budget surplus that is not otherwise subject to being swept by the Department of Revenue. The budget reserve may only be used to:

- Offset a current-year deficit caused by a revenue shortfall;
- Provide supplemental funding related to a declared emergency; and
- Provide for a minimum continuation budget where the clerks have projected a deficit and the legislature did not appropriate funds sufficient to create a minimum continuation budget. A minimum continuation budget is the current county fiscal year budget unless the Corporation requires a lesser budget.

The bill requires the Corporation to request a budget amendment from the Governor in order to access the reserve. This is in line with the requirements for Executive Branch agencies seeking to establish trust fund budget from a reserve.

The bill amends s. 28.36, F.S., to allow a clerk of the court to request, and the Florida Clerks of Court Operations Corporation to approve, an increase in a clerk's budget authority for a financial impact resulting from increases in use of hearing officers and senior judges.

Monies Owed to a Clerk of Court

The bill amends s. 28.246, F.S., to direct the clerks of court to offer a payment plan to every person who owes money to the clerk and cannot immediately pay. The clerk is responsible for

[72] For the latest county fiscal year (FY 2019-20), the total budget authority of the clerks was approximately $403 million. If this bill were in effect, the maximum reserve would be approximately $64.5 million.

setting the terms of individual plans, although the trial court may review the reasonableness of the plan.

The bill amends s. 28.42, F.S., to require the Florida Clerks of Court Operations Corporation to create a uniform payment plan form. The form must be created by October 1, 2021, and must be used by each clerk starting January 1, 2022. The bill amends traffic and licensing laws at ss. 318.15, 318.20, and 322.45, F.S., to require notice of the availability of payment plans through the clerk of court. The notice must be included with a notice of suspension of a license and must be appended to a citation.

The bill amends s. 28.246, F.S., to require that an individual released from incarceration contact the clerk within 30 days after release to either pay the outstanding fines and fees in full or set up a payment plan.

The bill amends the criminal fine statute at s. 775.083, F.S., to add that the clerk of the court is the entity that collects fines, fees, service charges, and court costs. This reflects current law. The bill also adds the requirement that an offender must contact the clerk to pay, or set up a payment plan, upon assessment by the court.

Jury Management

The bill modifies the process by which clerks receive funds for jury management by changing the current practice under which clerks receive pre-imbursements for their costs to one in which they will receive reimbursements for the costs they have incurred.

The new process by which the clerks will receive reimbursement for jury-related costs is as follows:

- Each clerk of the court shall submit a request for reimbursement to the Florida Clerks of Court Operations Corporation (CCOC) within 20 days after each quarter attesting to the clerk's actual costs to compensate jurors, to pay for meals or lodging provided to jurors, and to pay jury-related personnel costs.
- The CCOC will review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management.
- The CCOC will then forward the request for reimbursement to the Justice Administrative Commission (JAC) unless the requests total more than is available, in which case the CCOC will adjust the cumulative total to match the available funds before submittal.
- The JAC will then review the amount requested for the most recently completed quarter to determine if funds are available and submit a request for payment to the Chief Financial Officer.

For the sections relating to the clerks' budget process changes, the effective date is upon becoming law. For the sections relating to the payment of juror costs, service charges, and correcting service charge cross-references, the bill is effective July 1, 2021. For the sections pertaining to payment plans, the bill's effective date is October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 5th, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) evaluated SB 838 and its companion HB 903. The conference adopted a positive indeterminate impact for various state and local trust funds, the General Revenue Fund, Clerks of Court Trust Fund, and Clerk's Fine and Forfeiture Funds as it relates to the bill's changes to payment plans.[73]

Currently, if the Article V Estimating Conference forecasts that revenue will exceed the clerks' total budget, 50 percent of the surplus is transferred to General Revenue and the clerks retain the other 50 percent up to a maximum of $20 million. This procedure is set to expire at the end of County Fiscal Year (CFY) 2021-22 after which time 100 percent

[73] Office of Economic and Demographic Research, Results of the Revenue Estimating Impact Conference held March 5, 2021, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf

of any surplus revenue will be transferred to the General Revenue Fund. Because the bill permanently codifies the existing revenue split, if clerk revenues surpass the total clerks' budget, the REC estimates there will be an indeterminate negative impact to the General Revenue Fund and a positive indeterminate impact to the clerks.

The sections of the bill related to service charges, appellate filing fees and jury management are expected to have an indeterminate but likely minimal fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52 28.222, 28.22205, 28.24, 28.241, 28.246, 28.35, 28.36, 28.37, 28.42, 40.29, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 318.15, 318.20, 322.245, 569.23, 712.06, and 775.083.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Removes provisions modifying the duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices;
- Incorporates the substance of SB 382 into the bill which:
  - Specifies that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply for performing services related to a "court record";
  - Revises the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that $20 of the $100 fee be transferred to the General Revenue Fund; and
  - Revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system.

CS by Judiciary on March 9, 2021:
The committee substitute removes a provision that would have allowed a clerk of court to request a budget increase due to requirements of the courts, changes the effective date of portions of the bill other than clerk budgeting to October 1, 2021, and makes technical corrections and clarifications.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Judiciary; and Senator Boyd

590-02600-21 2021838c1

A bill to be entitled

An act relating to clerks of the circuit court; amending s. 28.246, F.S.; clarifying the responsibility of an individual released from incarceration regarding enrolling in a payment plan for any outstanding court obligations; modifying the manner of calculating a monthly payment amount under a payment plan; requiring the clerk to establish all terms of a payment plan; amending s. 28.35, F.S.; modifying duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices; conforming a cross-reference; amending s. 28.36, F.S.; conforming a cross-reference; requiring the corporation to establish and manage a contingency reserve within the Clerks of the Court Trust Fund for specified purposes; prescribing reporting requirements; specifying circumstances under which moneys held in reserve may be used; prescribing procedures for the release of such funds; amending s. 28.37, F.S.; modifying a provision regarding state court system funding; defining terms; conforming a cross-reference; revising provisions governing the transfer of certain funds from the Clerks of the Court Trust Fund to the General Revenue Fund by the Department of Revenue; amending s. 28.42, F.S.; requiring the clerks to develop a uniform payment plan form by a specified date; prescribing requirements for the form; requiring the clerks to use such form by a specified date; amending ss. 318.15, 318.20, and

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322.245, F.S.; requiring orders and notifications for certain traffic citations and suspensions to include information regarding payment plans; amending s. 775.083, F.S.; designating the clerk as the entity responsible for collecting payment of certain court obligations; requiring a person ordered to pay such obligations to contact the clerk in order to pay or establish a payment plan, unless otherwise provided; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)(a) Each ~~The~~ clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30

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days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The clerk shall establish all terms of a payment plan and the court may review the reasonableness of the payment plan.

Section 2. Effective upon this act becoming a law, paragraph (f) of subsection (2) and paragraph (a) of subsection (3) of section 28.35, Florida Statutes, are amended, and paragraphs (i) and (j) are added to subsection (2) of that section, to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(f) Approving the proposed budgets submitted by clerks of the court pursuant to s. 28.36. The corporation must ensure that the total combined budgets of the clerks of the court do not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, plus the total of unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year, ~~and~~ plus the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), and plus any

appropriations for court-related functions ~~s. 28.37(3)(b)~~. The corporation may amend any individual clerk of the court budget to ensure compliance with this paragraph and must consider performance measures, workload performance standards, workload measures, and expense data before modifying the budget. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for items not included on the standard list of court-related

functions specified in paragraph (3)(a).

5. Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.

6. Use revenue estimates based on the official estimate for funds from fees, service charges, court costs, and fines for court-related functions accruing to the clerks of the court made by the Revenue Estimating Conference, as well as any unspent budgeted funds for court-related functions carried forward by the clerks of the court from the previous county fiscal year and the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b), plus any appropriations for the purpose of funding court-related functions ~~s. 28.37(3)(b)~~.

7. Identify pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.

8. Identify increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.

9. Identify the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.

10. Request the Governor to order, pursuant to s. 215.18(1), a temporary transfer of moneys from unobligated funds in the State Treasury to the Clerks of the Court Trust Fund in the Department of Revenue to meet temporary deficiencies in that fund.

11. Determine if the estimated revenue available for the

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upcoming county fiscal year is adequate to fund court-related functions, and certify and submit any aggregate difference to the chairs of the legislative appropriations committees and the Executive Office of the Governor for consideration, at least 30 days before the start of the next regular session of the Legislature.

For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerks of the courts budgets for court-related functions established pursuant to this section and s. 28.36.

(i) If the corporation determines that the cumulative budget for all clerks will vary by more than 5 percent from the approved cumulative budget for the previous year, certify to the Legislature the specific causes for the variance and how each variance relates to the clerks' responsibilities in performing their court-related functions.

(j) Prepare and submit legislative budget requests to the Legislature, consistent with the requirements of s. 216.023. Such requests must be submitted for any fiscal year for which the corporation determines that new duties or financial obligations under s. 28.36(4), beyond those funded in prior fiscal years, have been imposed on the court-related functions of clerks of the court; and for any fiscal year for which the corporation determines that the total estimated revenues available for court-related expenditures as determined by the most recent Revenue Estimating Conference, unspent revenues carried forward from the previous fiscal year, and budget amendments and appropriations made by law for the purpose of

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funding court-related functions will be inadequate to provide funding for court-related functions of clerks of the court at the current level of operations.

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 3. Effective upon this act becoming a law, present subsections (3) and (4) of section 28.36, Florida Statutes, are redesignated as subsections (4) and (5), a new subsection (3) is added to that section, and subsection (1), paragraph (b) of subsection (2), and present subsection (4) of that section are amended, to read:

28.36 Budget procedure.—There is established a budget procedure for the court-related functions of the clerks of the court.

(1) Only those functions listed in s. 28.35(3)(a) may be funded from fees, service charges, court costs, and fines retained by the clerks of the court.

(2) Each proposed budget shall further conform to the following requirements:

(b) The proposed budget must be balanced such that the total of the estimated revenues available equals or exceeds the total of the anticipated expenditures. Such revenues include revenue projected to be received from fees, service charges, court costs, and fines for court-related functions during the fiscal period covered by the budget, plus the total of unspent budgeted funds for court-related functions carried forward by the clerk of the court from the previous county fiscal year and plus the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37(4)(b) ~~s. 28.37(3)(b)~~ which has been allocated to each respective clerk of the court by the Florida Clerks of Court Operations Corporation. For the purposes of this paragraph, the term "unspent budgeted funds for court-related functions" means undisbursed funds included in the clerk of the courts' budget for court related functions established pursuant to s. 28.35 and this section. The anticipated expenditures must be itemized as required by the corporation.

(3)(a) The Florida Clerks of Court Operations Corporation shall establish and manage a reserve for contingencies within the Clerks of the Court Trust Fund which must consist of an amount not to exceed 16 percent of the total budget authority for the clerks of court during the current county fiscal year, to be carried forward at the end of the fiscal year. Funds to be held in reserve include transfers of cumulative excess, as provided in s. 28.37(4)(b), from the Clerks of the Court Trust Fund and may also include revenues provided by law or moneys appropriated by the Legislature.

(b) The corporation shall provide a reporting of the balance and use of these funds during each county fiscal year as part of the corporation's annual report submitted under s. 28.35(2)(h).

(c) The corporation may use the reserve to ensure the clerks of court can perform the court-related functions as provided in s. 28.35(3)(a). Moneys in the Clerks of the Court Trust Fund which are held in reserve may be used by the corporation under the following circumstances:

1. To offset a current deficit between the revenue available and the original budget authority. A deficit is deemed to occur when the revenue available to the clerks of court falls below the original revenue projection for that county fiscal year.

2. To provide funding for an emergency, as defined in s. 252.34(4). The emergency must have been declared by the Governor, pursuant to s. 252.36, or otherwise declared by law.

3. If, after the corporation has notified the Legislature of a deficit under s. 28.35(2)(f)11., there remains a deficit between the total revenues available and the total budget from the current county fiscal year, to provide funds in the development of the total aggregate budget of the clerks of court to ensure that a minimum continuation budget is met. For purposes of this subparagraph, a minimum continuation budget is the budget approved for the current county fiscal year or some lesser amount adopted by the corporation.

(d) To use the reserve, the corporation must request a budget amendment pursuant to s. 216.292.

(5)~~(4)~~ The corporation may approve increases or decreases

to the previously authorized budgets approved for ~~individual~~ clerks of the court pursuant to s. 28.35 for court-related functions, if:

(a) The additional budget authority is necessary to pay the cost of performing new or additional functions required by changes in law or court rule; or

(b) The additional budget authority is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature, or for increases in the use of hearing officers and senior judges assigned by the courts.

Section 4. Effective upon this act becoming a law, section 28.37, Florida Statutes, is amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(1) Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and court costs collected by the clerks of the court, and from adequate and appropriate supplemental funding from state revenues as appropriated by the Legislature.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Cumulative excess" means revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

(b) "Original revenue projection" means the official estimate, as determined by the Revenue Estimating Conference, of

revenues from fines, fees, service charges, and court costs available for court-related functions for the county fiscal year covered by the projection.

(3) The ~~Beginning November 1, 2013, that~~ portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must ~~shall~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. Such collections do not include funding received for the operation of the Title IV-D child support collections and disbursement program. The clerk of the court shall remit the revenues collected during the previous month due to the state on or before the 10th day of each month.

(4)(a) ~~(3)(a)~~ Each year, no later than January 25, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, shall remit to the Department of Revenue for deposit in the Clerks of the Court Trust Fund the cumulative excess of all fines, fees, service charges, and court costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund under s. 28.36(4) ~~s. 28.36(3)~~, which exceed the amount needed to meet their authorized budget amounts established under s. 28.35.

(b) No later than February 1, 2022, and each February 1 thereafter, the Department of Revenue shall transfer 50 percent of the cumulative excess of the original revenue projection from the Clerks of the Court Trust Fund to the General Revenue Fund. The remaining 50 percent in the Clerks of the Court Trust Fund

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

may be used in the development of the total combined budgets of the clerks of the court as provided in s. 28.35(2)(f)6. However, a minimum of 10 percent of the clerk-retained portion of the cumulative excess amount must be held in reserve until such funds reach an amount equal to at least 16 percent of the total budget authority from the current county fiscal year, as provided in s. 28.36(3)(a)

~~1. No later than February 1, 2020, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a) in excess of $10 million.~~

~~2. No later than February 1, 2021, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~3. No later than February 1, 2022, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund not less than 50 percent of the sum of the cumulative excess of all fines, fees, service charges,~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a); provided however, the balance remaining in the Clerks of Courts Trust Fund after such transfer may not be more than $20 million.~~

~~4. No later than February 1, 2023, and each February 1 thereafter, the Department of Revenue shall transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court pursuant to subsection (2) and the cumulative excess of all fines, fees, service charges, and costs remitted by the clerks of court pursuant to paragraph (a).~~

(5)~~(4)~~ The Department of Revenue shall collect any funds that the Florida Clerks of Court Operations Corporation determines upon investigation were due but not remitted to the Department of Revenue. The corporation shall notify the clerk of the court and the Department of Revenue of the amount due to the Department of Revenue. The clerk of the court shall remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of the court.

(6)~~(5)~~ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a), must ~~shall~~ be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions, as provided in s. 28.35(3)(a).

Section 5. Section 28.42, Florida Statutes, is amended to

read:

28.42 Manual of filing fees, charges, costs, and fines; payment plan form.—

(1) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall prepare and disseminate a manual of filing fees, service charges, costs, and fines imposed pursuant to state law, for each type of action and offense, and classified as mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. The clerks, through their association, shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year.

(2) By October 1, 2021, the clerks of court, through the Florida Clerks of Court Operations Corporation, shall develop a uniform payment plan form for use by persons seeking to establish a payment plan in accordance with s. 28.246(4). The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment.

(3) By January 1, 2022, each clerk of court shall use the uniform payment plan form developed pursuant to subsection (2) when establishing payment plans.

Section 6. Paragraph (a) of subsection (1) of section

318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(1)(a) If a person fails to comply with the civil penalties provided in s. 318.18 within the time period specified in s. 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with ss. 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court must ~~shall~~ notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department must ~~shall~~ immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order also must inform the person that he or she may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for court-related fines, fees, service charges, and court costs. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside of this state ~~Florida~~, must ~~shall~~ remain on the records of the department for a period of 7 years from the date imposed and must ~~shall~~ be removed from the records after the expiration of 7 years from the date it is imposed. The department may not accept the resubmission of such suspension.

Section 7. Section 318.20, Florida Statutes, is amended to read:

318.20 Notification; duties of department.—The department

shall prepare a notification form to be appended to, or incorporated as a part of, the Florida uniform traffic citation issued in accordance with s. 316.650. The notification form must ~~shall~~ contain language informing persons charged with infractions to which this chapter applies of the procedures available to them under this chapter. Such notification form must ~~shall~~ contain a statement that, if the official determines that no infraction has been committed, no costs or penalties may ~~shall~~ be imposed and any costs or penalties that ~~which~~ have been paid will ~~shall~~ be returned. Additionally, the notification form must include information on paying the civil penalty to the clerk of the court and the ability to establish a payment plan pursuant to s. 28.246(4). A uniform traffic citation that is produced electronically must also include the information required by this section.

Section 8. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 322.245, Florida Statutes, are amended to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(1) If a person charged with a violation of any of the criminal offenses enumerated in s. 318.17 or with the commission of any offense constituting a misdemeanor under chapter 320 or this chapter fails to comply with all of the directives of the court within the time allotted by the court, the clerk of the

~~traffic~~ court must provide ~~shall mail to~~ the person, either electronically or by mail sent to ~~at~~ the address specified on the uniform traffic citation, a notice of such failure, notifying him or her that, if he or she does not comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to $25 to the clerk, from which the clerk shall remit $10 to the Department of Revenue for deposit into the General Revenue Fund, his or her driver license will be suspended. The notice must ~~shall~~ be sent ~~mailed~~ no later than 5 days after such failure. The delinquency fee may be retained by the office of the clerk to defray the operating costs of the office.

(3) If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply with the requirements of s. 61.13016 within the period specified in that statute, the depository or the clerk of the court must ~~shall~~ electronically notify the department of such failure within 10 days. Upon electronic receipt of the notice, the department shall immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed in accordance with s. 322.251(1), (2), and (6). The order of suspension must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

(5)(a) When the department receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state under the provisions of this chapter has failed to

pay financial obligations for any criminal offense other than those specified in subsection (1), in full or in part under a payment plan pursuant to s. 28.246(4), the department must ~~shall~~ suspend the license of the person named in the notice. The department shall mail an order of suspension in accordance with s. 322.251(1), (2), and (6), which must also contain information specifying that the person may contact the clerk of the court to establish a payment plan pursuant to s. 28.246(4) to make partial payments for fines, fees, service charges, and court costs.

Section 9. Present subsection (3) of section 775.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

775.083 Fines.—

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full, or to apply for enrollment in a payment plan, pursuant to s. 28.246(4).

Section 10. Except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1024 (716122)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Brodeur and others
SUBJECT:	Increasing Access to Mental Health Care
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1024 requires the Department of Financial Services (DFS) to submit a report to the Legislature and the Governor regarding complaints submitted by individuals covered by an individual or group health insurance policy or health maintenance organization (HMO) contract about the adequacy of coverage and access to mental health services. The report is due January 31, 2022.

Insurers and HMOs are required to provide insureds and subscribers a direct notice regarding the federal and state coverage requirements for mental health services, as well as contact information for the Division of Consumer Services within the DFS. Insurers and HMOs are also required to make this information available on their website.

The bill will have an insignificant fiscal impact on the DFS that can be absorbed within existing resources.

The bill is effective October 1, 2021.

II. Present Situation:

Mental health is a state of mind characterized by emotional well-being, good behavioral adjustment, relative freedom from anxiety and disabling symptoms, and a capacity to establish constructive relationships and cope with the ordinary demands and stresses of life.[1] Mental illness refers collectively to all diagnosable mental disorders – health conditions involving significant changes in thinking, emotion or behavior or distress or problems functioning in social, work, or family activities.[2] In the United States, mental illnesses are common. Nearly one in five U.S. adults, or 51.5 million people, in 2019, were living with a mental illness, which represents 20.6 percent of all U.S. adults.[3] Mental illnesses include many different conditions that vary in degree of severity, ranging from mild to moderate to severe. Serious mental illness (SMI) is a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.[4] The burden of mental illnesses is particularly concentrated among those who experience disability due to SMI. In 2019, there were an estimated 13.1 million adults aged 18 or older in the United States with SMI. This number represented 5.2 percent of all U.S. adults. In 2019, among the 13.1 million adults with SMI, 8.6 million (65.5 percent) received mental health treatment in the past year.[5]

Some mental health conditions have been identified as risk factors for developing a substance use disorder.[6] For example, research suggests that people with mental illness may use drugs or alcohol as a form of self-medication.[7] In the United States, approximately 8.2 million adults (3.4 percent of all adults) had co-occurring disorders, which is the existence of both a mental health and a substance use disorder.[8]

Mental Health Insurance Coverage in the Private Health Insurance Market

Federal Requirements

Prior to 1996, health insurance coverage for mental illness was generally not as comprehensive as coverage for medical and surgical benefits. In response, Congress enacted the Mental Health Parity Act of 1996[9] (MHPA), which requires parity of medical and surgical benefits with mental health benefits for annual and aggregate lifetime limits of large group plans.

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[1] American Psychological Association, APA Dictionary of Psychology, https://dictionary.apa.org/mental-health (last visited Feb. 20, 2021).
[2] American Psychological Association, What is Mental Illness? https://www.psychiatry.org/patients-families/what-is-mental-illness (last visited Jan. 30, 2021).
[3] National Institute of Mental Health, *Mental Illness,* available at https://www.nimh.nih.gov/health/statistics/mental-illness.shtml (last viewed Feb. 20, 2021).
[4] *Id.*
[5] *Id*.
[6] M. Baigent, Managing patients with dual diagnosis in psychiatric practice. Curr Opin Psychiatry. 2012;25(3):201-205.
[7] K. Santucci, Psychiatric disease and drug abuse. *Curr Opin Pediatr.* 2012;24(2):233-237.
[8] Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health (Sep. 2017), available at https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.pdf (last viewed Feb. 20, 2021).
[9] Pub. L. No. 104-204.

In 2008, Congress passed the Mental Health Parity and Addiction Equity Act[10] (MHPAEA), which generally applies to large group health plans.[11] The MHPAEA expanded parity of coverage to include financial requirements, treatment limitations, and in- and out-of-network coverage if a plan provided coverage for mental illness. The MHPAEA also applies to the treatment of substance use disorders.[12] Like the MHPA, the MHPAEA does not require large groups to provide benefits for mental health or substance use disorders. The MHPAEA contains a cost exemption, which allows a group health plan to receive a waiver, exempting them from some of the key requirements, if the plan demonstrates that costs increased at least one percent because of compliance.[13]

In 2010, the Patient Protection and Affordable Care Act[14] (PPACA) amended the MHPAEA to apply the provisions to individual health insurance coverage. The PPACA mandates that qualified health plans must provide coverage of 10 essential health benefits,[15] including coverage for mental health and substance use disorders for individual and small group qualified health plans. The final rule, implementing these provisions, generally requires health insurers offering health insurance coverage in the individual and small group markets to comply with the requirements of the MHPAEA regulations in order to satisfy the essential health benefit requirement.[16]

State Requirements

Section 627.668, F.S., requires insurers and HMOs offering group coverage to make available optional coverage for mental and nervous disorders for an appropriate additional premium that would include specified benefits. Section 627.669, F.S., requires insurers and HMOs offering group coverage to make available optional coverage for substance abuse that would include certain benefits.

Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida,[17] is designated as the State Fire Marshal,[18] and is known as the Treasurer. [19] The CFO is the head of the DFS.[20] Section 20.121, F.S., establishes the Office of

[10] Pub. L. No. 110-343.
[11] 45 CFR Parts 146 and 147.
[12] 45 CFR Parts 146 and 160.
[13] Plans and issuers that make changes to comply with MHPAEA and incur an increased cost of at least two percent in the first year that MHPAEA applies to the plan or coverage or at least one percent in any subsequent plan year may claim an exemption from MHPAEA based on their increased cost. If such a cost is incurred, the plan or coverage is exempt from MHPAEA requirements for the plan or policy year following the year the cost was incurred. The plan sponsors or issuers must notify the plan beneficiaries that MHPAEA does not apply to their coverage. These exemptions last one year. After that, the plan or coverage is required to comply again; however, if the plan or coverage incurs an increased cost of at least one percent in that plan or policy year, the plan or coverage could claim the exemption for the following plan or policy year.
[14] Pub. L. No.111-148, as amended by Pub. L. No. 111-152.
[15] 45 CFR s. 156.115.
[16] 45 CFR ss. 147.150 and 156.115.
[17] FLA. CONST. art. IV, s. 4.
[18] Section 633.104(1), F.S.
[19] Section 20.121, F.S.
[20] Id.

the Insurance Consumer Advocate and numerous divisions within the DFS, including the Division of Consumer Services.

Division of Consumer Services

The Division of Consumer Services (division) of the DFS assists consumers with issues and complaints related to products or services regulated by the DFS or the Office of Insurance (OIR). The division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to the appropriate division within the DFS or the OIR, as applicable.[21]

A consumer may request assistance from the division regarding coverage questions and concerns, or file a formal complaint by telephone, email, or online.[22] An insurer or other entity licensed or issued a certificate of authority by the DFS or the OIR must respond in writing to the division within 20 days after receipt of a written request for information from the division concerning a consumer complaint.[23] The division may impose an administrative penalty on an entity licensed by the DFS or the OIR that fails to respond to the division.[24]

The division currently tracks and monitors complaint activity using a database known as ServicePoint.[25] The division can generate reports, by request, on any entity, individual, line of business, or reason by accessing ServicePoint codes along with the use of key word searches. Individuals requesting reports can request any key words to be used in their report request. The division refers managed care consumer complaints regarding allegations of lack of an adequate provider network to the agency once the division has assisted the individual to the extent of its ability.[26]

The Office of Insurance Regulation

The OIR regulates insurers, HMOs, and other risk-bearing entities.[27] Rates and forms of health insurers and HMOs are subject to prior approval by the OIR.[28] The OIR reviews health insurance rates and forms for compliance with state and federal laws, such as the MHPAEA.[29] The OIR communicates any violations of MHPAEA to the insurer or HMO. If the insurer or HMO fails to

[21] Section 624.307(10), F.S.
[22] DFS, Division of Consumer Services, *File an insurance complaint,* at https://www.myfloridacfo.com/Division/Consumers/needourhelp.htm (last viewed Feb. 24, 2021).
[23] Section 624.307(10)(b), F.S.
[24] *Id*.
[25] DFS, *2021 Legislative Bill Analysis of SB 1024* (Feb. 25, 2021).
[26] *Id*.
[27] Section 20.121(3)(a), F.S.
[28] Sections 627.410, 627.411, and 627.413, F.S.
[29] Office of Insurance Regulation, MHPAEA Compliance Checklist to be Completed by Regulated Entity, https://www.floir.com/sitedocuments/2021ACAEnhancedAttestation.pdf (last viewed Feb. 21, 2021).

correct the issue, the OIR would refer the issue to the appropriate federal regulator as a possible violation of federal law.[30]

III. Effect of Proposed Changes:

Section 1 creates s. 624.36, F.S., to require the DFS to submit a report by January 31, 2022, to the Legislature and the Governor regarding the disposition of complaints relating to access and affordability of mental health services and benefits during the prior calendar year. The report must include all of the following information:

- The total number of complaints received.
- The nature of the complaints; including but not limited to, concerns related to access to providers, facilities, and inpatient or outpatient services; affordability of services. equivalency of mental health benefits with respect to medical and surgical benefits; quality of care; and denial of services.
- The disposition of complaints.
- Any recommendations made by the DFS to the Legislature for ensuring access to and the affordability of mental health services to insureds and subscribers.

Further, the section also requires the DFS to make available on its website a description of mental health benefits required to be made available pursuant to state and federal law for individual and group policies and contracts.

Sections 2 and 3 create ss. 627.4215 and 641.31085, F.S., to require health insurers and HMOs, respectively, to provide direct notices to insureds and subscribers and make information available on their websites. Health insurers and HMOs are required to provide insureds and subscribers an annual direct notice regarding the federal and state requirements for coverage of mental health services, as well as contact information for the DFS' Division of Consumer Services. Further, insurers and HMOs are required to make the same information contained in the written notices available at their respective websites.

Section 4 provides the bill has an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[30] Section 624.26(2), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The written disclosures regarding the state and federal mental health coverage requirements and the contact information for the DFS Consumer Hotline that insurers and HMOs would provide insureds and subscribers may assist insureds and subscribers in understanding their coverage and obtaining mental health services.

C. Government Sector Impact:

Department of Financial Services[31]

The fiscal impact is indeterminate. The Division of Consumer Services of the DFS currently uses a database for monitoring and tracking complaints and generating reports. The DFS may incur insignificant costs associated with producing a complaint report for the prior calendar year and modifying their website to include a description of mental health benefits required to be made available pursuant to state and federal law. These costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 624.36, 627.4215, and 641.31085.

[31] *See Supra* note 36.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee Agriculture, Environment, and General Government on March 24, 2021:
The committee substitute clarifies that health insurers and HMOs shall provide direct versus written notice to insurers and subscribers, respectively, on an annual basis.

CS by Banking and Insurance on March 10, 2021:
The CS:

- Requires the DFS to submit a report to the Legislature and the Governor using information generated from their current complaint database and eliminates the requirement that the Agency for Health Care Administration collaborate on complaint tracking and the issuance of a joint report with the DFS.
- Revises the information that must be included in the DFS report about complaints received from insureds and subscribers relating to the access and affordability of mental health services and benefits.
- Requires the DFS to make available on their website a description of mental health benefits required to be made available pursuant to state and federal laws for individual and group policies and contracts.
- Requires insurers and HMOs to provide written notices to insureds and subscribers, respectively, and information on their website regarding federal and state requirements for coverage of mental health services and contact information for the Division of Consumer Services of the DFS.
- Revises the report due date from January 1, 2022, to January 31, 2022 and the effective date of the bill from July 1, 2021, to October 1, 2021.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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576-03361-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to increasing access to mental health care; creating s. 624.36, F.S.; requiring the Department of Financial Services to submit a specified report to the Governor and Legislature by a specified date; specifying the minimum information the report must contain; requiring the department to make certain information available on its website; creating ss. 627.4215 and 641.31085, F.S.; requiring insurers and health maintenance organizations, respectively, to disclose specified information on their websites; requiring insurers and health maintenance organizations, respectively, to annually provide certain direct notices to insureds or subscribers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.36, Florida Statutes, is created to read:

624.36 Coverage of and access to mental health services; complaints; reporting.—

(1) By January 31, 2022, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to the disposition of complaints received from insureds and subscribers

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of insurers or health maintenance organizations regulated by the office relating to the access and affordability of mental health services and benefits during the prior calendar year. At a minimum, the report must include all of the following information:

(a) The total number of complaints received.

(b) The nature of complaints, including, but not limited to, concerns related to access to in-network providers or facilities; access to inpatient or outpatient services; availability of specialists; affordability of services; equivalency of mental health benefits with respect to medical and surgical benefits; quality of care; and denial of services, including the types of services denied and the stated reason for the denials.

(c) The disposition of complaints.

(d) Any recommendations made by the department to the Legislature for ensuring access to and the affordability of mental health services to insureds and subscribers.

(2) The department shall make available on its website a description of mental health benefits required to be made available pursuant to s. 627.668 and federal law for individual and group policies and contracts.

Section 2. Section 627.4215, Florida Statutes, is created to read:

627.4215 Disclosures to policyholders; coverage of mental and nervous disorders.—

(1) An insurer shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of

mental health services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a hyperlink, for consumers to submit inquiries or complaints relating to insurer or health maintenance organization products or services regulated by the department or the office.

(2) On an annual basis, an insurer shall provide direct notice to insureds which must include a description of the federal and state requirements for coverage of mental health services. Such notice must also include the website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 3. Section 641.31085, Florida Statutes, is created to read:

641.31085 Disclosures to subscribers; coverage of mental and nervous disorders.—

(1) A health maintenance organization shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of mental health services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a hyperlink, for consumers to submit inquiries or complaints relating to insurer or health maintenance organization products or services regulated by the department or the office.

(2) On an annual basis, a health maintenance organization shall provide direct notice to subscribers which must include a description of the federal and state requirements for coverage of mental health services. Such notice must also include the

website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 4. This act shall take effect October 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1024
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Brodeur and others
SUBJECT:	Increasing Access to Mental Health Care
DATE:	April 16, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1024 requires the Department of Financial Services (DFS) to submit a report to the Legislature and the Governor regarding complaints submitted by individuals covered by an individual or group health insurance policy or health maintenance organization (HMO) contract about the adequacy of coverage and access to mental health services. The report is due January 31, 2022.

Insurers and HMOs are required to provide insureds and subscribers a direct notice regarding the federal and state coverage requirements for mental health services, as well as contact information for the Division of Consumer Services within the DFS. Insurers and HMOs are also required to make this information available on their website.

The bill will have an insignificant fiscal impact on the DFS that can be absorbed within existing resources.

The bill is effective October 1, 2021.

II. Present Situation:

Mental health is a state of mind characterized by emotional well-being, good behavioral adjustment, relative freedom from anxiety and disabling symptoms, and a capacity to establish constructive relationships and cope with the ordinary demands and stresses of life.[1] Mental illness refers collectively to all diagnosable mental disorders – health conditions involving significant changes in thinking, emotion or behavior or distress or problems functioning in social, work, or family activities.[2] In the United States, mental illnesses are common. Nearly one in five U.S. adults, or 51.5 million people, in 2019, were living with a mental illness, which represents 20.6 percent of all U.S. adults.[3] Mental illnesses include many different conditions that vary in degree of severity, ranging from mild to moderate to severe. Serious mental illness (SMI) is a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.[4] The burden of mental illnesses is particularly concentrated among those who experience disability due to SMI. In 2019, there were an estimated 13.1 million adults aged 18 or older in the United States with SMI. This number represented 5.2 percent of all U.S. adults. In 2019, among the 13.1 million adults with SMI, 8.6 million (65.5 percent) received mental health treatment in the past year.[5]

Some mental health conditions have been identified as risk factors for developing a substance use disorder.[6] For example, research suggests that people with mental illness may use drugs or alcohol as a form of self-medication.[7] In the United States, approximately 8.2 million adults (3.4 percent of all adults) had co-occurring disorders, which is the existence of both a mental health and a substance use disorder.[8]

Mental Health Insurance Coverage in the Private Health Insurance Market

Federal Requirements

Prior to 1996, health insurance coverage for mental illness was generally not as comprehensive as coverage for medical and surgical benefits. In response, Congress enacted the Mental Health Parity Act of 1996[9] (MHPA), which requires parity of medical and surgical benefits with mental health benefits for annual and aggregate lifetime limits of large group plans.

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[1] American Psychological Association, APA Dictionary of Psychology, https://dictionary.apa.org/mental-health (last visited Feb. 20, 2021).
[2] American Psychological Association, What is Mental Illness? https://www.psychiatry.org/patients-families/what-is-mental-illness (last visited Jan. 30, 2021).
[3] National Institute of Mental Health, *Mental Illness,* available at https://www.nimh.nih.gov/health/statistics/mental-illness.shtml (last viewed Feb. 20, 2021).
[4] *Id.*
[5] *Id*.
[6] M. Baigent, Managing patients with dual diagnosis in psychiatric practice. Curr Opin Psychiatry. 2012;25(3):201-205.
[7] K. Santucci, Psychiatric disease and drug abuse. *Curr Opin Pediatr.* 2012;24(2):233-237.
[8] Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health (Sep. 2017), available at https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.pdf (last viewed Feb. 20, 2021).
[9] Pub. L. No. 104-204.

In 2008, Congress passed the Mental Health Parity and Addiction Equity Act[10] (MHPAEA), which generally applies to large group health plans.[11] The MHPAEA expanded parity of coverage to include financial requirements, treatment limitations, and in- and out-of-network coverage if a plan provided coverage for mental illness. The MHPAEA also applies to the treatment of substance use disorders.[12] Like the MHPA, the MHPAEA does not require large groups to provide benefits for mental health or substance use disorders. The MHPAEA contains a cost exemption, which allows a group health plan to receive a waiver, exempting them from some of the key requirements, if the plan demonstrates that costs increased at least one percent because of compliance.[13]

In 2010, the Patient Protection and Affordable Care Act[14] (PPACA) amended the MHPAEA to apply the provisions to individual health insurance coverage. The PPACA mandates that qualified health plans must provide coverage of 10 essential health benefits,[15] including coverage for mental health and substance use disorders for individual and small group qualified health plans. The final rule, implementing these provisions, generally requires health insurers offering health insurance coverage in the individual and small group markets to comply with the requirements of the MHPAEA regulations in order to satisfy the essential health benefit requirement.[16]

State Requirements

Section 627.668, F.S., requires insurers and HMOs offering group coverage to make available optional coverage for mental and nervous disorders for an appropriate additional premium that would include specified benefits. Section 627.669, F.S., requires insurers and HMOs offering group coverage to make available optional coverage for substance abuse that would include certain benefits.

Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida,[17] is designated as the State Fire Marshal,[18] and is known as the Treasurer. [19] The CFO is the head of the DFS.[20] Section 20.121, F.S., establishes the Office of

[10] Pub. L. No. 110-343.
[11] 45 CFR Parts 146 and 147.
[12] 45 CFR Parts 146 and 160.
[13] Plans and issuers that make changes to comply with MHPAEA and incur an increased cost of at least two percent in the first year that MHPAEA applies to the plan or coverage or at least one percent in any subsequent plan year may claim an exemption from MHPAEA based on their increased cost. If such a cost is incurred, the plan or coverage is exempt from MHPAEA requirements for the plan or policy year following the year the cost was incurred. The plan sponsors or issuers must notify the plan beneficiaries that MHPAEA does not apply to their coverage. These exemptions last one year. After that, the plan or coverage is required to comply again; however, if the plan or coverage incurs an increased cost of at least one percent in that plan or policy year, the plan or coverage could claim the exemption for the following plan or policy year.
[14] Pub. L. No.111-148, as amended by Pub. L. No. 111-152.
[15] 45 CFR s. 156.115.
[16] 45 CFR ss. 147.150 and 156.115.
[17] FLA. CONST. art. IV, s. 4.
[18] Section 633.104(1), F.S.
[19] Section 20.121, F.S.
[20] Id.

the Insurance Consumer Advocate and numerous divisions within the DFS, including the Division of Consumer Services.

Division of Consumer Services

The Division of Consumer Services (division) of the DFS assists consumers with issues and complaints related to products or services regulated by the DFS or the Office of Insurance (OIR). The division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to the appropriate division within the DFS or the OIR, as applicable.[21]

A consumer may request assistance from the division regarding coverage questions and concerns, or file a formal complaint by telephone, email, or online.[22] An insurer or other entity licensed or issued a certificate of authority by the DFS or the OIR must respond in writing to the division within 20 days after receipt of a written request for information from the division concerning a consumer complaint.[23] The division may impose an administrative penalty on an entity licensed by the DFS or the OIR that fails to respond to the division.[24]

The division currently tracks and monitors complaint activity using a database known as ServicePoint.[25] The division can generate reports, by request, on any entity, individual, line of business, or reason by accessing ServicePoint codes along with the use of key word searches. Individuals requesting reports can request any key words to be used in their report request. The division refers managed care consumer complaints regarding allegations of lack of an adequate provider network to the agency once the division has assisted the individual to the extent of its ability.[26]

The Office of Insurance Regulation

The OIR regulates insurers, HMOs, and other risk-bearing entities.[27] Rates and forms of health insurers and HMOs are subject to prior approval by the OIR.[28] The OIR reviews health insurance rates and forms for compliance with state and federal laws, such as the MHPAEA.[29] The OIR communicates any violations of MHPAEA to the insurer or HMO. If the insurer or HMO fails to

[21] Section 624.307(10), F.S.
[22] DFS, Division of Consumer Services, *File an insurance complaint,* at https://www.myfloridacfo.com/Division/Consumers/needourhelp.htm (last viewed Feb. 24, 2021).
[23] Section 624.307(10)(b), F.S.
[24] *Id*.
[25] DFS, *2021 Legislative Bill Analysis of SB 1024* (Feb. 25, 2021).
[26] *Id.*
[27] Section 20.121(3)(a), F.S.
[28] Sections 627.410, 627.411, and 627.413, F.S.
[29] Office of Insurance Regulation, MHPAEA Compliance Checklist to be Completed by Regulated Entity, https://www.floir.com/sitedocuments/2021ACAEnhancedAttestation.pdf (last viewed Feb. 21, 2021).

correct the issue, the OIR would refer the issue to the appropriate federal regulator as a possible violation of federal law.[30]

III. Effect of Proposed Changes:

Section 1 creates s. 624.36, F.S., to require the DFS to submit a report by January 31, 2022, to the Legislature and the Governor regarding the disposition of complaints relating to access and affordability of mental health services and benefits during the prior calendar year. The report must include all of the following information:

- The total number of complaints received.
- The nature of the complaints; including but not limited to, concerns related to access to providers, facilities, and inpatient or outpatient services; affordability of services. equivalency of mental health benefits with respect to medical and surgical benefits; quality of care; and denial of services.
- The disposition of complaints.
- Any recommendations made by the DFS to the Legislature for ensuring access to and the affordability of mental health services to insureds and subscribers.

Further, the section also requires the DFS to make available on its website a description of mental health benefits required to be made available pursuant to state and federal law for individual and group policies and contracts.

Sections 2 and 3 create ss. 627.4215 and 641.31085, F.S., to require health insurers and HMOs, respectively, to provide direct notices to insureds and subscribers and make information available on their websites. Health insurers and HMOs are required to provide insureds and subscribers an annual direct notice regarding the federal and state requirements for coverage of mental health services, as well as contact information for the DFS' Division of Consumer Services. Further, insurers and HMOs are required to make the same information contained in the written notices available at their respective websites.

Section 4 provides the bill has an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[30] Section 624.26(2), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The written disclosures regarding the state and federal mental health coverage requirements and the contact information for the DFS Consumer Hotline that insurers and HMOs would provide insureds and subscribers may assist insureds and subscribers in understanding their coverage and obtaining mental health services.

C. Government Sector Impact:

Department of Financial Services[31]

The fiscal impact is indeterminate. The Division of Consumer Services of the DFS currently uses a database for monitoring and tracking complaints and generating reports. The DFS may incur insignificant costs associated with producing a complaint report for the prior calendar year and modifying their website to include a description of mental health benefits required to be made available pursuant to state and federal law. These costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 624.36, 627.4215, and 641.31085.

[31] *See Supra* note 36.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute clarifies that health insurers and HMOs shall provide direct versus written notice to insurers and subscribers, respectively, on an annual basis.

CS by Banking and Insurance on March 10, 2021:
The CS:

- Requires the DFS to submit a report to the Legislature and the Governor using information generated from their current complaint database and eliminates the requirement that the Agency for Health Care Administration collaborate on complaint tracking and the issuance of a joint report with the DFS.
- Revises the information that must be included in the DFS report about complaints received from insureds and subscribers relating to the access and affordability of mental health services and benefits.
- Requires the DFS to make available on their website a description of mental health benefits required to be made available pursuant to state and federal laws for individual and group policies and contracts.
- Requires insurers and HMOs to provide written notices to insureds and subscribers, respectively, and information on their website regarding federal and state requirements for coverage of mental health services and contact information for the Division of Consumer Services of the DFS.
- Revises the report due date from January 1, 2022, to January 31, 2022 and the effective date of the bill from July 1, 2021, to October 1, 2021.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senators Brodeur and Rouson

597-02653-21 20211024c1

A bill to be entitled

An act relating to increasing access to mental health care; creating s. 624.36, F.S.; requiring the Department of Financial Services to submit a specified report to the Governor and Legislature by a specified date; specifying the minimum information the report must contain; requiring the department to make certain information available on its website; creating ss. 627.4215 and 641.31085, F.S.; requiring insurers and health maintenance organizations, respectively, to disclose specified information on their websites; requiring insurers and health maintenance organizations, respectively, to annually provide certain written notices to insureds or subscribers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.36, Florida Statutes, is created to read:

624.36 Coverage of and access to mental health services; complaints; reporting.—

(1) By January 31, 2022, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to the disposition of complaints received from insureds and subscribers of insurers or health maintenance organizations regulated by the office relating to the access and affordability of mental health services and benefits during the prior calendar year. At a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02653-21 20211024c1

minimum, the report must include all of the following information:

(a) The total number of complaints received.

(b) The nature of complaints, including, but not limited to, concerns related to access to in-network providers or facilities; access to inpatient or outpatient services; availability of specialists; affordability of services; equivalency of mental health benefits with respect to medical and surgical benefits; quality of care; and denial of services, including the types of services denied and the stated reason for the denials.

(c) The disposition of complaints.

(d) Any recommendations made by the department to the Legislature for ensuring access to and the affordability of mental health services to insureds and subscribers.

(2) The department shall make available on its website a description of mental health benefits required to be made available pursuant to s. 627.668 and federal law for individual and group policies and contracts.

Section 2. Section 627.4215, Florida Statutes, is created to read:

627.4215 Disclosures to policyholders; coverage of mental and nervous disorders.—

(1) An insurer shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of mental health services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hyperlink, for consumers to submit inquiries or complaints relating to insurer or health maintenance organization products or services regulated by the department or the office.

(2) On an annual basis, an insurer shall provide written notice to insureds which must include a description of the federal and state requirements for coverage of mental health services. Such notice must also include the website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 3. Section 641.31085, Florida Statutes, is created to read:

641.31085 Disclosures to subscribers; coverage of mental and nervous disorders.—

(1) A health maintenance organization shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of mental health services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a hyperlink, for consumers to submit inquiries or complaints relating to insurer or health maintenance organization products or services regulated by the department or the office.

(2) On an annual basis, a health maintenance organization shall provide written notice to subscribers which must include a description of the federal and state requirements for coverage of mental health services. Such notice must also include the website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 4. This act shall take effect October 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill 1024**, relating to Increasing Access to Mental Health Care, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1086 (518944)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Hutson
SUBJECT:	Operation and Safety of Motor Vehicles and Vessels
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1086 contains numerous changes to existing laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities.

Relating to rulemaking, the bill provides additional rulemaking authority to the FWC to implement provisions relating to derelict vessels.

Relating to boater safety, the bill:

- Effective October 1, 2021, revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term "human-powered vessel" and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Prohibits a livery from leasing, hiring, or renting a vessel to a person required to complete a FWC-approved boating safety education course, unless the person presents certain documentation indicating compliance.
- Revises boating-restricted areas to include certain areas around public or private marinas, permitted public mooring fields, and the Florida Intracoastal Waterway.

- Designates Monroe County as an anchoring limitation area under certain conditions.
- Authorizes the FWC to establish anchoring/mooring/beaching/grounding protection zones for springs.
- Prohibits the operation of vessels faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.

Relating to derelict vessels, the bill:
- Authorizes officers to provide in-person notice that a vessel is at risk of becoming derelict if there is a body camera recording.
- Authorizes law enforcement officers to relocate at-risk vessels to a certain distance from mangroves or vegetation.
- Authorizes the FWC to establish a derelict vessel prevention program.
- Authorizes local governments to enact and enforce regulations to remove an abandoned or lost vessel affixed to a public mooring.
- Authorizes law enforcement officers to relocate or remove public nuisance vessels from the waters of this state.
- Prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes the FWC to provide local government grants for the destruction and disposal of derelict vessels.
- Creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state, including notice and hearing requirements and liability for removal costs.
- Revises the definition of the term "derelict vessel" to specify requirements for a vessel to be considered "wrecked," "junked," or "substantially dismantled."
- Authorizes certain governmental subdivisions to perform relocation or removal activities and specifies requirements for licensure, insurance, and equipment.

Relating to marine sanitation devices, the bill requires the owner/operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain records of each pump out.

Relating to penalties, the bill:
- Increases the civil penalties for a vessel deemed at risk of becoming derelict.
- Creates civil penalties for vessels creating special hazards as specified in the bill.
- Adds operating a human-powered vessel in the Intracoastal Waterway to the list of violations resulting in a noncriminal infraction.

Relating to spaceflight, the bill authorizes the FWC to establish temporary protective zones in certain water bodies in preparation for a launch service or reentry service, or for the recovery of spaceflight assets before or after a launch service or reentry service.

There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

The bill provides that except as otherwise expressly provided, the effective date is July 1, 2021.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.[1] The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.[2] Under Article IV, Section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid the FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.[3]

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.[4] The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.[5] This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.[6]

Boater Safety Education

A person born on or after January 1, 1988, who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.[7] To obtain a card, a person must complete an approved boating safety course.[8] There are several courses available at various price points ranging from free up to $50.[9] The course must meet the eight-hour instruction requirement established by the National Association of State Boating Law

[1] FLA. CONST. art. IV, s. 9.
[2] *Id.*; *see also* s. 379.102(1), F.S.
[3] FLA. CONST. art. IV, s. 9.
[4] Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[5] Fish and Wildlife Conservation Commission (FWC), *Boating*, https://myfwc.com/boating/ (last visited Feb. 13, 2021).
[6] FWC, *Law Enforcement*, https://myfwc.com/about/inside-fwc/le/ (last visited Feb. 15, 2021). *See* s. 327.70(1) and (4), F.S.
[7] Section 327.395(1), F.S.
[8] FWC, *Boater Education Identification Card*, https://myfwc.com/boating/safety-education/id/ (last visited Feb. 23, 2021). This card is not a boating license; it is a certification that the person named on the card has successfully completed the required boating safety course.
[9] FWC, *Boating Safety Courses*, https://myfwc.com/boating/safety-education/courses/ (last visited Feb. 23, 2021).

Administrators and must include a component regarding diving vessels.[10] The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 90 days after the date of issuance.[11]

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard (Coast Guard) to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalent examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
- Is exempted by FWC rule.[12]

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a $50 civil penalty.[13]

A livery may not knowingly lease, hire, or rent vessels under certain conditions meant to ensure boater safety.[14] A livery may also not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless the person presents photographic identification and a valid boater safety identification card to the livery or meets one of the listed exemptions.[15]

Boating Safety Regulations

An operator of a vessel in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person

[10] Section 327.395(1), F.S.
[11] Section 327.395(5), F.S.
[12] Section 327.395(6), F.S.
[13] Section 327.73(1)(s), F.S.
[14] Section 327.54(1), F.S. For example, vessels must have proper safety equipment and be seaworthy and the number of vessel occupants may not exceed the maximum safety load of the vessel.
[15] Section 327.54(2), F.S.

outside the vessel or due to vessel overloading or excessive speed.[16] Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is $50.[17]

Vessel owners and operators must carry, store, maintain, and use safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.[18] Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.[19]

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.[20] Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.[21]

State law prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.[22] Interference with navigation is a noncriminal infraction and punishable by a fine of $50.[23]

The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility (a facility that services or repairs a yacht with a water line of 120 feet or more in length); or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.[24]

However, there are exceptions if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or

[16] Section 327.33, F.S.
[17] Section 327.73(h), F.S.
[18] Section 327.50, F.S.
[19] *Id*.
[20] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
[21] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), *available at* https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 10, 2021).
[22] Section 327.44, F.S.
[23] Section 327.73, F.S.
[24] Section 327.4109(1)(a), F.S.

- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.[25]

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.[26]

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.[27] Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.[28]

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures[29] or live-aboard vessels[30] within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.[31] However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.[32]

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.[33] To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.[34] However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

[25] Section 327.4109(2), F.S.
[26] Section 327.4109(3), F.S.
[27] *See* s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).
[28] *See* Fla. Admin. Code R. 62-330.420.
[29] Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."
[30] Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats."
[31] Section 327.60(3), F.S.
[32] Section 327.60(2)(f), F.S.
[33] Section 327.4108(1), F.S.
[34] Section 327.4108(2), F.S.

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.[35]

Certain types of vessels are exempt from anchoring limitation areas, including certain government, construction, and fishing vessels.[36] Law enforcement officers or agencies may remove and impound vessels from anchoring limitation areas when a vessel operator who was previously issued a citation continues to anchor the vessel in or refuses to leave the anchoring limitation area.[37]

Boating-Restricted Areas

The FWC may establish boating-restricted areas on the waters of this state for any purpose deemed necessary to ensure the safety of the public if the restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.[38] The FWC adopts boating-restricted areas by rule.[39]

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the Coast Guard and the United States Army Corps of Engineers.[40]

Local governments also have authority to establish boating-restricted areas by ordinance.[41] These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local ordinances establishing boating-restricted areas are subject to FWC review and approval. The FWC must make its determination based on substantial competent evidence that the ordinance is necessary to protect public safety.[42] However, navigational hazards are presumed to

[35] Section 327.4108(3), F.S.
[36] Section 327.4108(4), F.S.
[37] Section 327.4108(5), F.S.
[38] Section 327.46, F.S. Boating-restricted areas can include, but are not limited to, restrictions of vessel speeds and vessel traffic.
[39] *See* Fla. Admin. Code R. 68D-24, for established boating restricted areas by county.
[40] Section 327.46(3), F.S.
[41] Section 327.46(1), F.S.
[42] *Id*.

exist in several areas noted under FWC rule and statute.[43] In these cases, a showing of substantial competent evidence is not required.

Additionally, the Coast Guard can establish safety zones,[44] security zones,[45] regulated navigation areas,[46] or naval vessel protection zones[47] where persons may not knowingly operate a vessel or authorize the operation of a vessel in violation of the restrictions under the zone.[48] The restricted vessel access protects against destruction, loss, or injury from various causes.[49] Generally, the Coast Guard establishes security zones around vessels, harbors, ports, and waterfront facilities. The Coast Guard has established several safety zones, security zones, and regulated navigation areas in Florida,[50] including a security zone around the Kennedy Space Center.[51]

A person who knowingly operates a vessel or authorizes the operation of a vessel in violation of an established zone or area, and without authorization by the Coast Guard Captain of the Port, commits a misdemeanor of the first degree.[52] A person who continues to do so after receiving a warning, or refusing to leave, commits a felony of the third degree.[53] State and local law enforcement may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state.[54]

Protection Zones for Springs

The FWC is authorized to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs, including negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.[55] To develop a springs protection zone, the FWC consults and coordinates with the appropriate water management district, the Department of Environmental Protection, and the county and municipality, if applicable, where the zone is located.[56]

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[43] *Id.*; Fla. Admin. Code R. 68D-21.004. Navigational hazards are presumed to exist in areas including: within certain distances of launching and landing facilities, fuel pumps, lock structures, bridge fenders; in certain small waterways or areas designated as a public bathing or swimming area; near certain bends in the waterway; areas subject to unsafe levels of vessel traffic congestion, hazardous water levels or currents; and canoe trails.
[44] 33 C.F.R. pt. 165 subpart C.
[45] 33 C.F.R. pt. 165 subpart D.
[46] 33 C.F.R. pt. 165 subpart B.
[47] 33 C.F.R. pt. 165 subpart G.
[48] Section 327.461(1)(a), F.S.
[49] 33 C.F.R. pt. 165; *see* United States Coast Guard, *Regulated Navigation Areas*, https://www.dco.uscg.mil/RNA/ (last visited Feb. 17, 2021).
[50] 33 C.F.R. s. 165.T07-0794 - 165.786, providing safety and security zones and regulated navigation areas in the Seventh Coast Guard District.
[51] 33 C.F.R. s. 165.701.
[52] Section 327.461(2), (7), F.S.
[53] Section 327.461(3), F.S.
[54] Section 327.461(1)(a), F.S.
[55] Section 327.45(2), F.S.
[56] Section 327.45(3), F.S. If the zone includes navigable waters of the United States, FWC is required to coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

The restrictions in a springs protection zone do not apply to certain law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties, or in emergency situations.[57]

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.[58] It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.[59]

At-Risk Vessels

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of this state.[60] A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. [61]

Abandoned Vessels

"Abandoned property"[62] means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in s. 823.11, F.S.

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.[63]

[57] Section 327.45(5), F.S.
[58] Section 823.11(1)(b), F.S.
[59] Section 376.15, F.S.; s. 823.11(2), F.S.
[60] Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.
[61] Section 327.4107, F.S.
[62] Section 705.101(3), F.S.
[63] Section 705.103(2), F.S.

If, after five days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.[64]

The owner of abandoned or lost property who does not remove the property after being noticed, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the property, less any salvage value obtained by the disposal of the property.[65] Upon the final disposition of the property, the law enforcement officer is required to notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.[66]

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.[67]

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.[68]

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.[69] FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.[70]

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.[71] A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[72]

[64] *Id*.
[65] Section 705.103(4), F.S.
[66] *Id*.
[67] Section 327.60(5), F.S.
[68] Section 327.70, F.S.
[69] Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.
[70] Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.
[71] Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.
[72] Section 705.103(4), F.S.

The FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.[73] Grants are awarded based on a set of criteria outlined in FWC rules.[74] Removal or relocation of a vessel on private property is not eligible for grant funding.[75] However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.[76]

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.[77] Violations are punishable by a term of imprisonment of no more than one year and a fine of up to $1,000.[78] Further, such violation is punishable by a civil penalty of up to $75,000 per violation per day.[79] Each day during any portion of which the violation occurs constitutes a separate offense.[80]

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- $50 for a first offense;
- $100 for a second offense occurring 30 days or more after a first offense; and
- $250 for a third offense occurring 30 days or more after a previous offense.[81]

Section 327.73(1)(bb), F.S., provides that an owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- $50 for a first offense;
- $100 for a second offense; and
- $250 for a third offense.[82]

Finally, s. 327.73(1), F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days imprisonment.[83]

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[73] Section 376.15, F.S.
[74] Fla. Admin. Code R. 68-1.003.
[75] National Oceanic and Atmospheric Association, Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida (last visited Feb. 22, 2021).
[76] Section 376.15, F.S.
[77] Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[78] Sections 775.082(4)(a) and 775.083(1)(d), F.S.
[79] Sections 376.15(2) and 376.16(1), F.S.
[80] Section 376.16(1), F.S.
[81] Section 327.73(1)(aa), F.S.
[82] Section 327.73(1)(bb), F.S.
[83] Sections 775.082 and 775.083, F.S.

Artificial Reef Program

Artificial reefs are reef habitats using one or more objects of natural or human origin intentionally placed on the seafloor to enhance marine life for human use. Artificial reefs provide benefits including:

- Enhancing recreational and diving opportunities;
- Providing socio-economic benefits to local coastal communities;
- Increasing reef fish habitat;
- Mitigation reefs to replace hard bottom habitat lost through activities such as beach re-nourishment and damage caused by vessel groundings;
- Oyster reef regeneration; and
- Shoreline protection.[84]

Florida has one of the most active artificial reef programs in the nation. Since the 1940s, more than 3,750 planned public artificial reefs have been placed in state and federal waters off of Florida's coast.[85] The FWC is authorized to accept title, on behalf of the state, of vessels to use as offshore reefs in the artificial reef program.[86] Under the program, the FWC provides grants and financial and technical assistance to coastal local governments, state universities, and qualified nonprofit organizations for the siting and development of artificial reefs, and for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness.[87]

Marine Sanitation Devices

Certain vessels, including those that are 26 feet or longer with an enclosed cabin and berthing facilities, houseboats,[88] and floating structures with an enclosed living space with berthing facilities or work space with public access, are required to have a working toilet on board.[89] Permanently installed toilets must be properly attached to a Coast Guard certified or labeled marine sanitation device.[90] A marine sanitation device is equipment that is designed to receive, retain, treat, or discharge sewage and the process to treat such sewage.[91]

Florida prohibits the discharge of untreated sewage from any vessel, including houseboats, or any floating structure into state waters.[92] This prohibition also applies to live-aboard vessels, which are defined as: a vessel used solely as a residence and not for navigation; a vessel for which a declaration of domicile has been filed; or a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial

[84] FWC, *Artificial Reefs*, https://myfwc.com/fishing/saltwater/artificial-reefs/ (last visited Feb. 22, 2021).
[85] *Id*.
[86] Section 379.249(1), F.S.
[87] *Id*.
[88] Section 327.02(17), F.S. defines a "houseboat" as a vessel used primarily as a residence and not moved for 21 out of 30 days in a county of this state if the residential use of the vessel is to the preclusion of its use as a means of transportation. Section 327.02(17).
[89] Section 327.53(1)-(3), F.S.
[90] *Id*.
[91] DEP, *Clean Boater FAQ*, https://floridadep.gov/rcp/cva/content/clean-boater-faq (last visited Feb. 22, 2021).
[92] Section 327.53(4)(a), F.S.

fishing vessels.[93] Vessel owners with Type III[94] marine sanitation devices must dispose of sewage in an approved pump-out facility.[95] Violators are subject to a noncriminal infraction, for which the penalty is $50.[96]

Nuisance Vessels

Florida law declares that vessels or floating structures that are operated or occupied on the waters of this state and violate marine sanitation device requirements are a nuisance and hazard to public safety and health.[97] If an owner or operator does not correct a violation within 30 days after a citation is issued, and their vessel or floating structure remains on the waters of this state, law enforcement officers are required to apply to the appropriate court in the county where the vessel or floating structure is located, to order or cause the removal of the vessel or floating structure from the waters of this state at the owner's expense.[98] If the owner cannot be found or fails to pay the removal costs, the vessel or floating structure will be sold at a nonjudicial sale and the proceeds will be used to pay the removal costs.[99]

Testing for Alcohol, Chemical Substances, and Controlled Substances

Anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath, or a urine test to detect the presence of chemical substances or controlled substances.[100] These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.[101]

Additionally, anyone who operates a motor vehicle or vessel in the state is deemed to have given his or her consent to submit to an approved blood test to determine the alcoholic content of his or her blood or to detect the presence of chemical substances or controlled substances.[102] These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.[103]

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[93] Section 327.02(22), F.S.
[94] Type III marine sanitation devices hold sewage, preventing the direct overboard discharge of sewage. Type I marine sanitation devices treat sewage by chemical or thermal means before discharge. Type II marine sanitation devices treat sewage by biological means, using bacteria, before discharge.
[95] Section 327.53(4)(b), F.S.
[96] Section 327.53(6)(a), F.S.
[97] Section 327.53(7), F.S.
[98] *Id*.
[99] Section 328.17, F.S.
[100] Sections 316.1932(1)(a) and 327.352(1)(a), F.S.
[101] *Id*.
[102] Sections 316.1932(1)(c) and 327.352(1)(c), F.S.
[103] *Id*.

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of one year for a first refusal, or 18 months for a repeat refusal.[104] A person who operates a motor vehicle who fails to submit to such test who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.[105]

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of $500 for a first refusal.[106] A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.[107]

However, in 2016, the United States Supreme Court issued a ruling in *Birchfield v. North Dakota* that prohibits warrantless blood tests incident to arrests for driving under the influence.[108] The Court held that the Fourth Amendment prohibits unreasonable searches, and the taking of a blood sample or administration of a blood test is a search.[109] Under the Court's ruling, refusing a blood test may not subject a person to criminal penalties.[110] Thus, Florida's current laws relating to the penalties for refusal to submit to a blood test are unenforceable.

Mangroves

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.[111] They provide protected nursery areas for fishes, crustaceans, and shellfish; food, shelter, and nesting areas for a multitude of species;[112] protection of the shoreline from storm surge and erosion;[113] and water quality protection.[114]

Currently, there are not any state regulations for anchoring or mooring near mangroves, although the trimming of mangroves is regulated under the Mangrove Trimming and Preservation Act.[115] Through the Mangrove Trimming and Preservation Act, the Legislature intends to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.[116] The FWC notes that removing derelict and at-risk vessels from areas in close proximity to mangroves and other upland vegetation can be considerably more expensive than from other areas due to conservation and depth concerns.[117]

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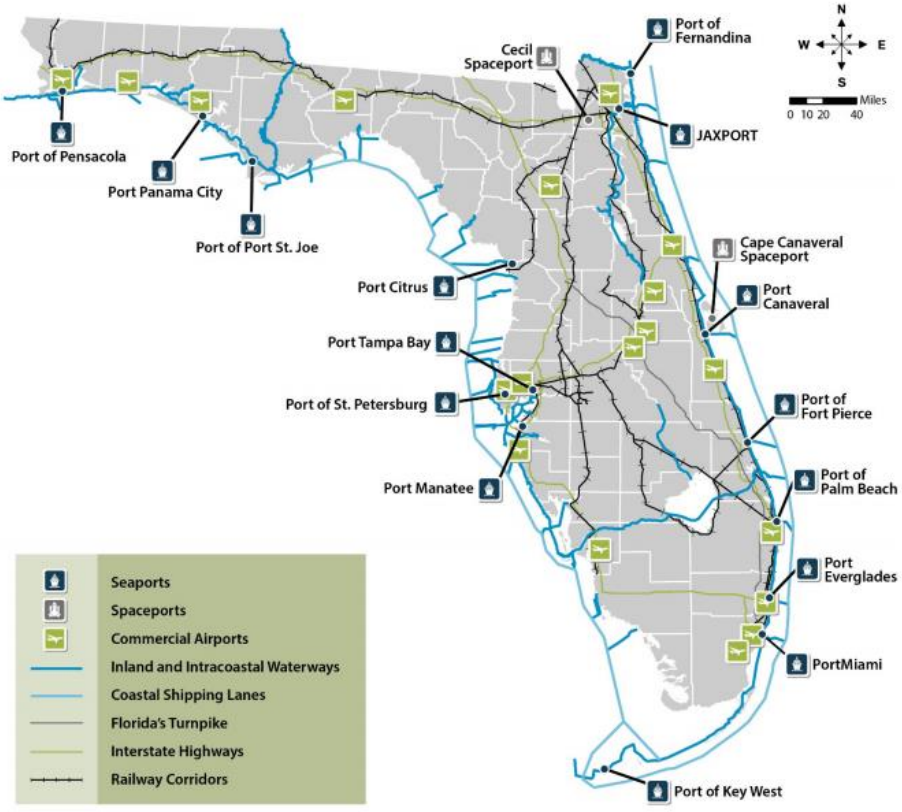
[104] Section 316.1932(1)(a) and (1)(c), F.S.
[105] *Id.*; s. 316.1939, F.S.
[106] Section 327.352(1)(a) and (1)(c), F.S.
[107] *Id.*; s. 327.259, F.S.
[108] *Birchfield v. North Dakota*, 136 U.S. 2160 (2016).
[109] *Id.*
[110] *Id.*
[111] DEP, *What is a Mangrove?*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove (last visited Feb. 23, 2021).
[112] DEP, *Florida's Mangroves*, https://floridadep.gov/rcp/rcp/content/floridas-mangroves (last visited Feb. 23, 2021).
[113] FWC, *Mangrove Forests*, https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/ (last visited Feb. 23, 2021).
[114] *Id.*
[115] Sections 403.9321-403.9333, F.S.
[116] Section 403.9323, F.S.
[117] FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

Florida Intracoastal Waterway

The Florida Intracoastal Waterway is defined as the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.[118] The Florida Intracoastal Waterway is shown in the map below.[119]



Spaceflight

With the recent resurgence of space activity, Florida is emerging as a national leader in spaceflight activities. In 2020, the space industry in Florida completed 31 launches from Cape

[118] Section 327.02(15), F.S.
[119] Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), *available at* https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf (last visited Mar. 1, 2021).

Canaveral Spaceport,[120] including the SpaceX Demo-2 mission in May 2020[121] and the SpaceX Crew-1 mission in November 2020.[122] According to Space Florida, over 50 launches are expected in 2021, and up to 100 launches are expected annually going forward.[123] Upon re-entry, the space capsules splashed down in waters off of Florida's coasts for the first time in 45 years.[124] The National Aeronautics and Space Administration (NASA) and SpaceX teams coordinated with the Coast Guard to ensure crew safety upon splashdown, including providing extra ships and air assets to patrol the splashdown zone to mitigate safety concerns for boaters approaching the landing area.[125]

When the capsule landed in waters near Pensacola in August 2020, private boats approached the landing area too closely, according to NASA.[126] This led to confusion as recovery crews tried to reach the spacecraft. There were concerns that private boats could have interfered with the emergency recovery operation and that the spacecraft's thrusters could have released toxic propellant fumes.[127] Although the Coast Guard had patrol boats in the area ahead of the splashdown, it stated that "numerous boaters ignored the Coast Guard crews' requests and decided to encroach the area, putting themselves and those involved in the operation in potential danger."[128]

There are no existing state statutes in place to protect spaceflight operations and astronauts. The FWC stated in its agency bill analysis that "spectator separation is necessary to prevent interference with sensitive operations, as well as for public safety reasons."[129]

III. Effect of Proposed Changes:

Testing for Alcohol, Chemical Substances, or Controlled Substances: Sections 1, 2, 6, and 7

Section 1 of the bill, effective October 1, 2021, amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle.

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[120] Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).
[121] National Aeronautics and Space Administration (NASA), *NASA, SpaceX Successfully Launch Demo-2 Mission*, https://blogs.nasa.gov/kennedy/2020/05/30/nasa-spacex-successfully-launch-demo-2-mission/ (last visited Feb. 22, 2021).
[122] NASA, *NASA, SpaceX Officials Thrilled with Crew-1 Launch Success*, https://blogs.nasa.gov/kennedy/2020/11/15/nasa-spacex-officials-thrilled-with-crew-1-launch-success/ (last visited Feb. 22, 2021).
[123] Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).
[124] AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84 (last visited Feb. 22, 2021).
[125] NASA, *NASA and SpaceX Teams Prepare for Crew-1 Mission*, https://blogs.nasa.gov/kennedy/2020/09/30/nasa-and-spacex-teams-prepare-for-crew-1-mission/ (last visited Feb. 22, 2021).
[126] AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84 (last visited Feb. 22, 2021).
[127] The Verge, *SpaceX capsule Swarmed by Boaters After Successful Splashdown*, https://www.theverge.com/2020/8/2/21351811/spacex-capsule-boaters-splashdown-boats (last visited Feb. 22, 2021).
[128] *Id*.
[129] FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021) (on file with the Senate Committee on Environment and Natural Resources).

Section 2 of the bill, effective October 1, 2021, amends s. 316.1939, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances.

The bill revises the conditions under which a person's driving privilege is suspended and under which a person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances. The bill provides that failure to submit to a lawful breath test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test is a misdemeanor of the first degree.

Section 6 of the bill, effective October 1, 2021, amends s. 327.352, F.S., relating to tests for alcohol, chemical substances, or controlled substances while operating a vessel. The bill revises the conditions under which a person commits a misdemeanor relating to boating while impaired or intoxicated. The bill provides that failure to submit to a lawful breath or urine test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test, or had his or her driver's license suspended for an unlawful blood-alcohol or breath-alcohol level, is a misdemeanor of the first degree.

Section 7 of the bill, effective October 1, 2021, amends s. 327.359, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances. The bill revises the conditions under which a person commits a misdemeanor of the first degree for failure to submit to a chemical or physical breath or urine test for alcohol, chemical substances, or controlled substances to include refusal to submit to such a test, and either a previous fine for failure to submit to a chemical or physical breath test, or a driver's license suspension for an unlawful blood-alcohol or breath-alcohol level. The bill deletes from the list of misdemeanors the refusal to submit to a lawful blood test for alcohol, chemical substances, or controlled substances.

In **Sections 1, 2, 6, and 7**, the bill deletes the provisions establishing that a person commits a misdemeanor for refusing to submit to a lawful blood test for alcohol, chemical substances, or controlled substances if the person has been previously fined for refusal to submit to a lawful breath, urine, or blood test.

Human-Powered Vessels: Sections 3 and 8

Section 3 of the bill amends s. 327.02, F.S., relating to definitions. The bill defines the term "human-powered vessel" to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill revises references to the International Navigational Rules Act of 1977 and Inland Navigational Rules Act of 1980 to the most recent versions of the Acts, as amended.

Section 8 of the bill creates a new section of law, s. 327.371, F.S., regulating human-powered vessels. The bill authorizes persons to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway only under the following conditions:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water and the operator proceeds with diligence to a location where he or she may safely operate the vessel outside the marked channel;

- While crossing the marked channel in the most direct, continuous, and expeditious manner possible and not interfering with other vessel traffic in the channel; or
- During an emergency endangering life or limb.

The bill provides that a person who operates a human-powered vessel within the marked channel outside of these conditions commits a noncriminal infraction.

Rulemaking Authority: Section 4

Section 4 of the bill amends s. 327.04, F.S., related to the Fish and Wildlife Conservation Commission (FWC) rules. The bill provides additional rulemaking authority to the FWC to implement the provisions of:

- Chapter 705, F.S., relating to lost or abandoned vessels;
- Section 376.15, F.S., relating to relocation or removal of derelict vessels from public waters; and
- Section 823.11, F.S., relating to criminal penalties for relocation or removal of derelict vessels.

Spaceflight: Section 5

Section 5 of the bill creates a new section of law, s. 327.462, F.S., regulating the temporary establishment of protection zones in water bodies to ensure security around the launch and recovery of spaceflight assets.

The bill defines the following terms for the new section of law:

- "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- "Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing such a license, permit, or authorization.[130]

The bill authorizes the head of a law enforcement agency or entity, or his or her designee (law enforcement), to, within the agency or entity's jurisdiction, temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, water bodies when

[130] The bill defines "spaceflight entity" to have the same definition as in s. 331.501, F.S.

necessary for preparations in advance of or for recovery of spaceflight assets before or after a launch service or reentry service.

A temporary protection zone must be established under the following conditions:

- The zone must be located within five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted. However, the protection zone may be located at a distance greater than five hundred yards if law enforcement determines that such greater distance is in the best interest of public safety.
- The zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch.
- Law enforcement may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a launch or reentry while the transport vessel is continuously underway transporting such assets to a location for removal.
- Law enforcement may not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.
- Law enforcement must report the establishment of the temporary protection zone via email to The FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. The report must include:
  - Reasons for the protection zone;
  - The portion of the water body or water bodies that will be included in the protection zone; and
  - The duration of the protection zone.
- Law enforcement must report via email to the FWC's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violation of the protection zone no later than 72 hours after the end of the protection zone period.

The section of law applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory,[131] and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

The bill provides that a person who violates this section or any directive given by law enforcement relating to an established temporary protection zone after being advised of the establishment of the protection zone commits a misdemeanor of the second degree.

Boating Safety: Sections 10, 16, 15, and 19

Section 10 of the bill amends s. 327.395, F.S., relating to boater safety identification.

[131] Section 331.304, F.S. establishes as spaceport territory specified real property in Brevard, Santa Rosa, Okaloosa, Gulf, Walton, and Duval Counties, and real property which is a spaceport licensed by the FAA, as designated by the board of directors of Space Florida.

The bill clarifies what documentation and certifications persons operating a vessel must have in their possession aboard the vessel.

The bill exempts, from the boater safety identification card requirement, persons who have been previously licensed by the Coast Guard to serve as master of a vessel, provided proof of such licensure to the FWC, and requested that a boating safety identification card be issued in his or her name.

The bill deletes a provision authorizing the FWC to appoint liveries, marinas, or other persons as its agents to administer a boating safety education course or temporary certificate examination and issue identification cards or temporary certificates, and requiring the agent to charge a $2 examination fee. However, the provision is retained in another subsection within the same section of law.

Section 16 of the bill creates s. 327.463, F.S., relating to special hazards requiring slow speeds by vessel operators. The bill specifies conditions under which a vessel is and is not considered to be operating at slow speed, minimum wake.

A vessel is considered to be operating at slow speed, minimum wake only if it is:
- Fully off plane and completely settled into the water; and
- Proceeding without wake or with minimum wake.

A vessel is not considered to be operating at slow speed, minimum wake if it is:
- Operating on plane;
- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels.

The bill prohibits a vessel that is required to operate at slow speed, minimum wake from proceeding at a speed greater than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill prohibits vessel operators from operating a vessel faster than slow speed, minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:
- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a Coast Guard vessel, or a firefighting vessel, when such emergency vessel has its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge displaying an orange flag indicating that the vessel or barge is actively engaged in construction operations.
    - The flag must be displayed from a pole that extends at least 10 feet above the tallest portion of the vessel or barge, or at least five feet above any superstructure permanently installed upon the vessel or barge.
    - The flag must meet certain requirements, including:
        - Be a size of at least two feet by three feet;

- Include a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze; and
- Be displayed so the visibility of the flag is not obscured in any direction.

The bill specifies that a person may not be cited for a violation during periods of low visibility, including any time between the hours from 30 minutes after sunset to 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill also provides that a person operating a vessel who violates this section, or the owner of or responsible party for a construction vessel or barge that displays an orange flag when it is not actively engaged in construction operations, is guilty of a noncriminal infraction.

The bill specifies that the speed and penalty provisions of this section do not apply to law enforcement, firefighting, or rescue vessels that are owned or operated by a governmental entity.

Section 19 of the bill amends s. 327.54, F.S., relating to safety regulations of liveries. The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel unless the person renting presents:

- Photographic identification and a valid boater safety identification card issued by the FWC;
- A state-issued identification card or driver license indicating possession of the boating safety identification card; or
- Photographic identification and a valid temporary certificate issued or approved by the FWC.
- These provisions do not apply to those individuals that are exempt from boating safety education requirements (Individuals born before January 1, 1988).

Boating-Restricted Areas: Sections 12, 13, 14, and 15

Section 12 of the bill amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas. The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires the FWC to adopt rules to implement the anchoring limitation area. The bill provides that this anchoring limitation area does not apply to an approved and permitted mooring field. The bill provides that this section is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within one mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels, notwithstanding the FWC rules adopted pursuant to this section.

The bill deletes a provision that references an obsolete section of law.

Section 13 of the bill amends s. 327.4109, F.S., relating to prohibited anchoring and mooring. The bill revises existing anchoring and mooring restrictions to prohibit anchoring and mooring within 150 feet of a *public or private* marina or other *public* vessel launching or loading facility. However, vessels may anchor and moor within these areas under the exemptions in existing law.

Section 14 of the bill amends s. 327.45, F.S., relating to protection zones for springs. The bill authorizes the FWC to establish protection zones for springs which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the FWC using the most recent Florida Geological Survey springs bulletin.

Section 15 of the bill amends s. 327.46, F.S., relating to boating-restricted areas. The bill authorizes municipalities and counties to establish slow speed, minimum wake boating-restricted areas by ordinance if the area is within the boundaries of a permitted public mooring field and up to a 100 foot buffer around the mooring field.

Derelict/At-Risk Vessels: Sections 11, 20, 22, 23, 24, 25, and 27

Section 11 of the bill amends s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state. The bill revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.

The bill authorizes the FWC and other law enforcement officers to provide notice to a vessel owner or operator that a vessel is at risk of becoming derelict via in-person notice recorded on an agency-approved body camera.

The bill authorizes the FWC and other law enforcement officers to relocate or cause to be relocated a vessel at risk of becoming derelict to a distance greater than 20 feet from a mangrove or upland vegetation. Law enforcement agencies and officers must be held harmless for damages to an at-risk vessel that result from relocation unless the damage results from gross negligence[132] or willful misconduct.[133]

The bill authorizes the FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. The program may, but is not required to, include:

- Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with state law;
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to the FWC to be destroyed without penalty;
- Removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel;
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict; and
- Creation or acquisition of moorings designated for securing vessels at risk of becoming derelict.

[132] "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

[133] "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

The bill authorizes the FWC to adopt rules to implement the program. Implementation of the program is subject to appropriation by the Legislature and is funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 20 of the bill amends s. 327.60, F.S., relating to local regulations. The bill authorizes local governments to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove an abandoned or lost vessel within its jurisdiction that is affixed to a public mooring.

Section 22 and Section 23 of the bill amend s. 328.09, F.S., relating to the refusal to issue and authority to cancel a certificate of title or registration. The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict.

Section 23 of the bill takes effect on July 1, 2023. At that time, the bill authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

Section 24 of the bill amends s. 376.15, F.S., relating to the relocation or removal of derelict vessels from public waters. The bill deletes the prohibition in existing law against storing or abandoning a derelict vessel and provides that it is unlawful for any person, firm, or corporation to leave a derelict vessel upon the waters of this state. The bill provides that for purposes of this section, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
    - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within seven days after such accident or event; or
    - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them. The bill authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The FWC or law enforcement agencies or officers are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

The bill adds storage, destruction, and disposal to the list of authorized actions for which the FWC may provide grants from the Marine Resources Conservation Trust Fund or Florida Coastal Protection Trust Fund to local governments under an established program for derelict vessels.

Section 25 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property. The bill creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state. When a law enforcement officer ascertains that such a vessel exists, the officer must cause a notice to be placed on the vessel in substantially the following form:

> NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties may have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section)... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)...

The bill requires the law enforcement agency to mail a copy of the notice and inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, the bill requires a state agency to follow the statutory processes for proceedings in which the substantial interests of a party are determined by an agency, except that a local judge, magistrate, or code enforcement officer may be designated to conduct a hearing.

The bill authorizes the law enforcement agency, or its designee, if the owner or responsible party for a derelict vessel or vessel that has been declared a nuisance has not requested a hearing at the end of 21 days after the notice is published, or if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or at risk of becoming derelict and a final order has been entered or the case is otherwise closed, to:

- Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

- Authorize the vessel's use as an artificial reef in accordance with the FWC's artificial reef program if all necessary federal, state, and local authorizations are received.

The bill provides that the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition is liable to the law enforcement agency, governmental entity, or the agency's or entity's designee for removal, storage, and destruction costs.

The bill provides that neglecting or refusing to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

Section 27 of the bill amends s. 823.11, F.S., relating to the relocation or removal of derelict vessels. The bill revises the definition of "derelict vessel" to delete that the vessel is left, stored, or abandoned. The portion of the definition of "derelict vessel" that describes the vessel as in a wrecked, junked, or substantially dismantled condition upon any public waters of this state is also revised to delete the word "public." The new definition provides that a vessel is:

- Wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.
- Junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice of such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.
- Substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system, the propulsion system, or the exterior hull integrity. Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if the motor is not an effective means of propulsion.

The bill deletes the prohibition against storing or abandoning a derelict vessel in existing law and prohibits a person, firm, or corporation from leaving a derelict vessel upon the waters of this state. The bill provides that for purposes of the paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
  - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or
  - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them, if the derelict vessel obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. The FWC or law enforcement agencies or officers are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill allows for the FWC, law enforcement agencies, or governmental subdivisions that have received authorization from a law enforcement officer or agency to recover costs for relocation, removal, storage, destruction, and disposal of a derelict vessel from a vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The bill provides that neglecting or refusing to pay all costs of removal, storage, destruction, or disposal of a derelict vessel, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

Marine Sanitation Devices: Section 18

Section 18 of the bill amends s. 327.53, F.S., relating to marine sanitation. The bill requires the owner or operator of a live-aboard vessel or houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pump-out of the device and the location of the pump-out station or waste reception facility. The bill requires each record to be maintained for one year after the pump-out date.

Penalties: Section 21

Section 21 of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws.

The bill amends the noncriminal infraction for a violation of s. 327.395, F.S., relating to boater safety education to provide that a person cited for failing to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification

card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state, from:
- $50 to $100 for a first offense;
- $100 to $250 for a second offense occurring 30 days or more after a previous offense; and
- $250 to $500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill declares that a vessel that is the subject of three or more violations issued within an 18-month period by a law enforcement officer for being at risk of becoming derelict, which result in a disposition other than acquittal or dismissal, is a public nuisance and is subject to relocation or removal. The bill authorizes the FWC or other law enforcement to relocate or remove the vessel or cause it to be relocated or removed. Law enforcement officers who relocate or remove such a vessel are held harmless for damages to the vessel unless the damage results from gross negligence[134] or willful misconduct.[135]

The bill creates civil penalties for a violation of s. 327.463(4)(a) and (b), F.S., the new section relating to vessels creating special hazards, of:
- $50 for a first offense;
- $100 for a second offense occurring within 12 months after a prior offense; and
- $250 for a third offense occurring within 36 months after a prior offense.

The bill adds to the list of violations resulting in a noncriminal offense:
- Failing to maintain the required pump-out records of a marine sanitation device for a live-aboard vessel or houseboat; and
- Operating a human-powered vessel within the boundaries of a marked channel of the Florida Intracoastal Waterway in violation of the new statutory restrictions.

Conforming Changes: Sections 9, 17, and 26

Section 9 of the bill amends s. 327.391, F.S., relating to the regulation of airboats, to make conforming and technical changes.

Section 17 of the bill amends s. 327.50, F.S., relating to vessel safety regulations, equipment, and lighting requirements. The bill corrects an incorrect reference to clarify that the FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

Section 26 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property, to conform to revisions from ch. 2019-76, Laws of Florida, which take effect in 2023.

[134] "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.
[135] "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

Effective Date

Section 28 of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (*Section 23 of the bill takes effect July 1, 2023.*)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

If the FWC establishes a derelict vessel prevention program, the agency is likely to incur costs from implementing the program. The bill provides that establishment of the program is subject to legislative appropriation, but it is unknown what amount the appropriation would be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1932, 316.1939, 327.02, 327.04, 327.352, 327.359, 327.391, 327.395, 327.4107, 327.4108, 327.4109, 327.45, 327.46, 327.50, 327.53, 327.54, 327.60, 327.73, 328.09, 376.15, 705.103, and 823.11.

This bill creates the following sections of the Florida Statutes: 327.462, 327.371, and 327.463.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:
The committee substitute:

- Provides that the head of a law enforcement agency or entity, or his or her designee may not restrict vessel movement within the Florida Intracoastal Waterway, when establishing a temporary protective zone, except as necessary during transport of spaceflight assets to or from port or during exigent circumstances
- Establishes an effective date of October 1, 2021, to revise conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Clarifies what documents or certifications are required for operation of a vessel.
- Provides that the designation of Monroe County as an anchoring limitation area is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels.

CS by Environment and Natural Resources on March 15, 2021:

- Deletes the requirement from the underlying bill that persons have boating safety identification documents in his or her possession aboard a vessel beginning in 2023.
- Adds persons who possess an International Certificate of Competence in sailing to those exempt from the boating safety identification card requirement.

- Revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.
- Deletes a provision authorizing the derelict vessel prevention program created under the bill to include other preventative efforts and methods as determined appropriate and necessary by the Fish and Wildlife Conservation Commission (FWC).
- Designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days, excluding approved and permitted mooring fields.
- Requires the FWC to adopt rules to implement the Monroe County anchoring limitation area.
- Authorizes the FWC to establish protection zones for first, second, and third magnitude springs and springs groups, including their associated spring runs, which prohibit the anchoring, mooring, beaching, or grounding of vessels.
- Provides that the springs, springs groups, and springs runs be determined by the FWC using the most recent Florida Geological Survey springs bulletin.
- Clarifies that vessels that are required to operate at slow speed, minimum wake are prohibited from proceeding at certain speeds.
- Deletes provisions from the underlying bill designating the waters of this state as a no-discharge zone and associated penalties for violation.
- Revises provisions relating to derelict vessels to prohibit persons, firms, or corporations from leaving, rather than storing or abandoning, a derelict vessel upon the waters of this state.
- Provides that, for derelict vessels provisions, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.
- Provides that persons who own or operate a vessel that becomes derelict as a result of a reported boating accident, hurricane, or other uncontrollable event may not be charged with having a derelict vessel if the person provides documentation of the events leading to the vessel being derelict or the vessel has been removed or repaired within a specific time frame.
- Authorizes the FWC and law enforcement officers to store, destroy, or dispose of derelict vessels, in addition to relocating and removing the vessels.
- Authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 547 - 1205

and insert:

suspended for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section

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is admissible into evidence in any criminal proceeding.

2. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 ~~and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath,~~

~~urine, or blood, is a misdemeanor~~. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 7. Subsection (3) of section 327.35215, Florida Statutes, is amended to read:

327.35215 Penalty for failure to submit to test.—

(3) A person who has been advised of the penalties pursuant to subsection (2) may, within 30 days afterwards, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil penalty, and, if assessment of the civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court shall notify the Department of Highway Safety and Motor Vehicles of the final disposition of all actions filed under this section by electronic transmission in a format prescribed by the department. When the department receives the final disposition, the department shall enter the disposition on the person's driving record.

Section 8. Effective October 1, 2021, section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—A ~~Any~~ person who has refused to submit to a chemical or physical test of his or her breath~~, blood,~~ or urine, as described in s. 327.352, and who has been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(1) Who the arresting law enforcement officer had probable

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cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test, he or she is subject to a fine of $500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath or, urine~~, or blood~~, if he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 9. Section 327.371, Florida Statutes, is created to read:

327.371 Human-powered vessels regulated.—

(1) A person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway as defined in s. 327.02:

(a) When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered

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vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.

(b) When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.

(c) During an emergency endangering life or limb.

(2) A person may not operate a human-powered vessel in the marked channel of the Florida Intracoastal Waterway except as provided in subsection (1).

(3) A person who violates this section commits a noncriminal infraction, punishable as provided in s. 327.73.

Section 10. Subsection (1) and paragraphs (a) and (b) of subsection (5) of section 327.391, Florida Statutes, are amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). A ~~Any~~ person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(5)(a) ~~Beginning July 1, 2019,~~ A person may not operate an airboat to carry one or more passengers for hire on waters of

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this ~~the~~ state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

2. Proof of completion of a boater education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain’s license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Proof of the captain’s license must be onboard the airboat when carrying one or more passengers for hire on waters of this ~~the~~ state.

Section 11. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel the documents required by subsection (2).

(2) While operating a vessel, a person identified under subsection (1) must have in his or her possession aboard the vessel photographic identification and a Florida boating safety

identification card issued by the commission;~~,~~ a state-issued identification card or driver license indicating possession of the Florida boating safety identification card;~~,~~ or photographic identification and a temporary certificate issued or approved by the commission, an International Certificate of Competency, a boating safety card or certificate from another state or United States territory, or a Canadian Pleasure Craft Operator Card, which shows that he or she has:

(a) Completed a commission-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators; ~~or~~

(b) Passed a temporary certificate examination developed or approved by the commission;

(c) A valid International Certificate of Competency; or

(d) Completed a boating safety education course or equivalency examination in another state, a United States territory, or Canada which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(3)(a)~~(2)(a)~~ A person may obtain a Florida boating safety identification card by successfully completing a boating safety education course that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing a temporary certificate examination that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(4)~~(3)~~ A ~~Any~~ commission-approved boating safety education

course or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

~~(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must charge the $2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a $1 service fee.~~

(5) A Florida boating safety identification card issued to a person who has completed a boating safety education course is valid for life. A temporary certificate issued to a person who has passed a temporary certification examination is valid for 90 days after the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a)1. Is licensed by the United States Coast Guard to serve as master of a vessel; or

2. Has been previously licensed by the United States Coast Guard to serve as master of a vessel, provides proof of such licensure to the commission, and requests that a boating safety identification card be issued in his or her name.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety identification

card in compliance with this section, who is 18 years of age or older, and who is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety education course or equivalency examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing a boating safety education course in accordance with paragraph (2)(a) ~~the requirements of paragraph (1)(a)~~ and has a photographic identification card and a boating safety education certificate available for inspection as proof of having completed a boating safety education course. The boating safety education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of this section ~~subsection (1)~~ commits a noncriminal infraction, punishable as provided in s. 327.73.

(8) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and

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examinations are available in each county of this ~~the~~ state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. An agent ~~The agents~~ shall charge and collect the $2 fee required in subsection (9) for each temporary certificate requested of the commission by that agent, which must be forwarded to the commission. The agent may charge and keep a ~~$1~~ service fee.

(9) The commission may ~~is authorized to~~ establish and ~~to~~ collect a $2 fee for each card and temporary certificate issued pursuant to this section.

(10) The commission shall design forms and adopt rules pursuant to chapter 120 to implement ~~the provisions of~~ this section.

(11) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."

Section 12. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(d) The vessel is ~~left or stored aground unattended in such~~

~~a state that would prevent the vessel from getting underway, is~~ listing due to water intrusion~~, or is sunk or partially sunk~~.

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to implement this paragraph.

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(7) The commission may establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(a) Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with s. 327.53(7),

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s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

(b) Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict in accordance with this section to turn his or her vessel and vessel title over to the commission to be destroyed without penalty.

(c) Providing for removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(d) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(e) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The commission may adopt rules to implement this subsection. Implementation of the derelict vessel prevention program shall be subject to appropriation by the Legislature and shall be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 13. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour

after sunset and one-half hour before sunrise, except as provided in subsections (3) and (4):

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2)(a) Monroe County is designated as an anchoring limitation area within which a vessel on waters of the state may only be anchored in the same location for a maximum of 90 days. The commission shall adopt rules to implement this subsection.

(b) The anchoring limitations in this subsection do not apply to approved and permitted moorings or mooring fields.

(c) Notwithstanding the commission rules adopted pursuant to this section, this section is not effective for Monroe County until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time, the commission shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels.

~~(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour~~

~~before sunrise in an anchoring limitation area.~~

(3) Notwithstanding subsections (1) and ~~subsection~~ (2), a person may anchor a vessel in an anchoring limitation area during a time that would otherwise be unlawful:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

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(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and

impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(z).

~~(7) This section shall remain in effect notwithstanding the Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 14. Paragraph (a) of subsection (1) and subsection (2) of section 327.4109, Florida Statutes, are amended to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(1)(a) The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

1. Within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility;

2. Within 500 ~~300~~ feet of a superyacht repair facility. For purposes of this subparagraph, the term "superyacht repair facility" means a facility that services or repairs a yacht with a water line of 120 feet or more in length; or

3. Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located. The commission may adopt rules to implement this subparagraph.

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(2) Notwithstanding subsection (1), an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility; within 500 ~~300~~ feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

(a) The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 15. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels, or that prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the commission using the most recent Florida Geological Survey springs bulletin. This harm

includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

Section 16. Paragraph (b) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(b) Municipalities and counties may ~~have the authority to~~ establish the following boating-restricted areas by ordinance, including, notwithstanding the prohibition in s. 327.60(2)(c), within the portion of the Florida Intracoastal Waterway within their jurisdiction:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general

boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

e. Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Accessible by land, open to the general public, and designated as a public bathing beach or swim area, except that such areas may not be established within the Florida Intracoastal Waterway.

b. Within 300 feet of a dam, spillway, or flood control structure.

Section 17. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it is:

1. Fully off plane and completely settled into the water; and

2. Proceeding without wake or with minimum wake.

A vessel that is required to operate at slow speed, minimum wake may not proceed at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

(b) Is not proceeding at slow speed, minimum wake if it is:

1. Operating on plane;

2. In the process of coming off plane and settling into the water or getting on plane; or

3. Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

(2) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, United States Coast Guard vessel, or firefighting vessel, when such emergency vessel’s emergency lights are activated.

(3)(a) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag from a pole extending:

1. At least 10 feet above the tallest portion of the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations; or

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2. At least 5 feet above any superstructure permanently installed upon the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations.

(b) A flag displayed on a construction vessel or barge pursuant to this subsection must:

1. Be at least 2 feet by 3 feet in size.

2. Have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze.

3. Be displayed so that the visibility of the flag is not obscured in any direction.

(c) In periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, a person may not be cited for a violation of this subsection unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

(4)(a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) The owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction, punishable as provided in s. 327.73.

(5) The speed and penalty provisions of this section do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

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Section 18. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the commission ~~department~~.

Section 19. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

(6)(a) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

(7) A ~~Any~~ vessel or floating structure operated or occupied on the waters of this ~~the~~ state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of a ~~any~~ vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of this ~~the~~ state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of this ~~the~~ state in violation

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of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located~~,~~ to order or otherwise cause the removal of such vessel or floating structure from the waters of this ~~the~~ state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1 year after the date of the pumpout. This subsection does not apply to marine compost toilets that process and manage human waste using marine compost toilet technologies that comply with United States Coast Guard requirements.

Section 20. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent a ~~any~~ vessel ~~powered by a motor of 10 horsepower or greater~~ to a ~~any~~ person who is required to comply with s. 327.395~~,~~ unless such person presents to the livery the documentation required by s. 327.395(2) for the operation of a vessel ~~photographic~~

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~~identification and a valid boater safety identification card as required under s. 327.395(1),~~ or meets the exemption provided under

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 26 - 92

and insert:

penalties; amending s. 327.352, F.S.; revising conditions under which a person commits a misdemeanor of the first degree for refusing to submit to certain tests; amending s. 327.35215, F.S.; requiring the clerk of the court to notify the Department of Highway Safety and Motor Vehicles of certain final dispositions by electronic transmission; requiring the department to enter such disposition on a person's driving record; amending s. 327.359, F.S.; revising conditions under which a person commits a misdemeanor of the first degree for refusing to submit to certain tests; creating s. 327.371, F.S.; providing circumstances under which a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway; providing a penalty; amending s. 327.391, F.S.; conforming cross-references; amending s. 327.395, F.S.; revising the types of documentation that a person may use to comply with certain boating safety requirements; removing the authority of the commission to appoint certain entities to administer a boating

safety education course or temporary certificate examination and issue certain credentials; exempting certain persons from the requirement to possess certain documents aboard a vessel; removing the specified service fee amount that certain entities that issue boating safety identification cards and temporary certificates may charge and keep; amending s. 327.4107, F.S.; revising the conditions under which officers may determine a vessel is at risk of becoming derelict; authorizing certain officers to provide notice that a vessel is at risk of becoming derelict via body camera recordings; authorizing the commission or certain officers to relocate at-risk vessels to a certain distance from mangroves or vegetation; providing that the commission or officers are not liable for damages to such vessels; providing an exception; authorizing the commission to establish a derelict vessel prevention program consisting of certain components; authorizing the commission to adopt rules; providing that such program is subject to appropriation by the Legislature; providing for funding; amending s. 327.4108, F.S.; designating Monroe County as an anchoring limitation area subject to certain requirements; requiring the commission to adopt rules; providing construction; requiring the commission to designate a specified area as a priority for the removal of derelict vessels until certain conditions are met; deleting obsolete language; amending s. 327.4109, F.S.; prohibiting the anchoring

or mooring of a vessel or floating structure within a certain distance of certain facilities; providing exceptions; amending s. 327.45, F.S.; authorizing the commission to establish protection zones where certain activities are prohibited in or near springs; amending s. 327.46, F.S.; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway; creating s. 327.463, F.S.; specifying conditions under which a vessel is and is not operating at slow speed, minimum wake; prohibiting a person from operating a vessel faster than slow speed, minimum wake within a certain distance from other specified vessels; providing requirements for construction vessel or barge flags; exempting a person from being cited for a violation under certain circumstances; providing penalties; providing applicability; amending s. 327.50, F.S.; authorizing the commission to exempt vessel owners and operators from certain safety equipment requirements; amending s. 327.53, F.S.; requiring the owner or operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain a record of the date and location of each pumpout of the device for a certain period; providing an exception;

576-03924-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to operation and safety of motor vehicles and vessels; amending ss. 316.1932 and 316.1939, F.S.; revising conditions under which a person's driving privilege is suspended and under which the person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances; specifying that such misdemeanor is a misdemeanor of the first degree; amending s. 327.02, F.S.; defining the term "human-powered vessel"; revising the definition of the term "navigation rules"; amending s. 327.04, F.S.; providing additional rulemaking authority to the Fish and Wildlife Conservation Commission; creating s. 327.462, F.S.; defining terms; authorizing heads of certain entities to establish temporary protection zones in certain water bodies for certain purposes; providing protection zone requirements; prohibiting the restriction of vessel movement within the Florida Intracoastal Waterway except under certain circumstances; requiring the heads of certain entities to report the establishment of such protection zones to the commission and to the appropriate United States Coast Guard Sector Command; providing requirements for the report; providing applicability; providing penalties; amending ss. 327.352 and 327.359, F.S.;

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revising conditions under which a person commits a misdemeanor of the first degree for refusing to submit to certain tests; creating s. 327.371, F.S.; providing circumstances under which a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway; providing a penalty; amending s. 327.391, F.S.; conforming cross-references; amending s. 327.395, F.S.; revising the types of documentation that a person may use to comply with certain boating safety requirements; removing the authority of the commission to appoint certain entities to administer a boating safety education course or temporary certificate examination and issue certain credentials; exempting certain persons from the requirement to possess certain documents aboard a vessel; removing the specified service fee amount that certain entities that issue boating safety identification cards and temporary certificates may charge and keep; amending s. 327.4107, F.S.; revising the conditions under which officers may determine a vessel is at risk of becoming derelict; authorizing certain officers to provide notice that a vessel is at risk of becoming derelict via body camera recordings; authorizing the commission or certain officers to relocate at-risk vessels to a certain distance from mangroves or vegetation; providing that the commission or officers are not liable for damages to such vessels; providing an exception; authorizing the commission to establish a

derelict vessel prevention program consisting of certain components; authorizing the commission to adopt rules; providing that such program is subject to appropriation by the Legislature; providing for funding; amending s. 327.4108, F.S.; designating Monroe County as an anchoring limitation area subject to certain requirements; requiring the commission to adopt rules; providing construction; requiring the commission to designate a specified area as a priority for the removal of derelict vessels until certain conditions are met; deleting obsolete language; amending s. 327.4109, F.S.; prohibiting the anchoring or mooring of a vessel or floating structure within a certain distance of certain facilities; providing exceptions; amending s. 327.45, F.S.; authorizing the commission to establish protection zones where certain activities are prohibited in or near springs; amending s. 327.46, F.S.; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway; creating s. 327.463, F.S.; specifying conditions under which a vessel is and is not operating at slow speed, minimum wake; prohibiting a person from operating a vessel faster than slow speed, minimum wake within a certain distance from other specified vessels; providing requirements for construction vessel or barge flags; exempting a person from being cited for a violation under certain circumstances; providing

penalties; providing applicability; amending s. 327.50, F.S.; authorizing the commission to exempt vessel owners and operators from certain safety equipment requirements; amending s. 327.53, F.S.; requiring the owner or operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain a record of the date and location of each pumpout of the device for a certain period; conforming a cross-reference; making technical changes; amending s. 327.54, F.S.; prohibiting a livery from leasing, hiring, or renting a vessel to a person required to complete a commission-approved boating safety education course unless such person presents certain documentation indicating compliance; amending s. 327.60, F.S.; authorizing a local government to enact and enforce regulations allowing the local law enforcement agency to remove an abandoned or lost vessel affixed to a public mooring; amending s. 327.73, F.S.; providing additional violations that qualify as noncriminal infractions; providing civil penalties; prohibiting conviction of a person cited for a violation relating to possessing proof of boating safety education under certain circumstances; increasing certain civil penalties; providing that certain vessels shall be declared a public nuisance subject to certain statutory provisions; authorizing the commission or certain officers to relocate or remove public nuisance vessels from the waters of this state; providing that the

commission or officers are not liable for damages to such vessels; providing an exception; amending s. 328.09, F.S.; prohibiting the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to an applicant for a vessel that has been deemed derelict pursuant to certain provisions; authorizing the department, at a later date, to reject an application for a certificate of title for such a vessel; amending s. 376.15, F.S.; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; conforming provisions to changes made by the act; authorizing a governmental subdivision that has received authorization from a law enforcement officer or agency to direct a contractor to perform vessel storage, destruction, and disposal activities; authorizing the commission to provide local government grants for the storage, destruction, and disposal of derelict vessels; providing for funding; amending s. 705.103, F.S.; providing notice procedures for when a law enforcement officer ascertains that a derelict or public nuisance vessel is present on the waters of this state; requiring a mailed notice to the owner or party responsible for the vessel to inform him or her of the right to a hearing; providing hearing requirements; authorizing a law enforcement agency to

take certain actions if a hearing is not requested or a vessel is determined to be derelict or otherwise in violation of law; revising provisions relating to liability for vessel removal costs and notification of the amount owed; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; requiring persons whose vessel registration and motor vehicle privileges have been revoked for failure to pay certain costs to be reported to the department; prohibiting issuance of a certificate of registration to such persons until such costs are paid; amending s. 823.11, F.S.; revising application of definitions; revising the definition of the term "derelict vessel"; specifying requirements for a vessel to be considered wrecked, junked, or substantially dismantled; providing construction; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; providing that relocation or removal costs incurred by a governmental subdivision are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being derelict; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; authorizing a governmental subdivision that has received authorization from a law

enforcement officer or agency to direct a contractor to perform vessel relocation or removal activities; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective October 1, 2021, paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1.a. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any

lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest

and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the

request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with ~~the provisions of~~ this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for

breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term “other medical facility” includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is

incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327~~, and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor~~. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 2. Effective October 1, 2021, subsection (1) of section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

(1) A ~~Any~~ person who has refused to submit to a chemical or physical test of his or her breath~~, blood,~~ or urine, as

described in s. 316.1932, and whose driving privilege was previously suspended or who was previously fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood required under this chapter or chapter 327, and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath or~~,~~ urine, ~~or blood,~~ if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer commits a misdemeanor of the first degree and is subject to punishment as provided in s.

775.082 or s. 775.083.

Section 3. Present subsections (18) through (47) of section 327.02, Florida Statutes, are redesignated as subsections (19) through (48), respectively, a new subsection (18) is added to that section, and present subsection (31) of that section is amended, to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(18) "Human-powered vessel" means a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

(32)~~(31)~~ "Navigation rules" means, for vessels on:

(a) Waters outside established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through December 31, 2020 ~~October 1, 2012~~.

(b) All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through December 31, 2020 ~~October 1, 2012~~.

Section 4. Section 327.04, Florida Statutes, is amended to read:

327.04 Rules.—The commission may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter, the provisions of chapter 705 relating to vessels, and ss. 376.15 and 823.11 conferring powers

or duties upon it.

Section 5. Section 327.462, Florida Statutes, is created to read:

327.462 Temporary protection zones for spaceflight launches and recovery of spaceflight assets.—

(1) As used in this section, the term:

(a) "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.

(b) "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.

(c) "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.

(d) "Spaceflight entity" has the same meaning as provided in s. 331.501.

(2) The head of a law enforcement agency or entity identified in s. 327.70(1), or his or her designee, may, upon waters of this state within the law enforcement agency's or entity's jurisdiction, when necessary for preparations in advance of a launch service or reentry service or for the recovery of spaceflight assets before or after a launch service or reentry service, temporarily establish a protection zone

requiring vessels to leave, or prohibiting vessels from entering, water bodies within:

(a) Five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted; or

(b) A distance greater than provided in paragraph (a) if the head of such law enforcement agency or entity, or his or her designee, determines such greater distance is in the best interest of public safety.

(3) A protection zone established under subsection (2) may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch. The head of a law enforcement agency or entity identified in s. 327.70, or his or her designee:

(a) May also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from the waters of this state; and

(b) May not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.

(4) The head of a law enforcement agency or entity establishing a protection zone under this section, or his or her designee, must report the establishment of such protection zone

via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate United States Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. Such report must include the reasons for the protection zone, the portion of the water body or water bodies which will be included in the protection zone, and the duration of the protection zone. No later than 72 hours after the end of the protection zone period, the head of the law enforcement agency or entity, or his or her designee, must report via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violating the protection zone.

(5) This section applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, as defined in s. 331.304, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

(6) A person who violates this section or any directive given by a law enforcement officer relating to the establishment of a protection zone under this section after being advised of the establishment of the protection zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Effective October 1, 2021, paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or

controlled substances; implied consent; refusal.—

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, a ~~any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a

misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty

of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A ~~Any~~

person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 ~~and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood, is a misdemeanor~~. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 7. Effective October 1, 2021, section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—A ~~Any~~ person who has refused to submit to a chemical or physical test of his or her breath~~, blood,~~ or urine, as described in s. 327.352, and who has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test, he or she is subject to a fine of $500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath or~~,~~ urine~~, or blood~~, if he or she has been previously fined under s. 327.35215 or has previously had

his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 8. Section 327.371, Florida Statutes, is created to read:

327.371 Human-powered vessels regulated.—

(1) A person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway as defined in s. 327.02:

(a) When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.

(b) When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.

(c) During an emergency endangering life or limb.

(2) A person may not operate a human-powered vessel in the marked channel of the Florida Intracoastal Waterway except as provided in subsection (1).

(3) A person who violates this section commits a noncriminal infraction, punishable as provided in s. 327.73.

Section 9. Subsection (1) and paragraphs (a) and (b) of subsection (5) of section 327.391, Florida Statutes, are amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). A ~~Any~~ person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(5)(a) ~~Beginning July 1, 2019,~~ A person may not operate an airboat to carry one or more passengers for hire on waters of this ~~the~~ state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

2. Proof of completion of a boater education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of this ~~the~~ state.

Section 10. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel the documents required by subsection (2).

(2) While operating a vessel, a person identified under subsection (1) must have in his or her possession aboard the vessel photographic identification and a Florida boating safety identification card issued by the commission~~,~~ a state-issued identification card or driver license indicating possession of the Florida boating safety identification card~~,~~ or photographic identification and a temporary certificate issued or approved by the commission, an International Certificate of Competency, a boating safety card or certificate from another state or United States territory, or a Canadian Pleasure Craft Operator Card, which shows that he or she has:

(a) Completed a commission-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators;

~~or~~

(b) Passed a temporary certificate examination developed or approved by the commission;

(c) A valid International Certificate of Competency; or

(d) Completed a boating safety education course or equivalency examination in another state, a United States territory, or Canada which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(3)(a) ~~(2)(a)~~ A person may obtain a Florida boating safety identification card by successfully completing a boating safety education course that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing a temporary certificate examination that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(4) ~~(3)~~ A ~~Any~~ commission-approved boating safety education course or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

~~(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must charge the $2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may~~

~~charge and keep a $1 service fee.~~

(5) A Florida boating safety identification card issued to a person who has completed a boating safety education course is valid for life. A temporary certificate issued to a person who has passed a temporary certification examination is valid for 90 days after the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a)1. Is licensed by the United States Coast Guard to serve as master of a vessel; or

2. Has been previously licensed by the United States Coast Guard to serve as master of a vessel, provides proof of such licensure to the commission, and requests that a boating safety identification card be issued in his or her name.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety identification card in compliance with this section, who is 18 years of age or older, and who is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety education course or equivalency examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(e) Is operating a vessel within 90 days after the purchase

of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing a boating safety education course in accordance with paragraph (2)(a) ~~the requirements of paragraph (1)(a)~~ and has a photographic identification card and a boating safety education certificate available for inspection as proof of having completed a boating safety education course. The boating safety education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of this section ~~subsection (1)~~ commits a noncriminal infraction, punishable as provided in s. 327.73.

(8) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and examinations are available in each county of this ~~the~~ state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. An agent ~~The agents~~ shall charge and collect the $2 fee required in subsection (9) for each temporary certificate requested of the commission by that agent, which must be forwarded to the commission. The agent may charge and keep a ~~$1~~ service fee.

(9) The commission may ~~is authorized to~~ establish and ~~to~~ collect a $2 fee for each card and temporary certificate issued

pursuant to this section.

(10) The commission shall design forms and adopt rules pursuant to chapter 120 to implement ~~the provisions of~~ this section.

(11) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."

Section 11. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(d) The vessel is ~~left or stored aground unattended in such a state that would prevent the vessel from getting underway, is~~ listing due to water intrusion~~, or is sunk or partially sunk~~.

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to

implement this paragraph.

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(7) The commission may establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(a) Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with s. 327.53(7), s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

(b) Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict in accordance with this section to turn his or her vessel and vessel title over to the commission to be destroyed without penalty.

(c) Providing for removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(d) Purchase of anchor line, anchors, and other equipment

necessary for securing vessels at risk of becoming derelict.

(e) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The commission may adopt rules to implement this subsection. Implementation of the derelict vessel prevention program shall be subject to appropriation by the Legislature and shall be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 12. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise, except as provided in subsections (3) and (4):

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2)(a) Monroe County is designated as an anchoring

limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The commission shall adopt rules to implement this subsection.

(b) This subsection does not apply to an approved and permitted mooring field or to privately owned submerged land.

(c) Notwithstanding the commission rules adopted pursuant to this section, this section is not effective for Monroe County until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time, the commission shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels.

~~(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area~~.

(3) Notwithstanding subsections (1) and ~~subsection~~ (2), a person may anchor a vessel in an anchoring limitation area during a time that would otherwise be unlawful:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the

vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after

being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(z).

~~(7) This section shall remain in effect notwithstanding the Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 13. Paragraph (a) of subsection (1) and subsection

(2) of section 327.4109, Florida Statutes, are amended to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(1)(a) The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

1. Within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility;

2. Within 500 ~~300~~ feet of a superyacht repair facility. For purposes of this subparagraph, the term "superyacht repair facility" means a facility that services or repairs a yacht with a water line of 120 feet or more in length; or

3. Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located. The commission may adopt rules to implement this subparagraph.

(2) Notwithstanding subsection (1), an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility; within 500 ~~300~~ feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

(a) The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 14. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels, or that prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the commission using the most recent Florida Geological Survey springs bulletin. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

Section 15. Paragraph (b) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic

congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(b) Municipalities and counties may ~~have the authority to~~ establish the following boating-restricted areas by ordinance, including, notwithstanding the prohibition in s. 327.60(2)(c), within the portion of the Florida Intracoastal Waterway within their jurisdiction:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

e. Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area, except that such areas may not be established within the Florida Intracoastal Waterway.

b. Within 300 feet of a dam, spillway, or flood control structure.

Section 16. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it is:

1. Fully off plane and completely settled into the water; and

2. Proceeding without wake or with minimum wake.

A vessel that is required to operate at slow speed, minimum wake may not proceed at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

(b) Is not proceeding at slow speed, minimum wake if it is:

1. Operating on plane;

2. In the process of coming off plane and settling into the water or getting on plane; or

3. Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

(2) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, United States Coast Guard vessel, or firefighting vessel, when such emergency vessel's emergency lights are activated.

(3)(a) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag from a pole extending:

1. At least 10 feet above the tallest portion of the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations; or

2. At least 5 feet above any superstructure permanently installed upon the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations.

(b) A flag displayed on a construction vessel or barge pursuant to this subsection must:

1. Be at least 2 feet by 3 feet in size.

2. Have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze.

3. Be displayed so that the visibility of the flag is not obscured in any direction.

(c) In periods of low visibility, including any time

between 30 minutes after sunset and 30 minutes before sunrise, a person may not be cited for a violation of this subsection unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

(4)(a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) The owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction, punishable as provided in s. 327.73.

(5) The speed and penalty provisions of this section do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

Section 17. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the commission ~~department~~.

Section 18. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and

subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

(6)(a) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

(7) A ~~Any~~ vessel or floating structure operated or occupied on the waters of this ~~the~~ state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of a ~~any~~ vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of this ~~the~~ state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of this ~~the~~ state in violation of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located~~,~~ to order or otherwise cause the removal of such vessel or floating structure from the waters of this ~~the~~ state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as

defined in s. 327.02(23), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1 year after the date of the pumpout.

Section 19. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent a ~~any~~ vessel ~~powered by a motor of 10 horsepower or greater~~ to a ~~any~~ person who is required to comply with s. 327.395~~,~~ unless such person presents to the livery photographic identification and a valid boater safety identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a valid temporary certificate issued or approved by the commission as required under s. 327.395(2) ~~s. 327.395(1),~~ or meets the exemption provided under s. 327.395(6)(f).

Section 20. Subsection (5) of section 327.60, Florida Statutes, is amended to read:

327.60 Local regulations; limitations.—

(5) A local government may enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove a vessel affixed to a public dock or mooring within its jurisdiction that is abandoned or lost property pursuant to s. 705.103(1). Such regulation must require the local law enforcement agency to post

a written notice at least 24 hours before removing the vessel.

Section 21. Paragraphs (q), (s), and (aa) of subsection (1) of section 327.73, Florida Statutes, are amended, and paragraphs (cc) and (dd) are added to that subsection, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to marine sanitation.

(s) Section 327.395, relating to boater safety education. However, a person cited for violating the requirements of s. 327.395 relating to failure to have required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

(aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:

1. For a first offense, $100 ~~$50~~.

2. For a second offense occurring 30 days or more after a first offense, $250 ~~$100~~.

3. For a third or subsequent offense occurring 30 days or more after a previous offense, $500 ~~$250~~.

A vessel that is the subject of three or more violations issued

pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters of this state. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this paragraph upon waters of this state shall be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(cc) Section 327.463(4)(a) and (b), relating to vessels creating special hazards, for which the penalty is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior offense, $100.

3. For a third offense occurring within 36 months after a prior offense, $250.

(dd) Section 327.371, relating to the regulation of human-powered vessels.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly

respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 22. Subsection (4) of section 328.09, Florida Statutes, is amended to read:

328.09 Refusal to issue and authority to cancel a certificate of title or registration.—

(4) The department may not issue a certificate of title to an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. A law enforcement officer must inform the department in writing, which may be provided by facsimile, electronic mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, electronic mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 23. Effective July 1, 2023, paragraph (e) of subsection (3) of section 328.09, Florida Statutes, as amended by section 12 of chapter 2019-76, Laws of Florida, is amended to read:

328.09 Refusal to issue and authority to cancel a certificate of title or registration.—

(3) Except as otherwise provided in subsection (4), the

department may reject an application for a certificate of title only if:

(e) The application is for a vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. In such case, a law enforcement officer must inform the department in writing, which may be provided by facsimile, e-mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, e-mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 24. Section 376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from ~~public~~ waters of this state.—

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(c) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2)(a) It is unlawful for any person, firm, or corporation

to ~~store,~~ leave~~, or abandon~~ any derelict vessel as defined in s. 823.11 upon the waters of ~~in~~ this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:

a. For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over this state.

(c) This subsection does not apply to a vessel that was derelict upon the waters of this state before the stated accident or event.

(3)(a) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 may ~~are authorized and empowered to~~

relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a ~~any~~ derelict vessel as defined in s. 823.11 from ~~public~~ waters of this state as defined in s. 327.02. All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation, ~~or~~ removal, storage, destruction, or disposal of any abandoned or derelict vessel are recoverable against the owner of the vessel or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

(b) The commission, an officer ~~officers~~ of the commission, or a ~~and any other~~ law enforcement agency or officer specified in s. 327.70 acting pursuant to ~~under~~ this section to relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state as defined in s. 327.02 shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(c) A contractor performing relocation or removal activities at the direction of the commission, an officer ~~officers~~ of the commission, ~~or~~ a law enforcement agency or officer, or a governmental subdivision, when the governmental subdivision has received authorization for the relocation or removal from a law enforcement officer or agency pursuant to this section, must be licensed in accordance with applicable

United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly equipped to perform the services to be provided.

(d) The commission may establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from the ~~public~~ waters of this ~~the~~ state as defined in s. 327.02. The program shall be funded from the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund. Notwithstanding ~~the provisions in~~ s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal, storage, destruction, and disposal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, store, destroy, and dispose of, or to pay private contractors to remove, store, destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or

safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of this ~~the~~ state as defined in s. 327.02.

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of

posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section).... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. may ~~Such notice shall be~~ not be less than 8 inches by 10 inches and shall

be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting

the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative

law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than $100. If the value of the property is $100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of

general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel, the owner or other party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition, who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency, other governmental entity, or the agency's or entity's designee for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer or representative of the law enforcement agency or other governmental entity shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of

registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The law enforcement officer or representative of the law enforcement agency or other governmental entity shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges and ~~or whose~~ motor vehicle privileges have been revoked under this subsection. ~~Neither~~ The department or a ~~nor any other~~ person acting as an agent of the department may not ~~thereof shall~~ issue a certificate of registration to a person whose vessel and ~~or~~ motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

Section 26. Effective July 1, 2023, subsection (2) of section 705.103, Florida Statutes, as amended by section 29 of chapter 2019-76, Laws of Florida, is amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such

nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description of location)... has been determined to be (derelict or a public nuisance) and is unlawfully upon the waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or

otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section)... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. may ~~Such notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a

derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes as set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the

county where the property was found if the value of the property is more than $100. If the value of the property is $100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Section 27. Subsections (1), (2), and (3) of section 823.11, Florida Statutes, are amended to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(1) As used in this section and s. 376.15, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Derelict vessel" means a vessel, as defined in s. 327.02, that is ~~left, stored, or abandoned~~:

1. In a wrecked, junked, or substantially dismantled condition upon any ~~public~~ waters of this state.

a. A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

b. A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

c. A vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(I) The steering system;

(II) The propulsion system; or

(III) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer

be substantially dismantled if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

2. At a port in this state without the consent of the agency having jurisdiction thereof.

3. Docked, grounded, or beached upon the property of another without the consent of the owner of the property.

(c) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(d) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2)(a) ~~It is unlawful for~~ A person, firm, or corporation may not ~~to store,~~ leave~~, or abandon~~ any derelict vessel upon waters of ~~in~~ this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The individual documents for law enforcement the

specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:

a. For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over the state.

(c) This subsection does not apply to a vessel that was derelict upon the waters of this state before the stated accident or event.

(3) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 may ~~are authorized and empowered to~~ relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state as defined in s. 327.02 if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The commission, an officer ~~officers~~ of the commission, or any other law enforcement agency or officer acting pursuant to ~~under~~ this subsection to relocate, remove, store, destroy, dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful

misconduct.

(a) Removal of derelict vessels under this subsection may be funded by grants provided in ss. 206.606 and 376.15. The commission shall implement a plan for the procurement of any available federal disaster funds and use such funds for the removal of derelict vessels.

(b) All costs, including costs owed to a third party, incurred by the commission, another ~~or other~~ law enforcement agency, or a governmental subdivision, when the governmental subdivision has received authorization from a law enforcement officer or agency, in the relocation, ~~or~~ removal, storage, destruction, or disposal of a derelict vessel are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs. As provided in s. 705.103(4), a person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, destruction, or disposal of a derelict vessel as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A contractor performing such ~~relocation or removal~~ activities at the direction of the commission, an officer

~~officers~~ of the commission, ~~or~~ a law enforcement agency or officer, or a governmental subdivision, when the governmental subdivision has received authorization for the relocation or removal from a law enforcement officer or agency, pursuant to this section must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly equipped to perform the services to be provided.

Section 28. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1086
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Hutson
SUBJECT:	Operation and Safety of Motor Vehicles and Vessels
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1086 contains numerous changes to existing laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities.

Relating to rulemaking, the bill provides additional rulemaking authority to the FWC to implement provisions relating to derelict vessels.

Relating to boater safety, the bill:

- Effective October 1, 2021, revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term "human-powered vessel" and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Prohibits a livery from leasing, hiring, or renting a vessel to a person required to complete a FWC-approved boating safety education course, unless the person presents certain documentation indicating compliance.
- Revises boating-restricted areas to include certain areas around public or private marinas, permitted public mooring fields, and the Florida Intracoastal Waterway.

- Designates Monroe County as an anchoring limitation area under certain conditions.
- Authorizes the FWC to establish anchoring/mooring/beaching/grounding protection zones for springs.
- Prohibits the operation of vessels faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.

Relating to derelict vessels, the bill:

- Authorizes officers to provide in-person notice that a vessel is at risk of becoming derelict if there is a body camera recording.
- Authorizes law enforcement officers to relocate at-risk vessels to a certain distance from mangroves or vegetation.
- Authorizes the FWC to establish a derelict vessel prevention program.
- Authorizes local governments to enact and enforce regulations to remove an abandoned or lost vessel affixed to a public mooring.
- Authorizes law enforcement officers to relocate or remove public nuisance vessels from the waters of this state.
- Prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes the FWC to provide local government grants for the destruction and disposal of derelict vessels.
- Creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state, including notice and hearing requirements and liability for removal costs.
- Revises the definition of the term "derelict vessel" to specify requirements for a vessel to be considered "wrecked," "junked," or "substantially dismantled."
- Authorizes certain governmental subdivisions to perform relocation or removal activities and specifies requirements for licensure, insurance, and equipment.

Relating to marine sanitation devices, the bill requires the owner/operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain records of each pump out.

Relating to penalties, the bill:

- Increases the civil penalties for a vessel deemed at risk of becoming derelict.
- Creates civil penalties for vessels creating special hazards as specified in the bill.
- Adds operating a human-powered vessel in the Intracoastal Waterway to the list of violations resulting in a noncriminal infraction.
- Requires the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a sobriety test into a person's driving record.

Relating to spaceflight, the bill authorizes the FWC to establish temporary protective zones in certain water bodies in preparation for a launch service or reentry service, or for the recovery of spaceflight assets before or after a launch service or reentry service.

There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

The bill provides that except as otherwise expressly provided, the effective date is July 1, 2021.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.[1] The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.[2] Under Article IV, Section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid the FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.[3]

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.[4] The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.[5] This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.[6]

Boater Safety Education

A person born on or after January 1, 1988, who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.[7] To obtain a card, a person must complete an approved boating safety course.[8] There are several

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[1] FLA. CONST. art. IV, s. 9.
[2] *Id.*; *see also* s. 379.102(1), F.S.
[3] FLA. CONST. art. IV, s. 9.
[4] Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[5] Fish and Wildlife Conservation Commission (FWC), *Boating*, https://myfwc.com/boating/ (last visited Feb. 13, 2021).
[6] FWC, *Law Enforcement*, https://myfwc.com/about/inside-fwc/le/ (last visited Feb. 15, 2021). *See* s. 327.70(1) and (4), F.S.
[7] Section 327.395(1), F.S.
[8] FWC, *Boater Education Identification Card*, https://myfwc.com/boating/safety-education/id/ (last visited Feb. 23, 2021). This card is not a boating license; it is a certification that the person named on the card has successfully completed the required boating safety course.

courses available at various price points ranging from free up to $50.[9] The course must meet the eight-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.[10] The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 90 days after the date of issuance.[11]

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard (Coast Guard) to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalent examination in another state that meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
- Is exempted by FWC rule.[12]

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a $50 civil penalty.[13]

A livery may not knowingly lease, hire, or rent vessels under certain conditions meant to ensure boater safety.[14] A livery may also not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless the person presents photographic identification and a valid boater safety identification card to the livery or meets one of the listed exemptions.[15]

[9] FWC, *Boating Safety Courses*, https://myfwc.com/boating/safety-education/courses/ (last visited Feb. 23, 2021).
[10] Section 327.395(1), F.S.
[11] Section 327.395(5), F.S.
[12] Section 327.395(6), F.S.
[13] Section 327.73(1)(s), F.S.
[14] Section 327.54(1), F.S. For example, vessels must have proper safety equipment and be seaworthy and the number of vessel occupants may not exceed the maximum safety load of the vessel.
[15] Section 327.54(2), F.S.

Boating Safety Regulations

An operator of a vessel in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.[16] Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is $50.[17]

Vessel owners and operators must carry, store, maintain, and use safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.[18] Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.[19]

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.[20] Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.[21]

State law prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.[22] Interference with navigation is a noncriminal infraction and punishable by a fine of $50.[23]

The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility (a facility that services or repairs a yacht with a water line of 120 feet or more in length); or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.[24]

However, there are exceptions if:

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[16] Section 327.33, F.S.
[17] Section 327.73(h), F.S.
[18] Section 327.50, F.S.
[19] *Id*.
[20] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
[21] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), *available at* https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 10, 2021).
[22] Section 327.44, F.S.
[23] Section 327.73, F.S.
[24] Section 327.4109(1)(a), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.[25]

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.[26]

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.[27] Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.[28]

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures[29] or live-aboard vessels[30] within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.[31] However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.[32]

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.[33] To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring

[25] Section 327.4109(2), F.S.
[26] Section 327.4109(3), F.S.
[27] *See* s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).
[28] *See* Fla. Admin. Code R. 62-330.420.
[29] Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."
[30] Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats."
[31] Section 327.60(3), F.S.
[32] Section 327.60(2)(f), F.S.
[33] Section 327.4108(1), F.S.

limitation area.[34] However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.[35]

Certain types of vessels are exempt from anchoring limitation areas, including certain government, construction, and fishing vessels.[36] Law enforcement officers or agencies may remove and impound vessels from anchoring limitation areas when a vessel operator who was previously issued a citation continues to anchor the vessel in or refuses to leave the anchoring limitation area.[37]

Boating-Restricted Areas

The FWC may establish boating-restricted areas on the waters of this state for any purpose deemed necessary to ensure the safety of the public if the restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.[38] The FWC adopts boating-restricted areas by rule.[39]

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the Coast Guard and the United States Army Corps of Engineers.[40]

Local governments also have authority to establish boating-restricted areas by ordinance.[41] These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local ordinances establishing boating-restricted areas are subject to FWC review and approval. The FWC must make its determination based on substantial competent evidence that the ordinance is necessary to protect public safety.[42] However, navigational hazards are presumed to

[34] Section 327.4108(2), F.S.
[35] Section 327.4108(3), F.S.
[36] Section 327.4108(4), F.S.
[37] Section 327.4108(5), F.S.
[38] Section 327.46, F.S. Boating-restricted areas can include, but are not limited to, restrictions of vessel speeds and vessel traffic.
[39] *See* Fla. Admin. Code R. 68D-24, for established boating restricted areas by county.
[40] Section 327.46(3), F.S.
[41] Section 327.46(1), F.S.
[42] *Id*.

exist in several areas noted under FWC rule and statute.[43] In these cases, a showing of substantial competent evidence is not required.

Additionally, the Coast Guard can establish safety zones,[44] security zones,[45] regulated navigation areas,[46] or naval vessel protection zones[47] where persons may not knowingly operate a vessel or authorize the operation of a vessel in violation of the restrictions under the zone.[48] The restricted vessel access protects against destruction, loss, or injury from various causes.[49] Generally, the Coast Guard establishes security zones around vessels, harbors, ports, and waterfront facilities. The Coast Guard has established several safety zones, security zones, and regulated navigation areas in Florida,[50] including a security zone around the Kennedy Space Center.[51]

A person who knowingly operates a vessel or authorizes the operation of a vessel in violation of an established zone or area, and without authorization by the Coast Guard Captain of the Port, commits a misdemeanor of the first degree.[52] A person who continues to do so after receiving a warning, or refusing to leave, commits a felony of the third degree.[53] State and local law enforcement may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state.[54]

Protection Zones for Springs

The FWC is authorized to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs, including negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.[55] To develop a springs protection zone, the FWC consults and coordinates with the appropriate water management district, the Department of Environmental Protection, and the county and municipality, if applicable, where the zone is located.[56]

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[43] *Id.*; Fla. Admin. Code R. 68D-21.004. Navigational hazards are presumed to exist in areas including: within certain distances of launching and landing facilities, fuel pumps, lock structures, bridge fenders; in certain small waterways or areas designated as a public bathing or swimming area; near certain bends in the waterway; areas subject to unsafe levels of vessel traffic congestion, hazardous water levels or currents; and canoe trails.
[44] 33 C.F.R. pt. 165 subpart C.
[45] 33 C.F.R. pt. 165 subpart D.
[46] 33 C.F.R. pt. 165 subpart B.
[47] 33 C.F.R. pt. 165 subpart G.
[48] Section 327.461(1)(a), F.S.
[49] 33 C.F.R. pt. 165; *see* United States Coast Guard, *Regulated Navigation Areas*, https://www.dco.uscg.mil/RNA/ (last visited Feb. 17, 2021).
[50] 33 C.F.R. s. 165.T07-0794 - 165.786, providing safety and security zones and regulated navigation areas in the Seventh Coast Guard District.
[51] 33 C.F.R. s. 165.701.
[52] Section 327.461(2), (7), F.S.
[53] Section 327.461(3), F.S.
[54] Section 327.461(1)(a), F.S.
[55] Section 327.45(2), F.S.
[56] Section 327.45(3), F.S. If the zone includes navigable waters of the United States, FWC is required to coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

The restrictions in a springs protection zone do not apply to certain law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties, or in emergency situations.[57]

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.[58] It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.[59]

At-Risk Vessels

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of this state.[60] A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. [61]

Abandoned Vessels

"Abandoned property"[62] means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in s. 823.11, F.S.

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.[63]

[57] Section 327.45(5), F.S.
[58] Section 823.11(1)(b), F.S.
[59] Section 376.15, F.S.; s. 823.11(2), F.S.
[60] Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.
[61] Section 327.4107, F.S.
[62] Section 705.101(3), F.S.
[63] Section 705.103(2), F.S.

If, after five days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.[64]

The owner of abandoned or lost property who does not remove the property after being noticed, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the property, less any salvage value obtained by the disposal of the property.[65] Upon the final disposition of the property, the law enforcement officer is required to notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.[66]

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.[67]

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.[68]

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.[69] FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.[70]

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.[71] A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[72]

[64] *Id*.
[65] Section 705.103(4), F.S.
[66] *Id*.
[67] Section 327.60(5), F.S.
[68] Section 327.70, F.S.
[69] Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.
[70] Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.
[71] Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.
[72] Section 705.103(4), F.S.

The FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.[73] Grants are awarded based on a set of criteria outlined in FWC rules.[74] Removal or relocation of a vessel on private property is not eligible for grant funding.[75] However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.[76]

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.[77] Violations are punishable by a term of imprisonment of no more than one year and a fine of up to $1,000.[78] Further, such violation is punishable by a civil penalty of up to $75,000 per violation per day.[79] Each day during any portion of which the violation occurs constitutes a separate offense.[80]

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- $50 for a first offense;
- $100 for a second offense occurring 30 days or more after a first offense; and
- $250 for a third offense occurring 30 days or more after a previous offense.[81]

Section 327.73(1)(bb), F.S., provides that an owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- $50 for a first offense;
- $100 for a second offense; and
- $250 for a third offense.[82]

Finally, s. 327.73(1), F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days imprisonment.[83]

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[73] Section 376.15, F.S.
[74] Fla. Admin. Code R. 68-1.003.
[75] National Oceanic and Atmospheric Association, Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida (last visited Feb. 22, 2021).
[76] Section 376.15, F.S.
[77] Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[78] Sections 775.082(4)(a) and 775.083(1)(d), F.S.
[79] Sections 376.15(2) and 376.16(1), F.S.
[80] Section 376.16(1), F.S.
[81] Section 327.73(1)(aa), F.S.
[82] Section 327.73(1)(bb), F.S.
[83] Sections 775.082 and 775.083, F.S.

Artificial Reef Program

Artificial reefs are reef habitats using one or more objects of natural or human origin intentionally placed on the seafloor to enhance marine life for human use. Artificial reefs provide benefits including:

- Enhancing recreational and diving opportunities;
- Providing socio-economic benefits to local coastal communities;
- Increasing reef fish habitat;
- Mitigation reefs to replace hard bottom habitat lost through activities such as beach re-nourishment and damage caused by vessel groundings;
- Oyster reef regeneration; and
- Shoreline protection.[84]

Florida has one of the most active artificial reef programs in the nation. Since the 1940s, more than 3,750 planned public artificial reefs have been placed in state and federal waters off of Florida's coast.[85] The FWC is authorized to accept title, on behalf of the state, of vessels to use as offshore reefs in the artificial reef program.[86] Under the program, the FWC provides grants and financial and technical assistance to coastal local governments, state universities, and qualified nonprofit organizations for the siting and development of artificial reefs, and for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness.[87]

Marine Sanitation Devices

Certain vessels, including those that are 26 feet or longer with an enclosed cabin and berthing facilities, houseboats,[88] and floating structures with an enclosed living space with berthing facilities or work space with public access, are required to have a working toilet on board.[89] Permanently installed toilets must be properly attached to a Coast Guard certified or labeled marine sanitation device.[90] A marine sanitation device is equipment that is designed to receive, retain, treat, or discharge sewage and the process to treat such sewage.[91]

Florida prohibits the discharge of untreated sewage from any vessel, including houseboats, or any floating structure into state waters.[92] This prohibition also applies to live-aboard vessels, which are defined as: a vessel used solely as a residence and not for navigation; a vessel for which a declaration of domicile has been filed; or a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial

[84] FWC, *Artificial Reefs*, https://myfwc.com/fishing/saltwater/artificial-reefs/ (last visited Feb. 22, 2021).
[85] *Id*.
[86] Section 379.249(1), F.S.
[87] *Id*.
[88] Section 327.02(17), F.S. defines a "houseboat" as a vessel used primarily as a residence and not moved for 21 out of 30 days in a county of this state if the residential use of the vessel is to the preclusion of its use as a means of transportation. Section 327.02(17).
[89] Section 327.53(1)-(3), F.S.
[90] *Id*.
[91] DEP, *Clean Boater FAQ*, https://floridadep.gov/rcp/cva/content/clean-boater-faq (last visited Feb. 22, 2021).
[92] Section 327.53(4)(a), F.S.

fishing vessels.[93] Vessel owners with Type III[94] marine sanitation devices must dispose of sewage in an approved pump-out facility.[95] Violators are subject to a noncriminal infraction, for which the penalty is $50.[96]

Nuisance Vessels

Florida law declares that vessels or floating structures that are operated or occupied on the waters of this state and violate marine sanitation device requirements are a nuisance and hazard to public safety and health.[97] If an owner or operator does not correct a violation within 30 days after a citation is issued, and their vessel or floating structure remains on the waters of this state, law enforcement officers are required to apply to the appropriate court in the county where the vessel or floating structure is located, to order or cause the removal of the vessel or floating structure from the waters of this state at the owner's expense.[98] If the owner cannot be found or fails to pay the removal costs, the vessel or floating structure will be sold at a nonjudicial sale and the proceeds will be used to pay the removal costs.[99]

Testing for Alcohol, Chemical Substances, and Controlled Substances

Anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath, or a urine test to detect the presence of chemical substances or controlled substances.[100] These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.[101]

Additionally, anyone who operates a motor vehicle or vessel in the state is deemed to have given his or her consent to submit to an approved blood test to determine the alcoholic content of his or her blood or to detect the presence of chemical substances or controlled substances.[102] These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.[103]

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[93] Section 327.02(22), F.S.
[94] Type III marine sanitation devices hold sewage, preventing the direct overboard discharge of sewage. Type I marine sanitation devices treat sewage by chemical or thermal means before discharge. Type II marine sanitation devices treat sewage by biological means, using bacteria, before discharge.
[95] Section 327.53(4)(b), F.S.
[96] Section 327.53(6)(a), F.S.
[97] Section 327.53(7), F.S.
[98] *Id*.
[99] Section 328.17, F.S.
[100] Sections 316.1932(1)(a) and 327.352(1)(a), F.S.
[101] *Id*.
[102] Sections 316.1932(1)(c) and 327.352(1)(c), F.S.
[103] *Id*.

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of one year for a first refusal, or 18 months for a repeat refusal.[104] A person who operates a motor vehicle who fails to submit to such test who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.[105]

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of $500 for a first refusal.[106] A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.[107]

However, in 2016, the United States Supreme Court issued a ruling in *Birchfield v. North Dakota* that prohibits warrantless blood tests incident to arrests for driving under the influence.[108] The Court held that the Fourth Amendment prohibits unreasonable searches, and the taking of a blood sample or administration of a blood test is a search.[109] Under the Court's ruling, refusing a blood test may not subject a person to criminal penalties.[110] Thus, Florida's current laws relating to the penalties for refusal to submit to a blood test are unenforceable.

Mangroves

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.[111] They provide protected nursery areas for fishes, crustaceans, and shellfish; food, shelter, and nesting areas for a multitude of species;[112] protection of the shoreline from storm surge and erosion;[113] and water quality protection.[114]

Currently, there are not any state regulations for anchoring or mooring near mangroves, although the trimming of mangroves is regulated under the Mangrove Trimming and Preservation Act.[115] Through the Mangrove Trimming and Preservation Act, the Legislature intends to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.[116] The FWC notes that removing derelict and at-risk vessels from areas in close proximity to mangroves and other upland vegetation can be considerably more expensive than from other areas due to conservation and depth concerns.[117]

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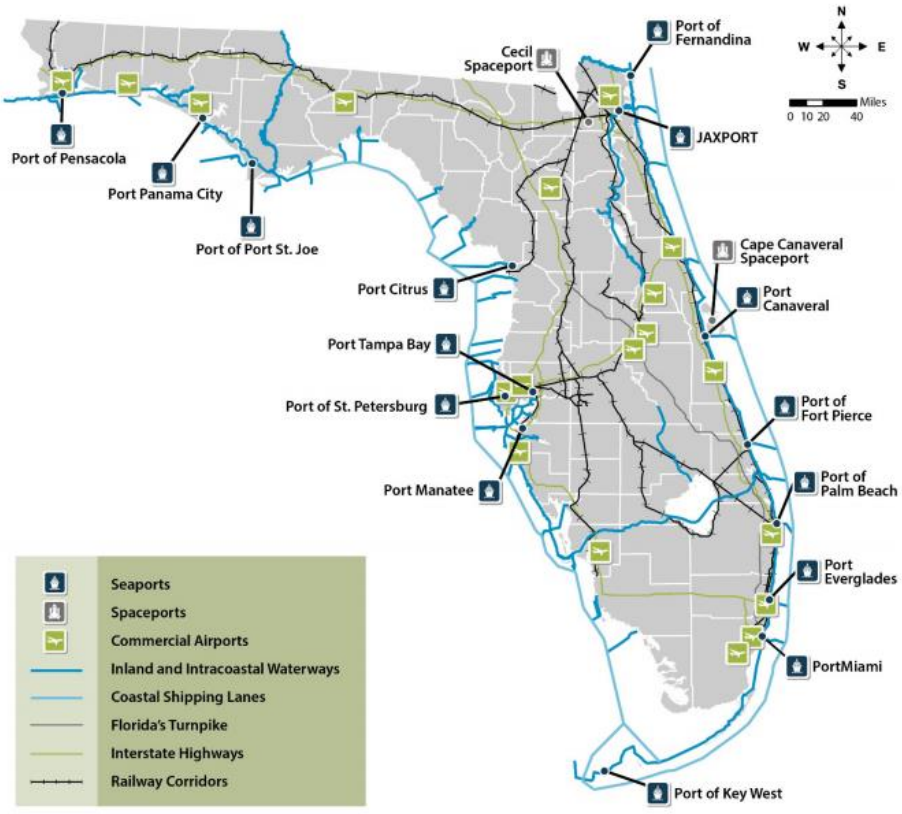
[104] Section 316.1932(1)(a) and (1)(c), F.S.
[105] *Id.*; s. 316.1939, F.S.
[106] Section 327.352(1)(a) and (1)(c), F.S.
[107] *Id.*; s. 327.259, F.S.
[108] *Birchfield v. North Dakota*, 136 U.S. 2160 (2016).
[109] *Id.*
[110] *Id.*
[111] DEP, *What is a Mangrove?*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove (last visited Feb. 23, 2021).
[112] DEP, *Florida's Mangroves*, https://floridadep.gov/rcp/rcp/content/floridas-mangroves (last visited Feb. 23, 2021).
[113] FWC, *Mangrove Forests*, https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/ (last visited Feb. 23, 2021).
[114] *Id.*
[115] Sections 403.9321-403.9333, F.S.
[116] Section 403.9323, F.S.
[117] FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

Florida Intracoastal Waterway

The Florida Intracoastal Waterway is defined as the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.[118] The Florida Intracoastal Waterway is shown in the map below.[119]



Spaceflight

With the recent resurgence of space activity, Florida is emerging as a national leader in spaceflight activities. In 2020, the space industry in Florida completed 31 launches from Cape

[118] Section 327.02(15), F.S.
[119] Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), *available at* https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf (last visited Mar. 1, 2021).

Canaveral Spaceport,[120] including the SpaceX Demo-2 mission in May 2020[121] and the SpaceX Crew-1 mission in November 2020.[122] According to Space Florida, over 50 launches are expected in 2021, and up to 100 launches are expected annually going forward.[123] Upon re-entry, the space capsules splashed down in waters off of Florida's coasts for the first time in 45 years.[124] The National Aeronautics and Space Administration (NASA) and SpaceX teams coordinated with the Coast Guard to ensure crew safety upon splashdown, including providing extra ships and air assets to patrol the splashdown zone to mitigate safety concerns for boaters approaching the landing area.[125]

When the capsule landed in waters near Pensacola in August 2020, private boats approached the landing area too closely, according to NASA.[126] This led to confusion as recovery crews tried to reach the spacecraft. There were concerns that private boats could have interfered with the emergency recovery operation and that the spacecraft's thrusters could have released toxic propellant fumes.[127] Although the Coast Guard had patrol boats in the area ahead of the splashdown, it stated that "numerous boaters ignored the Coast Guard crews' requests and decided to encroach the area, putting themselves and those involved in the operation in potential danger."[128]

There are no existing state statutes in place to protect spaceflight operations and astronauts. The FWC stated in its agency bill analysis that "spectator separation is necessary to prevent interference with sensitive operations, as well as for public safety reasons."[129]

III. Effect of Proposed Changes:

Testing for Alcohol, Chemical Substances, or Controlled Substances: Sections 1, 2, 6, and 7

Section 1 of the bill, effective October 1, 2021, amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle.

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[120] Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).
[121] National Aeronautics and Space Administration (NASA), *NASA, SpaceX Successfully Launch Demo-2 Mission*, https://blogs.nasa.gov/kennedy/2020/05/30/nasa-spacex-successfully-launch-demo-2-mission/ (last visited Feb. 22, 2021).
[122] NASA, *NASA, SpaceX Officials Thrilled with Crew-1 Launch Success*, https://blogs.nasa.gov/kennedy/2020/11/15/nasa-spacex-officials-thrilled-with-crew-1-launch-success/ (last visited Feb. 22, 2021).
[123] Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).
[124] AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84 (last visited Feb. 22, 2021).
[125] NASA, *NASA and SpaceX Teams Prepare for Crew-1 Mission*, https://blogs.nasa.gov/kennedy/2020/09/30/nasa-and-spacex-teams-prepare-for-crew-1-mission/ (last visited Feb. 22, 2021).
[126] AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84 (last visited Feb. 22, 2021).
[127] The Verge, *SpaceX capsule Swarmed by Boaters After Successful Splashdown*, https://www.theverge.com/2020/8/2/21351811/spacex-capsule-boaters-splashdown-boats (last visited Feb. 22, 2021).
[128] *Id*.
[129] FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021) (on file with the Senate Committee on Environment and Natural Resources).

Section 2 of the bill, effective October 1, 2021, amends s. 316.1939, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances.

The bill revises the conditions under which a person's driving privilege is suspended and under which a person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances. The bill provides that failure to submit to a lawful breath test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test is a misdemeanor of the first degree.

Section 6 of the bill, effective October 1, 2021, amends s. 327.352, F.S., relating to tests for alcohol, chemical substances, or controlled substances while operating a vessel. The bill revises the conditions under which a person commits a misdemeanor relating to boating while impaired or intoxicated. The bill provides that failure to submit to a lawful breath or urine test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test, or had his or her driver's license suspended for an unlawful blood-alcohol or breath-alcohol level, is a misdemeanor of the first degree.

Section 8 of the bill, effective October 1, 2021, amends s. 327.359, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances. The bill revises the conditions under which a person commits a misdemeanor of the first degree for failure to submit to a chemical or physical breath or urine test for alcohol, chemical substances, or controlled substances to include refusal to submit to such a test, and either a previous fine for failure to submit to a chemical or physical breath test, or a driver's license suspension for an unlawful blood-alcohol or breath-alcohol level. The bill deletes from the list of misdemeanors the refusal to submit to a lawful blood test for alcohol, chemical substances, or controlled substances.

In **Sections 1, 2, 6, and 8**, the bill deletes the provisions establishing that a person commits a misdemeanor for refusing to submit to a lawful blood test for alcohol, chemical substances, or controlled substances if the person has been previously fined for refusal to submit to a lawful breath, urine, or blood test.

Section 7 of the bill amends s. 327.35215, F.S., to require the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a blood, breath, or urine test into a person's driving record.

Human-Powered Vessels: Sections 3 and 8

Section 3 of the bill amends s. 327.02, F.S., relating to definitions. The bill defines the term "human-powered vessel" to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill revises references to the International Navigational Rules Act of 1977 and Inland Navigational Rules Act of 1980 to the most recent versions of the Acts, as amended.

Section 9 of the bill creates a new section of law, s. 327.371, F.S., regulating human-powered vessels. The bill authorizes persons to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway only under the following conditions:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water and the operator proceeds with diligence to a location where he or she may safely operate the vessel outside the marked channel;
- While crossing the marked channel in the most direct, continuous, and expeditious manner possible and not interfering with other vessel traffic in the channel; or
- During an emergency endangering life or limb.

The bill provides that a person who operates a human-powered vessel within the marked channel outside of these conditions commits a noncriminal infraction.

Rulemaking Authority: Section 4

Section 4 of the bill amends s. 327.04, F.S., related to the Fish and Wildlife Conservation Commission (FWC) rules. The bill provides additional rulemaking authority to the FWC to implement the provisions of:

- Chapter 705, F.S., relating to lost or abandoned vessels;
- Section 376.15, F.S., relating to relocation or removal of derelict vessels from public waters; and
- Section 823.11, F.S., relating to criminal penalties for relocation or removal of derelict vessels.

Spaceflight: Section 5

Section 5 of the bill creates a new section of law, s. 327.462, F.S., regulating the temporary establishment of protection zones in water bodies to ensure security around the launch and recovery of spaceflight assets.

The bill defines the following terms for the new section of law:

- "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- "Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing such a license, permit, or authorization.[130]

The bill authorizes the head of a law enforcement agency or entity, or his or her designee (law enforcement), to, within the agency or entity's jurisdiction, temporarily establish a protection

[130] The bill defines "spaceflight entity" to have the same definition as in s. 331.501, F.S.

zone requiring vessels to leave, or prohibiting vessels from entering, water bodies when necessary for preparations in advance of or for recovery of spaceflight assets before or after a launch service or reentry service.

A temporary protection zone must be established under the following conditions:

- The zone must be located within five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted. However, the protection zone may be located at a distance greater than five hundred yards if law enforcement determines that such greater distance is in the best interest of public safety.
- The zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch.
- Law enforcement may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a launch or reentry while the transport vessel is continuously underway transporting such assets to a location for removal.
- Law enforcement may not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.
- Law enforcement must report the establishment of the temporary protection zone via email to The FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. The report must include:
  - Reasons for the protection zone;
  - The portion of the water body or water bodies that will be included in the protection zone; and
  - The duration of the protection zone.
- Law enforcement must report via email to the FWC's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violation of the protection zone no later than 72 hours after the end of the protection zone period.

The section of law applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory,[131] and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

The bill provides that a person who violates this section or any directive given by law enforcement relating to an established temporary protection zone after being advised of the establishment of the protection zone commits a misdemeanor of the second degree.

Boating Safety: Sections 11, 17, and 20

Section 11 of the bill amends s. 327.395, F.S., relating to boater safety identification.

[131] Section 331.304, F.S. establishes as spaceport territory specified real property in Brevard, Santa Rosa, Okaloosa, Gulf, Walton, and Duval Counties, and real property which is a spaceport licensed by the FAA, as designated by the board of directors of Space Florida.

The bill clarifies what documentation and certifications persons operating a vessel must have in their possession aboard the vessel.

The bill exempts, from the boater safety identification card requirement, persons who have been previously licensed by the Coast Guard to serve as master of a vessel, provided proof of such licensure to the FWC, and requested that a boating safety identification card be issued in his or her name.

The bill deletes a provision authorizing the FWC to appoint liveries, marinas, or other persons as its agents to administer a boating safety education course or temporary certificate examination and issue identification cards or temporary certificates, and requiring the agent to charge a $2 examination fee. However, the provision is retained in another subsection within the same section of law.

Section 17 of the bill creates s. 327.463, F.S., relating to special hazards requiring slow speeds by vessel operators. The bill specifies conditions under which a vessel is and is not considered to be operating at slow speed, minimum wake.

A vessel is considered to be operating at slow speed, minimum wake only if it is:
- Fully off plane and completely settled into the water; and
- Proceeding without wake or with minimum wake.

A vessel is not considered to be operating at slow speed, minimum wake if it is:
- Operating on plane;
- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels.

The bill prohibits a vessel that is required to operate at slow speed, minimum wake from proceeding at a speed greater than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill prohibits vessel operators from operating a vessel faster than slow speed, minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:
- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a Coast Guard vessel, or a firefighting vessel, when such emergency vessel has its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge displaying an orange flag indicating that the vessel or barge is actively engaged in construction operations.
    - The flag must be displayed from a pole that extends at least 10 feet above the tallest portion of the vessel or barge, or at least five feet above any superstructure permanently installed upon the vessel or barge.
    - The flag must meet certain requirements, including:
        - Be a size of at least two feet by three feet;

- Include a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze; and
- Be displayed so the visibility of the flag is not obscured in any direction.

The bill specifies that a person may not be cited for a violation during periods of low visibility, including any time between the hours from 30 minutes after sunset to 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill also provides that a person operating a vessel who violates this section, or the owner of or responsible party for a construction vessel or barge that displays an orange flag when it is not actively engaged in construction operations, is guilty of a noncriminal infraction.

The bill specifies that the speed and penalty provisions of this section do not apply to law enforcement, firefighting, or rescue vessels that are owned or operated by a governmental entity.

Section 20 of the bill amends s. 327.54, F.S., relating to safety regulations of liveries. The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel unless the person renting presents:

- Photographic identification and a valid boater safety identification card issued by the FWC;
- A state-issued identification card or driver license indicating possession of the boating safety identification card; or
- Photographic identification and a valid temporary certificate issued or approved by the FWC.
- These provisions do not apply to those individuals that are exempt from boating safety education requirements (Individuals born before January 1, 1988).

Boating-Restricted Areas: Sections 13, 14, 15, and 16

Section 13 of the bill amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas. The bill designates Monroe County as an anchoring limitation area within which a vessel on the waters of this state may only be anchored in the same location for a maximum of 90 days. The bill requires the FWC to adopt rules to implement the anchoring limitation area. The bill provides that this anchoring limitation area does not apply to an approved and permitted mooring field. The bill provides that this section is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within one mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels, notwithstanding the FWC rules adopted pursuant to this section.

The bill deletes a provision that references an obsolete section of law.

Section 14 of the bill amends s. 327.4109, F.S., relating to prohibited anchoring and mooring. The bill revises existing anchoring and mooring restrictions to prohibit anchoring and mooring within 150 feet of a *public or private* marina or other *public* vessel launching or loading facility. However, vessels may anchor and moor within these areas under the exemptions in existing law.

Section 15 of the bill amends s. 327.45, F.S., relating to protection zones for springs. The bill authorizes the FWC to establish protection zones for springs which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the FWC using the most recent Florida Geological Survey springs bulletin.

Section 16 of the bill amends s. 327.46, F.S., relating to boating-restricted areas. The bill authorizes municipalities and counties to establish slow speed, minimum wake boating-restricted areas by ordinance if the area is within the boundaries of a permitted public mooring field and up to a 100 foot buffer around the mooring field. The bill provides that boating restricted areas designated by a local ordinance as a public bathing beach or swim area must be accessible by land and open to the general public.

Derelict/At-Risk Vessels: Sections 12, 21, 23, 24, 25, 26, and 28

Section 12 of the bill amends s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state. The bill revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.

The bill authorizes the FWC and other law enforcement officers to provide notice to a vessel owner or operator that a vessel is at risk of becoming derelict via in-person notice recorded on an agency-approved body camera.

The bill authorizes the FWC and other law enforcement officers to relocate or cause to be relocated a vessel at risk of becoming derelict to a distance greater than 20 feet from a mangrove or upland vegetation. Law enforcement agencies and officers must be held harmless for damages to an at-risk vessel that result from relocation unless the damage results from gross negligence[132] or willful misconduct.[133]

The bill authorizes the FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. The program may, but is not required to, include:

- Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with state law;
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to the FWC to be destroyed without penalty;
- Removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel;
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict; and

[132] "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

[133] "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

- Creation or acquisition of moorings designated for securing vessels at risk of becoming derelict.

The bill authorizes the FWC to adopt rules to implement the program. Implementation of the program is subject to appropriation by the Legislature and is funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 21 of the bill amends s. 327.60, F.S., relating to local regulations. The bill authorizes local governments to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove an abandoned or lost vessel within its jurisdiction that is affixed to a public mooring.

Section 23 and Section 24 of the bill amend s. 328.09, F.S., relating to the refusal to issue and authority to cancel a certificate of title or registration. The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict.

Section 23 of the bill takes effect on July 1, 2023. At that time, the bill authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

Section 25 of the bill amends s. 376.15, F.S., relating to the relocation or removal of derelict vessels from public waters. The bill deletes the prohibition in existing law against storing or abandoning a derelict vessel and provides that it is unlawful for any person, firm, or corporation to leave a derelict vessel upon the waters of this state. The bill provides that for purposes of this section, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
    - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within seven days after such accident or event; or
    - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them. The bill authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The FWC or law enforcement agencies or

officers are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

The bill adds storage, destruction, and disposal to the list of authorized actions for which the FWC may provide grants from the Marine Resources Conservation Trust Fund or Florida Coastal Protection Trust Fund to local governments under an established program for derelict vessels.

Section 26 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property. The bill creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state. When a law enforcement officer ascertains that such a vessel exists, the officer must cause a notice to be placed on the vessel in substantially the following form:

> NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties may have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section)... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)...

The bill requires the law enforcement agency to mail a copy of the notice and inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, the bill requires a state agency to follow the statutory processes for proceedings in which the substantial interests of a party are determined by an agency, except that a local judge, magistrate, or code enforcement officer may be designated to conduct a hearing.

The bill authorizes the law enforcement agency, or its designee, if the owner or responsible party for a derelict vessel or vessel that has been declared a nuisance has not requested a hearing at the end of 21 days after the notice is published, or if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or at risk of becoming derelict and a final order has been entered or the case is otherwise closed, to:

- Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
- Authorize the vessel's use as an artificial reef in accordance with the FWC's artificial reef program if all necessary federal, state, and local authorizations are received.

The bill provides that the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition is liable to the law enforcement agency, governmental entity, or the agency's or entity's designee for removal, storage, and destruction costs.

The bill provides that neglecting or refusing to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

Section 28 of the bill amends s. 823.11, F.S., relating to the relocation or removal of derelict vessels. The bill revises the definition of "derelict vessel" to delete that the vessel is left, stored, or abandoned. The portion of the definition of "derelict vessel" that describes the vessel as in a wrecked, junked, or substantially dismantled condition upon any public waters of this state is also revised to delete the word "public." The new definition provides that a vessel is:

- Wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.
- Junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice of such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.
- Substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system, the propulsion system, or the exterior hull integrity. Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if the motor is not an effective means of propulsion.

The bill deletes the prohibition against storing or abandoning a derelict vessel in existing law and prohibits a person, firm, or corporation from leaving a derelict vessel upon the waters of this state. The bill provides that for purposes of the paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
  - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or
  - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them, if the derelict vessel obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. The FWC or law enforcement agencies or officers are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill allows for the FWC, law enforcement agencies, or governmental subdivisions that have received authorization from a law enforcement officer or agency to recover costs for relocation, removal, storage, destruction, and disposal of a derelict vessel from a vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The bill provides that neglecting or refusing to pay all costs of removal, storage, destruction, or disposal of a derelict vessel, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

Marine Sanitation Devices: Section 19

Section 19 of the bill amends s. 327.53, F.S., relating to marine sanitation. The bill requires the owner or operator of a live-aboard vessel or houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pump-out of the device and the location of the pump-out station or waste reception facility. The bill requires each record to be maintained for one year after the pump-out date. This subsection does not apply to vessels equipped with marine compost toilets that process and manage human waste using marine compost toilet technologies that comply with U.S. Coast Guard requirements.

Penalties: Section 21

Section 22 of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws.

The bill amends the noncriminal infraction for a violation of s. 327.395, F.S., relating to boater safety education to provide that a person cited for failing to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state, from:
- $50 to $100 for a first offense;
- $100 to $250 for a second offense occurring 30 days or more after a previous offense; and
- $250 to $500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill declares that a vessel that is the subject of three or more violations issued within an 18-month period by a law enforcement officer for being at risk of becoming derelict, which result in a disposition other than acquittal or dismissal, is a public nuisance and is subject to relocation or removal. The bill authorizes the FWC or other law enforcement to relocate or remove the vessel or cause it to be relocated or removed. Law enforcement officers who relocate or remove such a vessel are held harmless for damages to the vessel unless the damage results from gross negligence[134] or willful misconduct.[135]

The bill creates civil penalties for a violation of s. 327.463(4)(a) and (b), F.S., the new section relating to vessels creating special hazards, of:
- $50 for a first offense;
- $100 for a second offense occurring within 12 months after a prior offense; and
- $250 for a third offense occurring within 36 months after a prior offense.

The bill adds to the list of violations resulting in a noncriminal offense:
- Failing to maintain the required pump-out records of a marine sanitation device for a live-aboard vessel or houseboat; and
- Operating a human-powered vessel within the boundaries of a marked channel of the Florida Intracoastal Waterway in violation of the new statutory restrictions.

Conforming Changes: Sections 10, 18, and 27

Section 10 of the bill amends s. 327.391, F.S., relating to the regulation of airboats, to make conforming and technical changes.

[134] "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.
[135] "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

Section 18 of the bill amends s. 327.50, F.S., relating to vessel safety regulations, equipment, and lighting requirements. The bill corrects an incorrect reference to clarify that the FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

Section 27 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property, to conform to revisions from ch. 2019-76, Laws of Florida, which take effect in 2023.

Effective Date

Section 29 of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (Sections 1, 2, 6, and 8 of the bill take effect October 1, 2021; Section 23 of the bill takes effect July 1, 2023.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

If the FWC establishes a derelict vessel prevention program, the agency is likely to incur costs from implementing the program. The bill provides that establishment of the program is subject to legislative appropriation, but it is unknown what amount the appropriation would be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1932, 316.1939, 327.02, 327.04, 327.352, 327.359, 327.391, 327.395, 327.4107, 327.4108, 327.4109, 327.45, 327.46, 327.50, 327.53, 327.54, 327.60, 327.73, 328.09, 376.15, 705.103, and 823.11.

This bill creates the following sections of the Florida Statutes: 327.462, 327.371, and 327.463.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Requires the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a blood, breath, or urine test into a person's driving record.
- Provides that the head of a law enforcement agency or entity, or his or her designee may not restrict vessel movement within the Florida Intracoastal Waterway, when establishing a temporary protective zone, except as necessary during transport of spaceflight assets to or from port or during exigent circumstances
- Establishes an effective date of October 1, 2021, to revise conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Clarifies what documents or certifications are required for operation of a vessel.
- Provides that the designation of Monroe County as an anchoring limitation area is not effective until Monroe County approves, permits, and opens new moorings for public

use, at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels.

- Clarifies that the area within one mile of the Key West Bight City Dock is prioritized for investigation of derelict vessels as well as vessel removal.
- Provides that boating-restricted areas designated by a local ordinance as a public bathing beach or swim area must be accessible by land and open to the general public.
- Provides that the marine sanitation device pumpout requirements in the underlying bill do not apply to certain marine compost toilets that are United States Coast Guard compliant.
- Clarifies that the documentation required to lease, hire, or rent a vessel from a livery is the same as is required under the boater safety identification requirements revised in the underlying bill.

CS by Environment and Natural Resources on March 15, 2021:

- Deletes the requirement from the underlying bill that persons have boating safety identification documents in his or her possession aboard a vessel beginning in 2023.
- Adds persons who possess an International Certificate of Competence in sailing to those exempt from the boating safety identification card requirement.
- Revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.
- Deletes a provision authorizing the derelict vessel prevention program created under the bill to include other preventative efforts and methods as determined appropriate and necessary by the Fish and Wildlife Conservation Commission (FWC).
- Designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days, excluding approved and permitted mooring fields.
- Requires the FWC to adopt rules to implement the Monroe County anchoring limitation area.
- Authorizes the FWC to establish protection zones for first, second, and third magnitude springs and springs groups, including their associated spring runs, which prohibit the anchoring, mooring, beaching, or grounding of vessels.
- Provides that the springs, springs groups, and springs runs be determined by the FWC using the most recent Florida Geological Survey springs bulletin.
- Clarifies that vessels that are required to operate at slow speed, minimum wake are prohibited from proceeding at certain speeds.
- Deletes provisions from the underlying bill designating the waters of this state as a no-discharge zone and associated penalties for violation.
- Revises provisions relating to derelict vessels to prohibit persons, firms, or corporations from leaving, rather than storing or abandoning, a derelict vessel upon the waters of this state.
- Provides that, for derelict vessels provisions, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

- Provides that persons who own or operate a vessel that becomes derelict as a result of a reported boating accident, hurricane, or other uncontrollable event may not be charged with having a derelict vessel if the person provides documentation of the events leading to the vessel being derelict or the vessel has been removed or repaired within a specific time frame.
- Authorizes the FWC and law enforcement officers to store, destroy, or dispose of derelict vessels, in addition to relocating and removing the vessels.
- Authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environment and Natural Resources; and Senator Hutson

592-02886-21 20211086c1

A bill to be entitled

An act relating to operation and safety of motor vehicles and vessels; amending ss. 316.1932 and 316.1939, F.S.; revising conditions under which a person's driving privilege is suspended and under which the person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances; specifying such misdemeanor as a misdemeanor of the first degree; amending s. 327.02, F.S.; defining the term "human-powered vessel"; revising the definition of the term "navigation rules"; amending s. 327.04, F.S.; providing additional rulemaking authority to the Fish and Wildlife Conservation Commission; creating s. 327.462, F.S.; defining terms; authorizing heads of certain entities to establish temporary protection zones in certain water bodies for certain purposes; providing protection zone requirements; requiring reports of establishment of such protection zones to the commission and to the appropriate United States Coast Guard Sector Command; providing report requirements; providing applicability; providing penalties; amending ss. 327.352 and 327.359, F.S.; revising conditions under which a person commits a misdemeanor the first degree for refusing to submit to certain tests; creating s. 327.371, F.S.; providing circumstances under which a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway; providing a

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penalty; amending s. 327.391, F.S.; conforming cross-references; amending s. 327.395, F.S.; removing authority of the commission to appoint certain entities to administer a boating safety education course or temporary certificate examination and issue certain credentials; exempting certain persons from the requirement to possess certain documents aboard a vessel; amending s. 327.4107, F.S.; revising the conditions under which officers may determine a vessel is at risk of becoming derelict; authorizing certain officers to provide notice that a vessel is at risk of becoming derelict via body camera recordings; authorizing the commission or certain officers to relocate at-risk vessels to a certain distance from mangroves or vegetation; providing that the commission or officers are not liable for damages to such vessels; providing an exception; authorizing the commission to establish a derelict vessel prevention program consisting of certain components; authorizing the commission to adopt rules; providing that such program is subject to appropriation by the Legislature; providing for funding; amending s. 327.4108, F.S.; designating Monroe County as an anchoring limitation area subject to certain requirements; requiring the commission to adopt rules; providing applicability; deleting obsolete language; amending s. 327.4109, F.S.; prohibiting the anchoring or mooring of a vessel or floating structure within a certain distance of certain facilities; providing

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exceptions; amending s. 327.45, F.S.; authorizing the commission to establish protection zones where certain activities are prohibited in or near springs; amending s. 327.46, F.S.; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway; providing an exception with respect to a certain vessel-exclusion zone; creating s. 327.463, F.S.; specifying conditions under which a vessel is and is not operating at slow speed, minimum wake; prohibiting a person from operating a vessel faster than slow speed, minimum wake within a certain distance from other specified vessels; exempting a person from being cited for a violation under certain circumstances; providing penalties; providing applicability; amending s. 327.50, F.S.; authorizing the commission to exempt vessel owners and operators from certain safety equipment requirements; amending s. 327.53, F.S.; requiring the owner or operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain a record of the date and location of each pumpout of the device for a certain period; conforming a cross-reference; making technical changes; amending s. 327.54, F.S.; prohibiting a livery from leasing, hiring, or renting a vessel to a person required to complete a commission-approved boating safety education course unless such person presents certain documentation indicating compliance;

amending s. 327.60, F.S.; authorizing a local government to enact and enforce regulations allowing the local law enforcement agency to remove an abandoned or lost vessel affixed to a public mooring; amending s. 327.73, F.S.; providing additional violations that qualify as noncriminal infractions; providing civil penalties; prohibiting conviction of a person cited for a violation relating to possessing proof of boating safety education under certain circumstances; increasing certain civil penalties; providing that certain vessels shall be declared a public nuisance subject to certain statutory provisions; authorizing the commission or certain officers to relocate or remove public nuisance vessels from the waters of this state; providing that the commission or officers are not liable for damages to such vessels; providing an exception; amending s. 328.09, F.S.; prohibiting the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to an applicant for a vessel that has been deemed derelict pursuant to certain provisions; authorizing the department, at a later date, to reject an application for a certificate of title for such a vessel; amending s. 376.15, F.S.; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; conforming

provisions to changes made by the act; authorizing a governmental subdivision that has received authorization from a law enforcement officer or agency to direct a contractor to perform vessel storage, destruction, and disposal activities; authorizing the commission to provide local government grants for the storage, destruction, and disposal of derelict vessels; providing for funding; amending s. 705.103, F.S.; providing notice procedures for when a law enforcement officer ascertains that a derelict or public nuisance vessel is present on the waters of this state; requiring a mailed notice to the owner or party responsible for the vessel to inform him or her of the right to a hearing; providing hearing requirements; authorizing a law enforcement agency to take certain actions if a hearing is not requested or a vessel is determined to be derelict or otherwise in violation of law; revising provisions relating to liability for vessel removal costs and notification of the amount owed; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; requiring persons whose vessel registration and motor vehicle privileges have been revoked for failure to pay certain costs to be reported to the department; prohibiting issuance of a certificate of registration to such persons until such costs are paid; amending s. 823.11, F.S.; revising application of definitions; revising the definition of the term "derelict vessel"; specifying requirements

for a vessel to be considered wrecked, junked, or substantially dismantled; providing construction; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; providing that relocation or removal costs incurred by a governmental subdivision are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being derelict; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; authorizing a governmental subdivision that has received authorization from a law enforcement officer or agency to direct a contractor to perform vessel relocation or removal activities; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1.a. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test

or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties

provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle

for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this

chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with ~~the provisions of~~ this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this

state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been

suspended previously or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327~~, and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor~~. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 2. Subsection (1) of section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

(1) A ~~Any~~ person who has refused to submit to a chemical or physical test of his or her breath~~, blood,~~ or urine, as described in s. 316.1932, and whose driving privilege was previously suspended or who was previously fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood required under this chapter or chapter 327, and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle

would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath or~~,~~ urine, ~~or blood,~~ if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

Section 3. Present subsections (18) through (47) of section 327.02, Florida Statutes, are redesignated as subsections (19) through (48), respectively, a new subsection (18) is added to that section, and present subsection (31) of that section is amended, to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(18) "Human-powered vessel" means a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

(32)~~(31)~~ "Navigation rules" means, for vessels on:

(a) Waters outside established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through December 31, 2020 ~~October 1, 2012~~.

(b) All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through December 31, 2020 ~~October 1, 2012~~.

Section 4. Section 327.04, Florida Statutes, is amended to read:

327.04 Rules.—The commission may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter, the provisions of chapter 705 relating to vessels, and ss. 376.15 and 823.11 conferring powers or duties upon it.

Section 5. Section 327.462, Florida Statutes, is created to read:

327.462 Temporary protection zones for spaceflight launches and recovery of spaceflight assets.—

(1) As used in this section, the term:

(a) "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.

(b) "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.

(c) "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.

(d) "Spaceflight entity" has the same meaning as provided in s. 331.501.

(2) The head of a law enforcement agency or entity identified in s. 327.70(1), or his or her designee, may, upon waters of this state within the law enforcement agency's or entity's jurisdiction, when necessary for preparations in advance of a launch service or reentry service or for the recovery of spaceflight assets before or after a launch service or reentry service, temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, water bodies within:

(a) Five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted; or

(b) A distance greater than provided in paragraph (a) if the head of such law enforcement agency or entity, or his or her designee, determines such greater distance is in the best interest of public safety.

(3) A protection zone established under subsection (2) may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone

may not be in place more than 72 hours before or 72 hours after the launch. The head of a law enforcement agency or entity identified in s. 327.70(1), or his or her designee, may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from the waters of this state.

(4) The head of a law enforcement agency or entity establishing a protection zone under this section, or his or her designee, must report the establishment of such protection zone via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate United States Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. Such report must include the reasons for the protection zone, the portion of the water body or water bodies which will be included in the protection zone, and the duration of the protection zone. No later than 72 hours after the end of the protection zone period, the head of the law enforcement agency or entity, or his or her designee, must report via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violating the protection zone.

(5) This section applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, as defined in s. 331.304, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end

destination upon waters of this state.

(6) A person who violates this section or any directive given by a law enforcement officer relating to the establishment of a protection zone under this section after being advised of the establishment of the protection zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, a ~~any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while

under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was

operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating

a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 ~~and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood, is a misdemeanor~~. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 7. Section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—A ~~Any~~ person who has refused to submit to a chemical or physical test of his or her breath~~, blood,~~ or urine, as described in s. 327.352, and who has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of

a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test, he or she is subject to a fine of $500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath or~~,~~ urine~~, or blood~~, if he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 8. Section 327.371, Florida Statutes, is created to read:

327.371 Human-powered vessels regulated.—

(1) A person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway as defined in s. 327.02:

(a) When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered

vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.

(b) When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.

(c) During an emergency endangering life or limb.

(2) A person may not operate a human-powered vessel in the marked channel of the Florida Intracoastal Waterway except as provided in subsection (1).

(3) A person who violates this section commits a noncriminal infraction, punishable as provided in s. 327.73.

Section 9. Subsection (1) and paragraphs (a) and (b) of subsection (5) of section 327.391, Florida Statutes, are amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). A ~~Any~~ person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

(5)(a) ~~Beginning July 1, 2019,~~ A person may not operate an airboat to carry one or more passengers for hire on waters of

this ~~the~~ state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

2. Proof of completion of a boater education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of this ~~the~~ state.

Section 10. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel the documents required by subsection (2).

(2) While operating a vessel, a person identified under subsection (1) must have in his or her possession aboard the vessel photographic identification and a boating safety

identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a temporary certificate issued or approved by the commission, which shows that he or she has:

(a) Completed a commission-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators; or

(b) Passed a temporary certificate examination developed or approved by the commission.

(3)(a) ~~(2)(a)~~ A person may obtain a boating safety identification card by successfully completing a boating safety education course that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing a temporary certificate examination that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(4) ~~(3)~~ A ~~Any~~ commission-approved boating safety education course or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

~~(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must~~

~~charge the $2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a $1 service fee.~~

(5) A boating safety identification card issued to a person who has completed a boating safety education course is valid for life. A temporary certificate issued to a person who has passed a temporary certification examination is valid for 90 days after the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a) 1. Is licensed by the United States Coast Guard to serve as master of a vessel;

2. Has been previously licensed by the United States Coast Guard to serve as master of a vessel, provides proof of such licensure to the commission, and requests that a boating safety identification card be issued in his or her name; or

3. Possesses an International Certificate of Competence in sailing.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety identification card in compliance with this section, who is 18 years of age or older, and who is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety education course or equivalency

examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing a boating safety education course in accordance with paragraph (2)(a) ~~the requirements of paragraph (1)(a)~~ and has a photographic identification card and a boating safety education certificate available for inspection as proof of having completed a boating safety education course. The boating safety education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of this section ~~subsection (1)~~ commits a noncriminal infraction, punishable as provided in s. 327.73.

(8) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and examinations are available in each county of this ~~the~~ state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. An agent ~~The agents~~ shall charge and collect the $2 fee required in subsection (9) for each temporary certificate requested of the commission by that agent,

which must be forwarded to the commission. The agent may charge and keep a $1 service fee.

(9) The commission may ~~is authorized to~~ establish and ~~to~~ collect a $2 fee for each card and temporary certificate issued pursuant to this section.

(10) The commission shall design forms and adopt rules pursuant to chapter 120 to implement ~~the provisions of~~ this section.

(11) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."

Section 11. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(d) The vessel is ~~left or stored aground unattended in such a state that would prevent the vessel from getting underway, is~~ listing due to water intrusion~~, or is sunk or partially sunk~~.

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other

electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to implement this paragraph.

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(7) The commission may establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(a) Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with s. 327.53(7), s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

(b) Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict in accordance with this section to turn his or her vessel and vessel title over to the commission to be destroyed without penalty.

(c) Providing for removal and destruction of an abandoned

vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(d) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(e) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The commission may adopt rules to implement this subsection. Implementation of the derelict vessel prevention program shall be subject to appropriation by the Legislature and shall be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 12. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise, except as provided in subsections (3) and (4):

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2)(a) Monroe County is designated as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The commission shall adopt rules to implement this subsection.

(b) This subsection does not apply to an approved and permitted mooring field.

~~(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one half hour after sunset and one half hour before sunrise in an anchoring limitation area.~~

(3) Notwithstanding subsections (1) and ~~subsection~~ (2), a person may anchor a vessel in an anchoring limitation area during a time that would otherwise be unlawful:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has

expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the

damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(z).

~~(7) This section shall remain in effect notwithstanding the Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 13. Paragraph (a) of subsection (1) and subsection (2) of section 327.4109, Florida Statutes, are amended to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(1)(a) The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach

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of the anchored or moored vessel or floating structure is:

1. Within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility;

2. Within 300 feet of a superyacht repair facility. For purposes of this subparagraph, the term "superyacht repair facility" means a facility that services or repairs a yacht with a water line of 120 feet or more in length; or

3. Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located. The commission may adopt rules to implement this subparagraph.

(2) Notwithstanding subsection (1), an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

(a) The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather

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conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 14. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels, or which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the commission using the most recent Florida Geological Survey springs bulletin. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

Section 15. Paragraph (b) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(b) Municipalities and counties may ~~have the authority to~~ establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake

boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

e. Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

3. An ordinance establishing a vessel-exclusion zone if the

area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

4. Notwithstanding the prohibition in s. 327.60(2)(c), within the portion of the Florida Intracoastal Waterway within their jurisdiction, except that the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway.

Section 16. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it is:

1. Fully off plane and completely settled into the water; and

2. Proceeding without wake or with minimum wake.

A vessel that is required to operate at slow speed, minimum wake may not proceed at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

(b) Is not proceeding at slow speed, minimum wake if it is:

1. Operating on plane;

2. In the process of coming off plane and settling into the water or getting on plane; or

3. Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

(2) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, United States Coast Guard vessel, or firefighting vessel, when such emergency vessel's emergency lights are activated.

(3)(a) A person may not operate a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag from a pole extending:

1. At least 10 feet above the tallest portion of the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations; or

2. At least 5 feet above any superstructure permanently installed upon the vessel or barge, indicating that the vessel or barge is actively engaged in construction operations.

(b) A flag displayed on a construction vessel or barge pursuant to this subsection must:

1. Be at least 2 feet by 3 feet in size.

2. Have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze.

3. Be displayed so that the visibility of the flag is not obscured in any direction.

(c) In periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, a person may not be cited for a violation of this subsection unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles. Such illumination does not relieve the construction vessel or barge from complying with

all navigation rules.

(4)(a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) The owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction, punishable as provided in s. 327.73.

(5) The speed and penalty provisions of this section do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

Section 17. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the commission ~~department~~.

Section 18. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

(6)(a) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any

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vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

(7) A ~~Any~~ vessel or floating structure operated or occupied on the waters of this ~~the~~ state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of a ~~any~~ vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of this ~~the~~ state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of this ~~the~~ state in violation of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located~~,~~ to order or otherwise cause the removal of such vessel or floating structure from the waters of this ~~the~~ state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23)(a) or (c), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1

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year after the date of the pumpout.

Section 19. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent a ~~any~~ vessel ~~powered by a motor of 10 horsepower or greater~~ to a ~~any~~ person who is required to comply with s. 327.395~~,~~ unless such person presents to the livery photographic identification and a valid boater safety identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a valid temporary certificate issued or approved by the commission as required under s. 327.395(2) ~~s. 327.395(1),~~ or meets the exemption provided under s. 327.395(6)(f).

Section 20. Subsection (5) of section 327.60, Florida Statutes, is amended to read:

327.60 Local regulations; limitations.—

(5) A local government may enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove a vessel affixed to a public dock or mooring within its jurisdiction that is abandoned or lost property pursuant to s. 705.103(1). Such regulation must require the local law enforcement agency to post a written notice at least 24 hours before removing the vessel.

Section 21. Paragraphs (q), (s), and (aa) of subsection (1) of section 327.73, Florida Statutes, are amended, and paragraphs (cc) and (dd) are added to that subsection, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to marine sanitation.

(s) Section 327.395, relating to boater safety education. However, a person cited for violating the requirements of s. 327.395 relating to failure to have required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

(aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:

1. For a first offense, $100 ~~$50~~.

2. For a second offense occurring 30 days or more after a first offense, $250 ~~$100~~.

3. For a third or subsequent offense occurring 30 days or more after a previous offense, $500 ~~$250~~.

A vessel that is the subject of three or more violations issued pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or

officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters of this state. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this paragraph upon waters of this state shall be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(cc) Section 327.463(4)(a) and (b), relating to vessels creating special hazards, for which the penalty is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior offense, $100.

3. For a third offense occurring within 36 months after a prior offense, $250.

(dd) Section 327.371, relating to the regulation of human-powered vessels.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 22. Subsection (4) of section 328.09, Florida Statutes, is amended to read:

328.09 Refusal to issue and authority to cancel a certificate of title or registration.—

(4) The department may not issue a certificate of title to an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. A law enforcement officer must inform the department in writing, which may be provided by facsimile, electronic mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, electronic mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 23. Effective July 1, 2023, paragraph (e) of subsection (3) of section 328.09, Florida Statutes, as amended by section 12 of chapter 2019-76, Laws of Florida, is amended to read:

328.09 Refusal to issue and authority to cancel a certificate of title or registration.—

(3) Except as otherwise provided in subsection (4), the department may reject an application for a certificate of title only if:

(e) The application is for a vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. In such case, a law enforcement officer must inform the

department in writing, which may be provided by facsimile, e-mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, e-mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 24. Section 376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from ~~public~~ waters of this state.—

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(c) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2)(a) It is unlawful for any person, firm, or corporation to ~~store,~~ leave~~, or abandon~~ any derelict vessel as defined in s. 823.11 upon the waters of ~~in~~ this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

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(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:

a. For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over this state.

(c) This subsection does not apply to a vessel that was derelict upon the waters of this state before the stated accident or event.

(3)(a) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 may ~~are authorized and empowered to~~ relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a ~~any~~ derelict vessel as defined in s. 823.11 from ~~public~~ waters of this state as defined in s. 327.02. All costs, including costs owed to a third party, incurred by the commission or other law

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enforcement agency in the relocation, ~~or~~ removal, storage, destruction, or disposal of any abandoned or derelict vessel are recoverable against the owner of the vessel or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

(b) The commission, an officer ~~officers~~ of the commission, or a ~~and any other~~ law enforcement agency or officer specified in s. 327.70 acting pursuant to ~~under~~ this section to relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state as defined in s. 327.02 shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(c) A contractor performing relocation or removal activities at the direction of the commission, an officer ~~officers~~ of the commission, ~~or~~ a law enforcement agency or officer, or a governmental subdivision, when the governmental subdivision has received authorization for the relocation or removal from a law enforcement officer or agency pursuant to this section, must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly

equipped to perform the services to be provided.

(d) The commission may establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from the ~~public~~ waters of this ~~the~~ state as defined in s. 327.02. The program shall be funded from the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund. Notwithstanding ~~the provisions in~~ s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal, storage, destruction, and disposal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, store, destroy, and dispose of, or to pay private contractors to remove, store, destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the

waters of this ~~the~~ state as defined in s. 327.02.

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this

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state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section).... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. may ~~Such notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or

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before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict

vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and

the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than $100. If the value of the property is $100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a

description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel, the owner or other party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition, who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency, other governmental entity, or the agency's or entity's designee for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer or representative of the law enforcement agency or other governmental entity shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle as provided in this section, after having been provided written

notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The law enforcement officer or representative of the law enforcement agency or other governmental entity shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges and ~~or whose~~ motor vehicle privileges have been revoked under this subsection. ~~Neither~~ The department or a ~~nor any other~~ person acting as an agent of the department may not ~~thereof shall~~ issue a certificate of registration to a person whose vessel and ~~or~~ motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

Section 26. Effective July 1, 2023, subsection (2) of section 705.103, Florida Statutes, as amended by section 29 of chapter 2019-76, Laws of Florida, is amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED

PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description of location)... has been determined to be (derelict or a public nuisance) and is unlawfully upon the waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section)... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable

for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. may ~~Such notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to

dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes as set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such hearings. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another

governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than $100. If the value of the property is $100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks

in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Section 27. Subsections (1), (2), and (3) of section 823.11, Florida Statutes, are amended to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(1) As used in this section and s. 376.15, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Derelict vessel" means a vessel, as defined in s.

327.02, that is ~~left, stored, or abandoned~~:

1. In a wrecked, junked, or substantially dismantled condition upon any ~~public~~ waters of this state.

a. A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

b. A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

c. A vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(I) The steering system;

(II) The propulsion system; or

(III) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

2. At a port in this state without the consent of the agency having jurisdiction thereof.

3. Docked, grounded, or beached upon the property of another without the consent of the owner of the property.

(c) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(d) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2)(a) ~~It is unlawful for~~ A person, firm, or corporation may not ~~to store,~~ leave~~, or abandon~~ any derelict vessel upon waters of ~~in~~ this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:

a. For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over the state.

(c) This subsection does not apply to a vessel that was derelict upon the waters of this state before the stated accident or event.

(3) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 may ~~are authorized and empowered to~~ relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state as defined in s. 327.02 if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The commission, an officer ~~officers~~ of the commission, or any other law enforcement agency or officer acting pursuant to ~~under~~ this subsection to relocate, remove, store, destroy, dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ waters of this state shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful misconduct.

(a) Removal of derelict vessels under this subsection may be funded by grants provided in ss. 206.606 and 376.15. The commission shall implement a plan for the procurement of any available federal disaster funds and use such funds for the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

removal of derelict vessels.

(b) All costs, including costs owed to a third party, incurred by the commission, another ~~or other~~ law enforcement agency, or a governmental subdivision, when the governmental subdivision has received authorization from a law enforcement officer or agency, in the relocation, ~~or~~ removal, storage, destruction, or disposal of a derelict vessel are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs. As provided in s. 705.103(4), a person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, destruction, or disposal of a derelict vessel as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A contractor performing such ~~relocation or removal~~ activities at the direction of the commission, an officer ~~officers~~ of the commission, ~~or~~ a law enforcement agency or officer, or a governmental subdivision, when the governmental subdivision has received authorization for the relocation or removal from a law enforcement officer or agency, pursuant to this section must be licensed in accordance with applicable

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly equipped to perform the services to be provided.

Section 28. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Ben Albritton, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #1086**, relating to Operation and Safety of Motor Vehicles and Vessels, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 12, 2021

I respectfully request that **Senate Bill #1086**, relating to Operation and Safety of Motor Vehicles and Vessels, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

1086
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic VESSEL SAFETY

Name Jeffrey Sharkey

Job Title President Capitol Alliance Group

Address 106 E College Ave #1110
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 224 1660

Email jeffreysharkey@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of St Petersburg

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-2021
Meeting Date

1086
Bill Number (if applicable)

Topic Operation and Safety of Motor Vehicles and Vessells

Amendment Barcode (if applicable)

Name Tim Parson

Job Title

Address 113 E. College Ave.
Street

Phone 850-910-2678

Tallahassee FL 32301
City *State* *Zip*

Email tim@gilbertpatenthouse

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Pensacola Shipyard Marina and Boatyard

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1126 (300690)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee Transportation, Tourism, and Economic Development); and Senator Harrell
SUBJECT:	Department of Transportation
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1126 represents the Florida Department of Transportation's (FDOT) legislative proposals for the 2021 Legislative Session. The bill contains a number of FDOT-related revisions to current law including:

- Increases from $275 to $300 million the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds issued to finance or refinance the cost of acquiring real property for state roads or the cost of bridge construction.
- Removes the expiration date for the Legislative Budget Commission (LBC) chair and vice chair's authority to approve amendments to the FDOT's work program that transfer fixed capital outlay appropriations between categories or increase an appropriation category.
- Clarifies that the Department of Revenue is the entity responsible for transferring a portion of documentary stamp tax revenues distributed to the State Treasury and credited to the State Transportation Trust Fund (STTF) from the State Treasury to the General Revenue Fund.
- Revises from October 1 to August 1 the date for metropolitan planning organization (MPO) annual submissions of project priorities to the FDOT districts for purposes of developing the FDOT's tentative work program and MPO transportation improvement programs.
- Removes provisions requiring the FDOT to provide space and video conference capability at each FDOT district office for persons requesting a hearing before the Commercial Motor Vehicle Review Board, instead requiring the FDOT to allow such persons to appear remotely

before the board via communications media technology already authorized by Administration Commission rule.
- Grants the FDOT rulemaking authority for the purpose of implementing statutory provisions relating to airport zoning.
- Revises provisions relating to a notice and hearing the FDOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property owner to provide clarity and improve readability.
- Removes obsolete references to a previously expired general service revenue service charge from specified collected revenue deposited into the STTF.

The extent of any potential fiscal impact to the FDOT resulting from the increased alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Trust Fund bonds is unknown. The remaining revisions are primarily administrative and housekeeping in nature and are expected to present no immediate fiscal impact to state or local revenues.

The bill takes effect July 1, 2021.

II. Present Situation:

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of proposed changes.

III. Effect of Proposed Changes:

Debt Service Cap on Right-of-Way Acquisition and Bridge Construction Bonds (Section 2)

Present Situation

Section 215.605, F.S., authorizes the issuance of state bonds to finance or refinance the cost of acquiring real property for state roads or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, the Legislature must authorize bonds, which must be issued pursuant to the State Bond Act.[1] The proceeds from the sale of issued bonds must be deposited into the Right-of-Way Acquisition and Bridge Construction Trust Fund.[2]

Section 206.46, F.S., authorizes the FDOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year into the Right-of-Way Acquisition and Bridge Construction Trust Fund to meet outstanding or proposed bond obligations; or, at a minimum, an amount sufficient to pay for the debt service coverage of outstanding bonds.[3] The annual transfer amount, however, may not exceed that which is necessary to provide the required debt service coverage levels for a maximum debt service of $275 million. Thus, debt service may not exceed 7 percent of the revenues deposited into the STTF or $275 million, whichever is less.

[1] Sections 215.57-215.83, F.S.
[2] Section 215.605(4), F.S.
[3] The transfer is required to be payable primarily from the motor and diesel fuel taxes transferred to the STTF.

The FDOT noted in 2020 that no adjustment has been made to the $275 million cap since 2007. The FDOT provided information that based on the FDOT's most recent bond sale and Revenue Estimating Conference projections [at that time], the limit on debt service based on the 7-percent-of-revenue threshold would have been $287 million in Fiscal Year 2019-2020 (based on revenues of $4.1 billion), growing to $350 million in Fiscal Year 2028-2029 (based on revenues of $5 billion). Additionally, the FDOT advised that under the current statutory limit, the $275 million cap leaves the FDOT with only about $100 million of available bonding capacity.[4]

Effect of Proposed Changes

Section 2 of the bill amends s. 206.46, F.S., to increase the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or $350 million, whichever is less.

Work Program Amendments (Section 10)

Present Situation

Current law authorizes the FDOT to amend its adopted work program and provides procedures for such amendments.[5] However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the LBC.

Prior to 2016, if a meeting of the LBC could not be held within 30 days after the FDOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.[6] In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the LBC could not meet.[7] In 2019, this authorization was reinstated with an expiration date of July 1, 2020.[8] In 2020, the authorization was reinstated with an expiration date of July 1, 2021.[9]

Effect of Proposed Changes

Section 10 of the bill amends s. 339.135(7)(g), F.S., to remove the expiration of authorization for LBC chair and vice chair approval of the identified amendments to the FDOT's adopted work program, thereby making the provision permanent.

Documentary Stamp Tax/General Revenue Fund Transfer (Section 1)

Present Situation

Chapter 201, F.S., levies an excise tax (documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the

[4] *See* the FDOT's 2020 Legislative Proposal, *Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap* (on file in the Senate Transportation Committee).
[5] Section 339.135(7), F.S.
[6] Section 339.135(7)(g), F.S. (2015).
[7] Chapter 2016-181, s. 16, Laws of Fla.
[8] Chapter 2019-116, s. 11, Laws of Fla.
[9] Chapter 2020-144, s. 93, Laws of Fla.

provisions of that chapter,[10] including provisions governing the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

After certain required distributions to the Land Acquisition Trust Fund,[11] approximately 24 percent of the remainder of the taxes collected or $541.75 million, whichever is less, is paid into the State Treasury to the credit of the STTF, $75 million of which must be transferred to the General Revenue Fund. The remaining amount credited to the STTF must be used to fund certain transportation-related programs.[12] Although current law specifies the DOR as the administering agency of that chapter, the DOR is not expressly identified as the entity responsible for making the $75 million transfer each fiscal year.

Effect of Proposed Changes

Section 1 of the bill amends s. 201.15(4)(a), F.S., to expressly require the DOR to make the $75 million transfer each fiscal year from funds credited to the STTF in the State Treasury to the General Revenue Fund.

Metropolitan Planning Organizations Project Priority Submissions to the FDOT (Sections 10 and 11)

Present Situation

The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program, which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs.[13] Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

With respect to development of the tentative work program, as outlined in s. 339.135(4), F.S., the district work program is developed cooperatively with the various metropolitan planning organizations (MPOs) around the state and must include, to the maximum extent feasible, the project priorities submitted by the MPOs to the FDOT's districts by October 1 of each year. The FDOT and an MPO may agree in writing to vary the submission date.[14]

The FDOT advises that during a "normal" work program development cycle, submission of MPO project priorities by October 1 allows sufficient time for development of the tentative work program cycle. However, because the Legislature meets beginning in January in even-numbered

[10] Section 201.11, F.S.
[11] Section 201.15(1) and (2), F.S.
[12] Section 201.15(4)(a), F.S. The programs include the New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, and the Transportation Regional Incentive Program.
[13] Section 339.135(1), F.S.
[14] Section 339.135(4)(c)2., F.S.

years,[15] the tentative work program cycle is "compressed" by two months, creating a need for earlier submission of project information. The FDOT notes that no failure to submit a priority list has occurred, but earlier submission has been provided as a courtesy, rather than a mandate.[16]

The MPOs are also required, in cooperation with the state and affected public transportation operators, to develop a transportation improvement program for the area within the jurisdiction of the MPO. Similar to work program development, each MPO is required to submit to the appropriate FDOT district a list of project priorities by October 1 of each year. Again, the FDOT and an MPO may agree in writing to vary the submission date. The MPO-approved lists must be used by the FDOT districts in developing the district work programs.[17]

Effect of Proposed Changes

Sections 10 and 11 of the bill, respectively, amend ss. 339.135(4)(c) and 339.175(8)(b), F.S., to revise from October 1 to August 1 the deadline for MPOs to submit their project priority lists for purposes of developing the FDOT's tentative work program and for purposes of development of MPO transportation improvement programs.

Commercial Motor Vehicle Review Board/Remote Appearance (Section 6)

Present Situation

The Commercial Motor Vehicle Review Board (the Board), established within the FDOT, is composed of three permanent members (the FDOT secretary as chair, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their designees); three members appointed by the Governor (one each from the road construction industry and the trucking industry, and one with a general business or legal background); and one member appointed by the Commissioner of Agriculture from the agriculture industry.[18]

The Board is authorized to review any penalty imposed upon any vehicle or person under the provisions of ch. 316, F.S., relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations, and the Board may modify, cancel, revoke, or sustain any such penalty.[19] The Board is authorized to hold sessions and conduct proceedings at any place. According to the FDOT's website, the Board meets physically in Tallahassee.[20]

Any person against whom a penalty is imposed may apply to the Board for a modification, cancellation, or revocation of the penalty. A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the Board, but attendance "will provide the petitioner the opportunity to respond to

[15] FLA. CONST. art. III, s. 3(b).
[16] *See* the FDOT's 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities* (on file in the Senate Transportation Committee).
[17] Section 339.175(8), F.S.
[18] Section 316.545(7)(a) and (b), F.S. *See* the FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at https://www.fdot.gov/traffic/reviewboard.shtm (retrieved March 12, 2021).
[19] Section 316.545(4)(c), F.S.
[20] Section 316.545(7), F.S.

Review Board inquiries into subjects that the petitioner may have overlooked when drafting his letter of protest."[21] Appearance by telephone is not available, but pursuant to the provisions of s. 316.545(7)(f), F.S., the FDOT is required to provide space and video conference capability at each of its seven district offices to enable a person requesting a hearing to appear remotely before the board, provided the requester notifies the Board at least 14 calendar days before the hearing date.[22]

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology; *i.e.*, the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.[23]

The current requirement for providing space and video conference capability at each of the seven FDOT district offices does not take advantage of the various forms of communications media technology authorized for use in conducting agency proceedings.

Effect of Proposed Changes

Section 6 of the bill amends s. 316.545(7), F.S., to remove the requirement that remote appearance before the Board by a person requesting a hearing must take place at one of the FDOT district offices by means of video conference capability and replace it with authorization for use of communications media technology by any means.

When using communications media technology the FDOT would be required to provide a notice to the requester specifying the address or addresses of all access points, specifically designating those which are in locations normally open to the public; the address of each access point where an interested person may go to attend the proceedings; an address, email address, and telephone number where an interested person may write or call for additional information; and an address, email address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the proceedings.[24]

This revision would allow the FDOT to more efficiently conduct proceedings before the Board and reduce the burden on a person requesting a hearing to travel to one of the FDOT district offices to be heard. The FDOT advises any person requesting to appear before the Board at one of the FDOT district offices will continue to be accommodated.[25]

[21] FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*.
[22] *Id.*
[23] Fla. Admin. Code R. 28-109.
[24] *Id.*
[25] Telephone conversation between Senate Transportation Committee staff and FDOT staff, February 1, 2021.

Airport Zoning/FDOT Rulemaking (Section 8)

Present Situation

The Legislature in 2016 enacted a substantial re-write of ch. 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports.[26] Generally, the 2016 re-write:

- Updated statutory definitions and terms in accordance with federal regulations.
- Streamlined the local airport protection zoning process to a simpler permitting model.
- Provided local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repealed duplicative requirements for obtaining a variance.

The FDOT has a long-standing rule that pre-dates the 2016 substantial re-write: Florida Administrative Code Rule Chapter 14-60, "*Airport Licensing, Registration, and Airspace Protection*," the purpose of which is "to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of Chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of Chapter 333, F.S."[27] The provisions of the rule appear to be critical to promotion of safe civil aviation. However, in the midst of the 2016 re-write, authority for the long-standing rule was apparently inadvertently overlooked.

Effect of Proposed Changes

Section 8 of the bill creates s. 333.14, F.S., to provide the FDOT with express authority to adopt rules to implement the provisions of ch. 333, F.S., thereby providing specific authorization for Florida Administrative Code Rule Chapter 14-60.

Transportation Projects/Modifying Access/Abutting Property Owners (Section 9)

Present Situation

Under current law, when the FDOT proposes a project on the State Highway System that will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the FDOT is required to notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. The notice must include a written explanation regarding the need for the project and an indication that all affected parties will be given an opportunity to provide comments to the FDOT regarding potential impacts of the change. The FDOT must hold at least one public hearing in the jurisdiction where the project is located to receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community. The FDOT must review all comments from the public hearing and take the comments and any alternatives

[26] Chapter 2016-239, Laws of Fla.
[27] Fla. Admin. Code R. 14-60.003(1) (2004).

presented by a local government during the hearing into consideration in the final design of the highway project.[28]

Effect of Proposed Changes

Section 9 of the bill amends s. 335.199, F.S., to make editorial revisions and improve readability. The bill clarifies that the FDOT must provide the required notice at least 180 days before the design phase of the project is completed, rather than finalized. The bill also revises all occurrences of the word "hearing" to "meeting," to remove any sort of legal connotation, as the required events are not in the nature of any sort of judicial proceeding but are more closely akin to informational "meetings."

The bill clarifies that the FDOT must hold at least one public meeting *prior to completing* the design phase of the project, so that the FDOT reviews all comments from the public meeting and takes the comments and any alternatives presented by a local government during the meeting into consideration in the *final* design of the project.

Obsolete References to the General Revenue Service Charge (Sections 3, 4, 5, and 7)

Present Situation

Section 215.20(1), F.S., appropriates from revenue deposited into most state trust funds[29] an 8 percent service charge, which represents the estimated pro rata share of the cost of general government. All such appropriations are deposited into the General Revenue Fund.

Section 215.211(1), F.S., however, eliminated the service charge beginning July 1, 2000, for taxes distributed under:

- Section 206.606(1), F.S., relating to the distribution of motor and diesel fuel taxes;
- Section 212.0501(6), F.S., relating to taxes on diesel fuel used in self-propelled off-road equipment for business purposes; and
- Section 319.32(5), F.S., relating to the disposition of fees from certificate of title transactions.

Additionally, s. 215.211(2), F.S., eliminated the service charge beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Although the service charge on the specified taxes has been eliminated, references to the service charge remain in statute for the described taxes or fees.

Effect of Proposed Changes

Sections 3, 4, 5, and 7, respectively, remove the obsolete references to the general revenue service charge that remain in ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S.

[28] Section 335.199, F.S.

[29] Section 215.22, F.S., sets out a list of items and trust funds that are exempt from the service charge, including trust funds administered by the Department of Transportation.

Effective Date (Section 12)

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals requesting a hearing before the Commercial Motor Vehicle Review Board who are authorized to appear remotely via communications media technology may experience reduced expenses associated with travel to an FDOT district office to appear.

C. Government Sector Impact:

Currently, the amount transferred by the FDOT into the Right-of-Way Acquisition and Bridge Construction Trust Fund may not exceed 7 percent of the revenues deposited into the STTF, or $275 million, whichever is less. The bill provides that the amount transferred may not exceed 7 percent of the revenues deposited into the STTF or $350 million, whichever is less. This revision may provide the FDOT with additional bonding capacity. However, the resulting impact of any additional bonding capacity is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.15, 206.46, 206.606, 206.608, 212.0501, 316.545, 319.32, 335.199, 339.135, and 339.175.

This bill creates section 333.15 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 24, 2021:
The committee substitute clarifies that when FDOT submits a work program amendment to the Legislative Budget Commission, but the commission does not consider the amendment within 30 days after submittal, the chair and vice chair of the commission may approve the amendment.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Between lines 224 and 225
insert:

Section 6. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended, and subsection (6) of that section is reenacted, to read:

316.126 Operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.—

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(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, or a road and bridge maintenance or construction vehicle displaying warning lights is on the roadside without advance signs and channelizing devices, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a law enforcement officer.

(6) A violation of this section is a noncriminal traffic

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infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or subsection (3), or as a pedestrian violation for infractions of subsection (2).

Section 7. For the purpose of incorporating the amendment made by this act to section 316.126, Florida Statutes, in a reference thereto, paragraph (d) of subsection (2) of section 318.18, Florida Statutes, is reenacted to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(2) Thirty dollars for all nonmoving traffic violations and:

(d) For all violations of s. 316.126(1)(b), unless otherwise specified.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 15

and insert:

moneys; amending s. 316.126, F.S.; requiring drivers to change lanes when approaching a road and bridge maintenance or construction vehicle displaying warning lights on the roadside without advance signs and channelizing devices; reenacting s. 318.18(2)(d), F.S., relating to the amount of certain penalties, to incorporate the amendment made to s. 316.126, F.S., in a reference thereto; amending s. 316.545, F.S.; deleting a

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Senate	.	House
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 401 and 402
insert:

Section 12. Present subsections (38) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (39) through (106), respectively, a new subsection (38) is added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when

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used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 13. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered

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and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery

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vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(e) A low-speed autonomous delivery vehicle must be covered by a policy of automobile insurance which provides the coverage required by s. 627.749(2)(a)1., 2., and 3. The coverage requirements of this paragraph may be satisfied by automobile insurance maintained by the owner of a low-speed autonomous delivery vehicle, the owner of the teleoperation system, the remote human operator, or a combination thereof.

(3) ~~(5)~~ A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(4) ~~(6)~~ The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Section 14. Present subsection (6) of section 316.215, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7)~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 15. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003 ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-

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subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 16. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 54

and insert:

programs; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous

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delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2021	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 402
and insert:
Section 12. Present subsections (24) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (25) through (106), respectively, a new subsection (24) is added to that section, and subsection (2) and present subsections (56) and (62) of that section are amended, to read:
316.003 Definitions.—The following words and phrases, when

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used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes that meet the requirements of Federal Motor Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

(24) ELECTRIC VERTICAL TAKEOFF AND LANDING AIRCRAFT.—A type of aircraft that uses electric power to hover, take off, and land vertically.

(57) ~~(56)~~ PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Has a weight that does not exceed the maximum weight established by Department of Transportation rule ~~Weighs less than 80 pounds, excluding cargo~~;

(c) Has a maximum speed of 10 miles per hour or, if the Department of Transportation establishes by rule a maximum speed, has a speed that does not exceed that maximum; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

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A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device. The Department of Transportation may adopt rules to implement this subsection.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 13. Paragraph (c) of subsection (4) of section 334.046, Florida Statutes, is amended to read:

334.046 Department mission, goals, and objectives.—

(4) At a minimum, the department's goals shall address the following prevailing principles.

(c) *Mobility.*—Ensuring a cost-effective, statewide, interconnected transportation system. Improvement of travel choices to ensure mobility includes planning and establishment of infrastructure for innovative technologies, including electric vehicle charging infrastructure.

Section 14. Effective upon SB 140 or other similar legislation being enacted in the 2021 Regular Session or an extension thereof and becoming a law, section 339.0802, Florida Statutes, is created to read:

339.0802 Allocation of increased license tax revenues from licensure of electric and hybrid vehicles.—Funds that result from increased revenues to the State Transportation Trust Fund derived under s. 320.08001(2) and (3) must be used as set forth in this section, notwithstanding any other provision of law.

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Beginning in the 2023-2024 fiscal year, all increased revenues must be used to fund the Electric Vehicle Infrastructure Grant Program created by s. 339.286. This section expires on December 31, 2030.

Section 15. Section 339.286, Florida Statutes, is created to read:

339.286 Electric Vehicle Infrastructure Grant Program.—

(1) The department shall establish the Electric Vehicle Infrastructure Grant Program. The purpose of the program is to provide financial assistance to encourage the installation of electric vehicle charging infrastructure.

(2) State agencies, public universities, public transit agencies, ports, airports, and local governments, including local housing authorities and libraries, may apply to the department for grants for the purpose of installing publicly available electric vehicle charging infrastructure on public or private property.

(3) A grant may be awarded for:

(a) Technical assistance for the development and adoption of:

1. A local or regional plan that establishes an electric vehicle charging infrastructure;

2. Any action plans necessary to address any infrastructure gaps; and

3. Steps necessary to complete the infrastructure plan.

A plan must address actions to deploy the necessary infrastructure in high-density housing areas and low-income to moderate-income areas.

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(b) Assistance with the purchase of related equipment and the costs of installation of that equipment to provide electric vehicle charging. Such equipment must be capable of collecting and reporting data, use standard connectors, and be available to the public.

(4)(a) An applicant may apply for a grant for both technical assistance and equipment purchase and installation. A grant for technical assistance requires a minimum match of funds from the applicant of 30 percent of the grant award, but such match is not required for an applicant that is located in a fiscally constrained county as described in s. 218.67(1). A grant for equipment purchase and installation requires a minimum match of funds from the applicant in the amount of 60 percent of the total project cost for alternating-current, Level 2 charging infrastructure; 20 percent of the total project cost for direct-current, fast-charging infrastructure; or 20 percent of the total project cost for high-powered charging infrastructure for electric aircraft, including, but not limited to, electric vertical takeoff and landing aircraft, and semi-trucks. The matching funds must be from nonstate resources, but may include private funds provided through a partnership with a private entity or in-kind contributions such as the donation of equipment, services, or land or use of land for establishment of the electric vehicle charging infrastructure. Grant funds may not subsidize the cost for the use of electricity. Twenty percent of the funds available under the grant program must be reserved for applicants or projects in fiscally constrained counties as described in s. 218.67(1). An applicant may partner with a private sector entity to install charging infrastructure

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on private property in the same county or local jurisdiction as the applicant.

(b) The department shall develop and publish criteria for prioritizing the grant applications and shall maintain a prioritized list of approved grant applications. The prioritized list must include recommended funding levels for each application and, if staged implementation is appropriate, must provide funding requirements for each stage. Grants must be prioritized based on the extent to which the activities of the grant will encourage growth in the use of electric vehicles and increase the availability of charging locations along evacuation routes. A grant for equipment purchase and installation that will immediately and most effectively serve those who currently own or operate electric vehicles may receive priority.

(5) The department shall continually review emerging research, policies, and standards related to electric vehicle infrastructure and innovations in the use of electric vehicles. Using such information, the department shall publish best practices for the establishment of electric vehicle charging infrastructure, model infrastructure plan development and components, and other significant information for the implementation and use of electric vehicle charging infrastructure. The department may develop a model plan that state agencies, public universities, public transit agencies, ports, airports, and local governments may use as a guide to establish an electric vehicle charging infrastructure plan.

(6) The department shall adopt rules to administer this section.

Section 16. Subsection (2) of section 339.287, Florida

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Statutes, is amended to read:

339.287 Electric vehicle charging stations; infrastructure plan development.—

(2)(a) The department shall coordinate, develop, and recommend a master plan and a supplemental master plan for current and future plans for the development of electric vehicle charging station infrastructure along the State Highway System, as defined in s. 334.03(24). The plans must include recommendations for legislation and may include other recommendations as determined by the department.

1. The department shall ~~develop the recommended master plan and~~ submit the recommended master plan ~~it~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2021. ~~The plan must include recommendations for legislation and may include other recommendations as determined by the department.~~

2. The department shall submit the recommended supplemental master plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2023. The supplemental master plan must address innovations in electric vehicle charging station infrastructure occurring since the submission of the recommended master plan and the development of high-powered charging infrastructure for electric aircraft. The supplemental master plan also must make recommendations related to charging station infrastructure along the State Highway System and at airports, seaports, and other ports in light of these innovations.

(b) The department, in consultation with the Public Service Commission and the Office of Energy within the Department of

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Agriculture and Consumer Services, and any other public or private entities as necessary or appropriate, shall be primarily responsible for the following goals and objectives in developing the plans ~~plan~~:

1. Identifying the types or characteristics of possible locations for electric vehicle charging station infrastructure along the State Highway System to support a supply of electric vehicle charging stations that will:

a. Accomplish the goals and objectives of this section;

b. Support both short-range and long-range electric vehicle travel;

c. Encourage the expansion of electric vehicle use in this state; and

d. Adequately serve evacuation routes in this state.

2. Identifying any barriers to the use of electric vehicles and electric vehicle charging station infrastructure both for short-range and long-range electric vehicle travel along the State Highway System.

3. Identifying an implementation strategy for expanding electric vehicle and charging station infrastructure use in this state.

4. Quantifying the loss of revenue to the State Transportation Trust Fund due to the current and projected future use of electric vehicles in this state and summarizing efforts of other states to address such revenue loss.

(c) The Public Service Commission, in consultation with the department and the Office of Energy within the Department of Agriculture and Consumer Services, and any other public or private entities as necessary or appropriate, shall be primarily

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responsible for the following goals and objectives in developing the plans ~~plan~~:

1. Projecting the increase in the use of electric vehicles in this state over the next 20 years and determining how to ensure an adequate supply of reliable electric vehicle charging stations to support and encourage this growth in a manner supporting a competitive market with ample consumer choice.

2. Evaluating and comparing the types of electric vehicle charging stations available at present and which may become available in the future, including the technology and infrastructure incorporated in such stations, along with the circumstances within which each type of station and infrastructure is typically used, including fleet charging, for the purpose of identifying any advantages to developing particular types or uses of these stations.

3. Considering strategies to develop this supply of charging stations, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of electric vehicle charging stations.

4. Identifying the type of regulatory structure necessary for the delivery of electricity to electric vehicles and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace.

(d) The Public Service Commission, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, shall review emerging technologies in the electric and alternative vehicle market, including alternative

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fuel sources.

(e) The department, the Public Service Commission, and the Office of Energy within the Department of Agriculture and Consumer Services may agree to explore other issues deemed necessary or appropriate for purposes of the plans ~~report~~ required by ~~in~~ paragraph (a).

(f) By December 1, 2021 ~~December 1, 2020~~, the department shall file a second status report with the Governor, the President of the Senate, and the Speaker of the House of Representatives containing any preliminary recommendations, including recommendations for legislation.

Section 17. Section 366.94, Florida Statutes, is amended to read:

366.94 Electric vehicle charging stations.—

(1) The provision of electric vehicle charging to the public by a nonutility is not the retail sale of electricity for the purposes of this chapter. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under this chapter. This section does not affect the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.

(2) The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry. Rules implemented under this subsection may not require specific methods of sale for electric vehicle charging equipment used in, and electrical vehicle

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charging services provided in, this state.

(3)(a) It is unlawful for a person to stop, stand, or park a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle.

(b) If a law enforcement officer or parking enforcement specialist finds a motor vehicle in violation of this subsection, the officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.

Section 18. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003 ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing

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and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 19. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 54

and insert:

programs; amending s. 316.003, F.S.; defining the term "electric vertical takeoff and landing aircraft"; revising definitions; authorizing the Department of Transportation to adopt rules; amending s. 334.046, F.S.; revising the principles relating to mobility which the department's goals are required to address;

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creating s. 339.0802, F.S.; requiring that certain funds be used for specified purposes relating to the Electric Vehicle Infrastructure Grant Program beginning in a specified year; providing for future expiration; creating s. 339.286, F.S.; requiring the department to establish the Electric Vehicle Infrastructure Grant Program; providing the purpose of the program; providing for the distribution of grants to certain entities to install electric vehicle charging infrastructure; providing grant requirements; providing requirements for equipment installed using grant funds; requiring the department to develop and publish criteria for the prioritization of grant applications and to maintain a prioritized list of approved applications; requiring the department to continually review emerging research, policies, and standards; requiring the department to publish certain information; authorizing the department to develop a model plan for specified entities; requiring the department to adopt rules; amending s. 339.287, F.S.; requiring the department to coordinate, develop, and recommend a supplemental master plan to address innovations in electric vehicle charging station infrastructure and the development of high-powered charging infrastructure for electric aircraft; requiring the department to submit the plan to the Governor and the Legislature by a specified date; conforming provisions to changes made by the act; requiring the department to file a second status

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report with the Governor and the Legislature by a specified date; amending s. 366.94, F.S.; prohibiting certain rules adopted by the Department of Agriculture and Consumer Services from requiring specific methods of sale for electric vehicle charging equipment used and services provided in this state; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete line 402
and insert:
Section 12. Subsection (4) of section 163.3168, Florida Statutes, is repealed.
Section 13. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended, and subsection (6) of that section is reenacted, to read:
316.126 Operation of vehicles and actions of pedestrians on

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approach of an authorized emergency, sanitation, or utility service vehicle.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, or a road and bridge maintenance or construction vehicle displaying warning lights is on the roadside without advance signs and channelizing devices, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a

law enforcement officer.

(6) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or subsection (3), or as a pedestrian violation for infractions of subsection (2).

Section 14. Subsection (35) of section 334.044, Florida Statutes, is amended to read:

334.044 Powers and duties of the department.—The department shall have the following general powers and duties:

(35) To provide a road and bridge construction workforce development program, in consultation with affected stakeholders, for construction of projects designated in the department's work program.

~~(a) The workforce development program is intended to provide direct economic benefits to communities in which the department is constructing infrastructure projects and to promote employment opportunities, including within areas of low income and high unemployment.~~

~~(b) The department shall merge any of its own existing workforce services into the program to create a robust workforce development program. The workforce development program must serve as a tool to address the construction labor shortage by recruiting and developing a group of skilled workers for infrastructure projects to increase the likelihood of department projects remaining on time and within budget.~~

~~(c) To accomplish these activities, the department may administer workforce development contracts with consultants and nonprofit entities, such as local community partners, Florida~~

~~College System institutions, and technical institutions or centers. These entities, as specified in a contract with the department, shall have the primary purposes of providing all of the following:~~

~~1. Workforce recruitment.~~

~~2. A training curriculum for the department's road and bridge construction projects which includes both traditional and emerging construction methods and skills needed to construct multiuse infrastructure and facilities accommodating emerging technologies.~~

~~3. Support services to remove barriers to work.~~

~~(d) The department shall develop performance and outcome metrics to ensure accountability and to measure the benefits and cost-effectiveness of the program. By June 30, 2020, and annually thereafter, the department shall prepare and provide a report to the Governor, President of Senate, and Speaker of the House of Representatives detailing the results of its findings and containing any recommendations relating to future program refinements.~~

Section 15. Section 338.2278, Florida Statutes, is repealed.

Section 16. Subsection (1) of section 338.236, Florida Statutes, is amended to read:

338.236 Staging areas for emergencies.—The Department of Transportation may plan, design, and construct staging areas to be activated during a declared state of emergency at key geographic locations on the turnpike system. Such staging areas must be used for the staging of emergency supplies, such as water, fuel, generators, vehicles, equipment, and other related

materials, to facilitate the prompt provision of emergency assistance to the public, and to otherwise facilitate emergency response and assistance, including evacuations, deployment of emergency-related supplies and personnel, and restoration of essential services.

(1) In selecting a proposed site for a designated staging area under this section, the department, in consultation with the Division of Emergency Management, must consider the extent to which such site:

(a) Is located in a geographic area that best facilitates the wide dissemination of emergency-related supplies and equipment;

(b) Provides ease of access to major highways and other transportation facilities;

(c) Is sufficiently large to accommodate the staging of a significant amount of emergency-related supplies and equipment;

(d) Provides space in support of emergency preparedness and evacuation activities, such as fuel reserve capacity;

(e) Could be used during nonemergency periods for commercial motor vehicle parking and for other uses; and

(f) Is consistent with other state and local emergency management considerations.

~~The department must give priority consideration to placement of such staging areas in counties with a population of 200,000 or fewer, as determined by the most recent official estimate pursuant to s. 186.901, in which a multiuse corridor of regional economic significance, as provided in s. 338.2278, is located.~~

Section 17. Subsection (2) of section 339.0801, Florida

Statutes, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by this act must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(5), notwithstanding any other provision of law:

(2) ~~(a)~~ Beginning in the 2013-2014 fiscal year and annually for up to 30 years thereafter ~~For each of the 2019-2020, 2020-2021, and 2021-2022 fiscal years~~, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with Florida Turnpike Enterprise Law, to the maximum extent feasible for feeder roads, structures, interchanges, appurtenances, and other rights to create or facilitate access to the existing turnpike system.

~~(b) Beginning with the 2022-2023 fiscal year and annually thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with s. 338.2278, with preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity. Of those funds, and to the maximum extent feasible, up to $5 million annually may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The department shall give priority consideration to broadband infrastructure projects located in any area designated as a rural area of opportunity under s. 288.0656 and adjacent to a multiuse corridor.~~

Section 18. Effective July 1, 2023, section 339.0801,

Florida Statutes, as amended by this act, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by this act must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(4) ~~(2)-(5)~~, notwithstanding any other provision of law:

(1)(a) Beginning in the 2013-2014 fiscal year and annually for 30 years thereafter, $10 million shall be for the purpose of funding any seaport project identified in the adopted work program of the Department of Transportation, to be known as the Seaport Investment Program.

(b) The revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on revenue bonds, or other forms of indebtedness issued by an individual port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, or used to purchase credit support to permit such borrowings. Alternatively, revenue bonds shall be issued by the Division of Bond Finance at the request of the Department of Transportation under the State Bond Act and shall be secured by such revenues as are provided in this subsection.

(c) Revenue bonds or other indebtedness issued hereunder are not a general obligation of the state and are secured solely by a first lien on the revenues distributed under this subsection.

(d) The state covenants with holders of the revenue bonds or other instruments of indebtedness issued pursuant to this

subsection that it will not repeal this subsection; nor take any other action, including but not limited to amending this subsection, that will materially and adversely affect the rights of such holders so long as revenue bonds or other indebtedness authorized by this subsection are outstanding.

(e) The proceeds of any revenue bonds or other indebtedness, after payment of costs of issuance and establishment of any required reserves, shall be invested in projects approved by the Department of Transportation and included in the department's adopted work program, by amendment if necessary. As required under s. 11(f), Art. VII of the State Constitution, the Legislature approves projects included in the department's adopted work program, including any projects added to the work program by amendment under s. 339.135(7).

(f) Any revenues that are not used for the payment of bonds as authorized by this subsection may be used for purposes authorized under the Florida Seaport Transportation and Economic Development Program. This revenue source is in addition to any amounts provided for and appropriated in accordance with ss. 311.07 and 320.20(3) and (4).

~~(2) Beginning in the 2013-2014 fiscal year and annually for up to 30 years thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with Florida Turnpike Enterprise Law, to the maximum extent feasible for feeder roads, structures, interchanges, appurtenances, and other rights to create or facilitate access to the existing turnpike system.~~

(2) ~~(3)~~ Beginning in the 2013-2014 fiscal year and annually thereafter, $10 million shall be transferred to the

Transportation Disadvantaged Trust Fund, to be used as specified in s. 427.0159.

(3) ~~(4)~~ Beginning in the 2013-2014 fiscal year and annually thereafter, $10 million shall be allocated to the Small County Outreach Program to be used as specified in s. 339.2818. These funds are in addition to the funds provided for the program pursuant to s. 201.15(4)(a)2.

(4) ~~(5)~~ After the distributions required pursuant to subsections (1)-(3) ~~(1)-(4)~~, the remaining funds shall be used annually for transportation projects within this state for existing or planned strategic transportation projects which connect major markets within this state or between this state and other states, which focus on job creation, and which increase this state's viability in the national and global markets.

(5) ~~(6)~~ Pursuant to s. 339.135(7), the department shall amend the work program to add the projects provided for in this section.

Section 19. Section 339.0803, Florida Statutes, is created to read:

339.0803 Allocation of increased revenues derived from amendments to s. 320.08 by chapter 2019-43, Laws of Florida.—Beginning in the 2021-2022 fiscal year and each fiscal year thereafter, funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 320.08 made by chapter 2019-43, Laws of Florida, and deposited into the fund pursuant to s. 320.20(5)(a) must be used to fund arterial highway projects identified by the department in accordance with s. 339.65 and may be used for projects as

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specified in ss. 339.66 and 339.67. For purposes of the funding provided in this section, the department shall prioritize use of existing facilities or portions thereof when upgrading arterial highways to limited or controlled access facilities. However, this section does not preclude use of the funding for projects that enhance the capacity of an arterial highway. The funds allocated as provided in this section shall be in addition to any other statutory funding allocations provided by law.

Section 20. Section 339.1373, Florida Statutes, is repealed.

Section 21. Section 339.66, Florida Statutes, is created to read:

339.66 Upgrade of arterial highways with controlled access facilities.—

(1) The Legislature finds that the provision and maintenance of safe, reliable, and predictably free-flowing facilities to support the movement of people and freight and to enhance hurricane evacuation efficiency is important. It is in the best interest of the state to plan now for population growth and technology changes while prudently making timely improvements to address demand.

(2) The department, in coordination with the Florida Turnpike Enterprise, shall evaluate existing roadways or portions thereof for development of specific controlled access facilities and include such projects as identified in the work program.

(3) The department may upgrade roadways with targeted improvements, such as adding new tolled or nontolled limited access alignments to manage congestion points and retrofitting

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existing roadway with a series of electronically tolled or nontolled grade separations that provide an alternative to a signalized intersection for through traffic. Such improvements must be made with the goal of enhancing the economic prosperity and preserving the character of the communities impacted by such improvements.

(a) The department may not reduce any nontolled general use lanes of an existing facility.

(b) The department shall maintain existing access points to the roadway provided by designated streets, graded roads, or driveways.

(c) Upon application or as otherwise agreed to by the department, after construction is completed, property owners with parcels of land having no existing access shall have the right to one access point, and property owners having more than 1 mile of roadway frontage shall be allowed one access point for each mile owned.

(d) Any tolling points must be located such that a nontolled alternative exists for local traffic.

(4) Any tolled facilities are approved turnpike projects that are part of the turnpike system. A controlled-access portion of a roadway constructed pursuant to this section is considered a Strategic Intermodal System facility.

(5) Any existing applicable requirements relating to department projects shall apply to projects undertaken by the department pursuant to this section. The department shall take into consideration the guidance and recommendations of any previous studies or reports relevant to the projects authorized by this section and ss. 339.67 and 339.68, including, but not

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limited to, the task force reports prepared pursuant to chapter 2019-43, Laws of Florida.

(6) Any existing applicable requirements relating to turnpike projects apply to projects undertaken by the Turnpike Enterprise pursuant to this section. The Turnpike Enterprise shall take into consideration the guidance and recommendations of any previous studies or reports relevant to the projects authorized by this section and ss. 339.67 and 339.68, including, but not limited to, the task force reports prepared pursuant to chapter 2019-43, Laws of Florida, and with respect to any extension of the Florida Turnpike from its northerly terminus in Wildwood.

(7) The department shall consider innovative concepts to combine right-of-way acquisition with the acquisition of lands or easements to facilitate environmental mitigation or ecosystem, wildlife habitat, or water quality protection or restoration.

(8)(a) Decisions on matters such as configuration, project alignment, and interchange locations must be determined in accordance with applicable department rules, policies, and procedures.

(b) To the greatest extent practicable, roadway alignments, project alignment, and interchange locations shall be designed so that project rights-of-way are not located within conservation lands acquired under the Florida Preservation 2000 Act established in s. 259.101 and the Florida Forever Act established in s. 259.105.

(9) Subject to applicability of existing requirements as provided in subsections (5) and (6), projects may be funded

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through turnpike revenue bonds or right-of-way acquisition and bridge construction bonds or financing by the Florida Department of Transportation Financing Corporation; by advances from the State Transportation Trust Fund; with funds obtained through the creation of public-private partnerships; or any combination thereof. The department also may accept donations of land for use as transportation rights-of-way or to secure or use transportation rights-of-way for such projects in accordance with s. 337.2505. To the extent legally available, any toll revenues from the turnpike system not required for payment of principal, interest, reserves, or other required deposits for bonds; costs of operations and maintenance; other contractual obligations; or system improvement project costs must be used to repay advances received from the State Transportation Trust Fund.

(10) Project construction is not eligible for funding until completion of 30 percent of the design phase, except for projects that are under construction or for which project alignment has been determined.

(11) In accordance with ss. 337.276, 338.227, and 339.0809, the Division of Bond Finance may issue, on behalf of the department, right-of-way acquisition and bridge construction bonds, turnpike revenue bonds, and Florida Department of Transportation Financing Corporation bonds to finance projects as provided in the State Bond Act.

Section 22. Section 339.67, Florida Statutes, is created to read:

339.67 U.S. 19 controlled access facilities.—The department shall develop and include in the work program the construction

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of controlled access facilities as necessary to achieve free flow of traffic on U.S. 19, beginning at the terminus of the Suncoast Parkway 2 Phase 3, north predominantly along U.S. 19 to a logical terminus on Interstate 10 in Madison County. This Strategic Intermodal System facility shall be developed using existing roadway, or portions thereof, to ensure the free flow of traffic along the roadway by improvements such as limited access alignments to manage congestion points and retrofitting existing roadway with a series of grade separations that provide an alternative to a signalized intersection for through traffic. To the maximum extent feasible, the facilities shall be developed no later than December 31, 2035.

Section 23. Section 339.68, Florida Statutes, is created to read:

339.68 Arterial rural highway projects.—The department shall identify and include in the work program projects to increase capacity by widening existing two-lane arterial rural roads to four lanes. To be included in a work program project, the road must be classified as an arterial rural road, and truck traffic using the road must amount to at least 15 percent of all such traffic, as determined by the department. The department shall fund at least $20 million annually for such projects.

Section 24. For the purpose of incorporating the amendment made by this act to section 316.126, Florida Statutes, in a reference thereto, paragraph (d) of subsection (2) of section 318.18, Florida Statutes, is reenacted to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(2) Thirty dollars for all nonmoving traffic violations and:

(d) For all violations of s. 316.126(1)(b), unless otherwise specified.

Section 25. The Legislature finds that the extension of the Florida Turnpike from its northerly terminus in Wildwood to a logical and appropriate terminus as determined by the Department of Transportation is in the strategic interest of the state. The department shall commence the project development and environmental phase of the extension and shall consider project configuration, alignment, cost, and schedule. The department shall prepare a report summarizing the status of the project development and environmental phase and, by December 31, 2022, submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 26. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 54

and insert:

programs; repealing s. 163.3168(4), F.S., relating to applications for funding for technical assistance relating to areas in and around a proposed multiuse corridor interchange; amending s. 316.126, F.S.; requiring drivers to change lanes when approaching a road and bridge maintenance or construction vehicle displaying warning lights on the roadside without

advance signs and channelizing devices; amending s. 334.044, F.S.; revising the powers and duties of the Department of Transportation relating to the workforce development program; repealing s. 338.2278, F.S., relating to the Multi-use Corridors of Regional Economic Significance Program; amending s. 338.236, F.S.; deleting a requirement for the department to give priority consideration to placement of staging areas in certain counties; amending s. 339.0801, F.S.; requiring that $35 million transferred to Florida's Turnpike Enterprise be used for a specified purpose beginning in a specified fiscal year and annually for up to 30 years thereafter; conforming provisions to changes made by the act; amending s. 339.0801, F.S.; deleting a requirement for a specified amount of funds to be transferred to Florida's Turnpike Enterprise for a specified purpose; creating s. 339.0803, F.S.; requiring that certain increased revenues be used to fund specified projects beginning in a specified fiscal year and annually thereafter; authorizing such revenues to be used for certain projects; requiring the department to prioritize the use of certain facilities when upgrading arterial highways; providing construction; providing that such funding is in addition to other statutory funding allocations; repealing s. 339.1373, F.S., relating to funding of the Multi-use Corridors of Regional Economic Significance Program; creating s. 339.66, F.S.; providing legislative findings; requiring the

department, in coordination with the Florida Turnpike Enterprise, to evaluate certain roadways for development of specific controlled access facilities and to include such projects in the work program; authorizing the department to upgrade roadways with targeted improvements; prohibiting the department from reducing nontolled general use lanes of an existing facility; requiring the department to maintain existing access points; providing for access points for certain property owners; specifying the location of tolling points and requiring a nontolled alternative for local traffic; requiring any new alignments to be established with a specified goal; providing that any tolled facilities are approved turnpike projects and part of the turnpike system; designating a controlled-access portion of a specified roadway a Strategic Intermodal System facility; providing for applicability of certain requirements; requiring the department and Turnpike Enterprise to take into consideration guidance and recommendations of certain studies and reports; requiring certain decisions to be determined in accordance with applicable department rules, policies, and procedures; requiring, to the greatest extent practicable, that roadway alignments, project alignment, and interchange locations be designed as specified; providing for funding sources; providing that project construction is not eligible for funding until completion of 30 percent of the project design phase, with exceptions;

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authorizing the Division of Bond Finance to issue specified bonds on behalf of the department to finance certain projects; creating s. 339.67, F.S.; requiring the department to develop and include construction of controlled access facilities in the work program of a certain facility; requiring the facility to be developed using existing roadway or portions thereof; requiring the facilities to be developed no later than a specified date to the maximum extent feasible; creating s. 339.68, F.S.; requiring the department to identify and include in the work program projects to increase capacity by widening existing two-lane arterial rural roads to four lanes; providing requirements for roads to be included in work program projects; requiring the department to annually fund at least a specified amount for such projects; reenacting s. 318.18(2)(d), F.S., relating to the amount of certain penalties, to incorporate the amendment made to s. 316.126, F.S., in a reference thereto; providing legislative findings; requiring the department to commence the project development and environmental phase of an extension of the Florida Turnpike; requiring the department to prepare a specified report and to submit the report to the Governor and Legislature by a specified date; providing effective dates.

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576-03352-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Department of Transportation; amending s. 201.15, F.S.; clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; amending s. 206.46, F.S.; revising a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; amending ss. 206.606, 206.608, and 212.0501, F.S.; removing a requirement for the deduction of certain service charges before the distribution of certain moneys; amending s. 316.545, F.S.; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department to allow a person requesting a hearing to appear remotely via communications media technology authorized by a specified rule; amending s. 319.32, F.S.; removing a requirement for the deduction of certain service charges before depositing fees for a certificate of

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576-03352-21

title into the State Transportation Trust Fund; creating s. 333.15, F.S.; requiring the department to adopt rules to implement ch. 333, relating to airport zoning; amending s. 335.199, F.S.; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed; requiring the department to hold at least one public meeting before completing the design phase of the project; making a technical change; amending s. 339.135, F.S.; revising the date by which a metropolitan planning organization must annually submit project priorities to the appropriate department district for purposes of developing department district work programs; removing the expiration of provisions relating to approval of department work program amendments when a meeting of the Legislative Budget Commission cannot be held within a specified timeframe; amending s. 339.175, F.S.; revising the date by which a metropolitan planning organization must annually submit a list of project priorities to the appropriate department district for purposes of developing department district work programs and developing metropolitan planning organization transportation improvement programs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be transferred by the Department of Revenue to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2. The first $60 million of the funds allocated pursuant to this subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

Section 2. Subsection (2) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other ~~provisions of~~ law, from the revenues deposited into the State Transportation Trust Fund a maximum of 7 percent in each fiscal year shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund created in s. 215.605, as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection may ~~shall~~ not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed $350 ~~$275~~ million. Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 3. Subsection (1) of section 206.606, Florida Statues, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.20,~~ the refunds granted pursuant to s. 206.41~~,~~ and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) $6.30 million shall be transferred to the Fish and Wildlife Conservation Commission in each fiscal year and deposited in the Invasive Plant Control Trust Fund to be used for aquatic plant management, including nonchemical control of aquatic weeds, research into nonchemical controls, and enforcement activities. The commission shall allocate at least $1 million of such funds to the eradication of melaleuca.

(b) Annually, $2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission and used for recreational boating activities and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities, and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of $1.25 million shall be used to fund local projects to provide recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, and other public launching facilities, derelict vessel removal, and other local boating-related activities. In funding the projects, the commission shall give priority consideration to:

a. Unmet needs in counties having populations of 100,000 or less ~~fewer~~.

b. Unmet needs in coastal counties having a high level of boating-related activities from individuals residing in other counties.

2. The remaining $1.25 million may be used for recreational

boating activities and freshwater fisheries management and research.

3. The commission may adopt rules to administer a Florida Boating Improvement Program.

The commission shall prepare and make available on its Internet website an annual report outlining the status of its Florida Boating Improvement Program, including the projects funded, and a list of counties whose needs are unmet due to insufficient financial resources from vessel registration fees.

(c) 0.65 percent of moneys collected pursuant to s. 206.41(1)(g) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) $13.4 million in fiscal year 2007-2008 and each fiscal year thereafter of the moneys attributable to the sale of motor and diesel fuel at marinas shall be transferred from the Fuel Tax Collection Trust Fund to the Marine Resources Conservation Trust Fund in the Fish and Wildlife Conservation Commission.

Section 4. Section 206.608, Florida Statutes, is amended to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund, and, after deducting ~~the service charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) 0.65 percent of the proceeds of the tax levied pursuant

to s. 206.41(1)(f) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s. 206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund, and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected and, to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, no revenue from the taxes imposed pursuant to ss. 206.41(1)(f) and 206.87(1)(d) in a county shall be expended unless the projects funded with such revenues have been included in the work program adopted pursuant to s. 339.135.

Section 5. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund, to be distributed~~, after deduction of the general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 6. Paragraph (f) of subsection (7) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(7) There is created within the Department of

Transportation the Commercial Motor Vehicle Review Board, consisting of three permanent members who shall be the Secretary of Transportation, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed pursuant to paragraph (b), which may review any penalty imposed upon any vehicle or person under the provisions of this chapter relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations.

(f) The review board may hold sessions and conduct proceedings at any place within the state. As an alternative to physical appearance, ~~and in addition to any other method of appearance authorized by rule,~~ the Department of Transportation shall allow ~~provide space and video conference capability at each district office to enable~~ a person requesting a hearing to appear remotely before the board via communications media technology as authorized by chapter 28-109, Florida Administrative Code, regardless of the physical location of the board proceeding.

Section 7. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges~~

~~imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed $200 million in any fiscal year, and any collections in excess of that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. All other fees collected by the department under this chapter shall be paid into the General Revenue Fund.

Section 8. Section 333.15, Florida Statutes, is created to read:

333.15 Rulemaking authority.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter.

Section 9. Subsections (1), (3), and (4) of section 335.199, Florida Statutes, are amended to read:

335.199 Transportation projects modifying access to adjacent property.—

(1) Whenever the Department of Transportation proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or

modifying an existing access to an abutting property owner, the department shall notify all affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed ~~finalized~~. The department's notice shall provide a written explanation regarding the need for the project and indicate that all affected parties will be given an opportunity to provide comments to the department regarding potential impacts of the change.

(3) The department shall hold at least one public meeting before completing the design phase of the project ~~hearing~~ in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.

(4) The department must review all comments from the public meeting ~~hearing~~ and take the comments and any alternatives presented by a local government under subsection (2) into consideration in the final design of the highway project.

Section 10. Paragraph (c) of subsection (4) and paragraph (g) of subsection (7) of section 339.135, Florida Statutes, are amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(c)1. For purposes of this section, the board of county commissioners shall serve as the metropolitan planning organization in those counties which are not located in a metropolitan planning organization and shall be involved in the development of the district work program to the same extent as a

metropolitan planning organization.

2. The district work program shall be developed cooperatively from the outset with the various metropolitan planning organizations of the state and include, to the maximum extent feasible, the project priorities of metropolitan planning organizations which have been submitted to the district by August 1 ~~October 1~~ of each year pursuant to s. 339.175(8)(b); however, the department and a metropolitan planning organization may, in writing, cooperatively agree to vary this submittal date. To assist the metropolitan planning organizations in developing their lists of project priorities, the district shall disclose to each metropolitan planning organization any anticipated changes in the allocation or programming of state and federal funds which may affect the inclusion of metropolitan planning organization project priorities in the district work program.

3. Before ~~Prior to~~ submittal of the district work program to the central office, the district shall provide the affected metropolitan planning organization with written justification for any project proposed to be rescheduled or deleted from the district work program which project is part of the metropolitan planning organization's transportation improvement program and is contained in the last 4 years of the previous adopted work program. By no later than 14 days after submittal of the district work program to the central office, the affected metropolitan planning organization may file an objection to such rescheduling or deletion. When an objection is filed with the secretary, the rescheduling or deletion may not be included in the district work program unless the inclusion of such

rescheduling or deletion is specifically approved by the secretary. The Florida Transportation Commission shall include such objections in its evaluation of the tentative work program only when the secretary has approved the rescheduling or deletion.

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g)1. Any work program amendment which also requires the transfer of fixed capital outlay appropriations between categories within the department or the increase of an appropriation category is subject to the approval of the Legislative Budget Commission.

2. If the department submits an amendment to ~~a meeting of~~ the Legislative Budget Commission and the commission does not meet or consider the amendment ~~cannot be held~~ within 30 days after its submittal ~~the department submits an amendment to the Legislative Budget Commission~~, the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to s. 216.177. ~~This subparagraph expires July 1, 2021.~~

Section 11. Paragraph (b) of subsection (8) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the jurisdiction of the M.P.O. In the development of the transportation improvement program, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of

freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program.

(b) Each M.P.O. annually shall prepare a list of project priorities and shall submit the list to the appropriate district of the department by August 1 ~~October 1~~ of each year; however, the department and a metropolitan planning organization may, in writing, agree to vary this submittal date. Where more than one M.P.O. exists in an urbanized area, the M.P.O.'s shall coordinate in the development of regionally significant project priorities. The list of project priorities must be formally reviewed by the technical and citizens' advisory committees, and approved by the M.P.O., before it is transmitted to the district. The approved list of project priorities must be used by the district in developing the district work program and must be used by the M.P.O. in developing its transportation improvement program. The annual list of project priorities must be based upon project selection criteria that, at a minimum, consider the following:

1. The approved M.P.O. long-range transportation plan;

2. The Strategic Intermodal System Plan developed under s. 339.64.

3. The priorities developed pursuant to s. 339.2819(4).

4. The results of the transportation management systems; and

5. The M.P.O.'s public-involvement procedures.

Section 12. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1126
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Harrell
SUBJECT:	Department of Transportation
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	McAuliffe	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	McAuliffe	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1126 represents the Florida Department of Transportation's (FDOT) legislative proposals for the 2021 Legislative Session. The bill contains a number of FDOT-related revisions to current law including:

- Adds road and bridge maintenance or construction vehicles to the list of vehicles subject to the Move Over Law.
- Increases from $275 to $300 million the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds issued to finance or refinance the cost of acquiring real property for state roads or the cost of bridge construction.
- Removes the expiration date for the Legislative Budget Commission (LBC) chair and vice chair's authority to approve amendments to the FDOT's work program that transfer fixed capital outlay appropriations between categories or increase an appropriation category.
- Clarifies that the Department of Revenue is the entity responsible for transferring a portion of documentary stamp tax revenues distributed to the State Treasury and credited to the State Transportation Trust Fund (STTF) from the State Treasury to the General Revenue Fund.
- Revises from October 1 to August 1 the date for metropolitan planning organization (MPO) annual submissions of project priorities to the FDOT districts for purposes of developing the FDOT's tentative work program and MPO transportation improvement programs.
- Removes provisions requiring the FDOT to provide space and video conference capability at each FDOT district office for persons requesting a hearing before the Commercial Motor

Vehicle Review Board, instead requiring the FDOT to allow such persons to appear remotely before the board via communications media technology already authorized by Administration Commission rule.
- Grants the FDOT rulemaking authority for the purpose of implementing statutory provisions relating to airport zoning.
- Revises provisions relating to a notice and hearing the FDOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property owner to provide clarity and improve readability.
- Removes obsolete references to a previously expired general service revenue service charge from specified collected revenue deposited into the STTF.

The bill repeals the Multi-use Corridors of Regional Economic Significance (M-CORES) program and related provisions and instead creates programs related to arterial highway projects. More specifically, the bill:
- Authorizes the FDOT to upgrade existing arterial roadways with targeted improvements, such as adding new tolled or non-tolled limited access alignments to manage congestion points and retrofitting roadways with tolled or non-tolled grade separations that provide alternatives to a signalized intersection for through traffic.
- Directs the FDOT to develop by December 31, 2035, and include in the work program construction of controlled access facilities to achieve free flow of traffic on U.S. 19 and requires the facility to be developed using existing or portions of existing roadway by specified improvements.
- Directs the FDOT to identify and include in the work program projects to widen certain two-lane arterial rural roads serving high volumes of truck traffic to four lanes.
- Directs the FDOT to begin the project development and environmental phase for a project to extend the Florida Turnpike from its current terminus in Wildwood to a terminus as determined by the FDOT, and to submit a summary report by December 31, 2022.

The revenue redirected to the STTF as a result of the 2019 M-CORES legislation is retained in the STTF and is dedicated for purposes of funding the authorized controlled access facility projects and widening projects on arterial rural highways. Additionally, beginning July 1, 2023, the distribution of $35 million to the FTE for feeder roads and related projects is discontinued; such funds will remain in the STTF to support statewide transportation priorities.

The bill is expected to have a minimal fiscal impact to the STTF, as it does not change the amount of revenue distributed to the STTF, but it does revise the authorized uses of such funding. The extent of any potential fiscal impact to the FDOT resulting from the increased alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Trust Fund bonds is unknown. The remaining revisions are primarily administrative and housekeeping in nature and are expected to present no immediate fiscal impact to state or local revenues.

The bill takes effect July 1, 2021, except as otherwise expressly provided.

II. Present Situation:

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of proposed changes.

III. Effect of Proposed Changes:

M-CORES Program (Section 13)

Present Situation

Section 338.2278, F.S., establishes the M-CORES Program within the FDOT. If projects in the corridors are determined to be economically and environmentally feasible and are consistent to the maximum extent feasible with the appropriate approved local government comprehensive plans, the projects will be included in the FDOT's tentative work program. Funding for M-CORES projects through turnpike revenue bonds, right-of-way and bridge construction bonds, the FDOT Financing Corporation, the use of public-private partnerships, or by any combination thereof is authorized. The FDOT is also authorized to accept donations of land for use as transportation rights-of-way or to secure or use transportation rights-of-way for such projects.

The 2019 legislation redirected motor vehicle license tax revenues from the General Revenue Fund taxes to the STTF, with transfers from STTF to the General Revenue Fund in Fiscal Years 2019-2020 and 2020-21.[1] Beginning Fiscal Year 2021-2022 and thereafter, the General Revenue Fund receives no further transfers, and the estimated $132 million is retained in the STTF.

The redirected motor vehicle license tax proceeds are directed to the M-CORES program; as additional funding for the SCRAP, the SCOP, and the Transportation Disadvantaged Trust Fund (TDTF);[2] and to the FDOT's workforce development program, as revised by the law. These funds are in addition to any other statutory funding allocations provided by law.

For the 2019-2020 fiscal year and annually thereafter, from the amounts retained in the STTF, the SCRAP, the SCOP, and the TDTF receive $10 million annually each and the workforce development program receives $2.5 million annually ending in the 2021-2022 fiscal year.

The funds allocated to the TDTF must be used to award competitive grants to community transportation coordinators and transportation network companies to provide cost-effective, door-to-door, on-demand, and scheduled transportation services (services that increase access to job training, employment, health care, and other life-sustaining services; that enhance regional connectivity and cross-county mobility; or that reduce difficulty in connecting to transportation hubs and from hubs to final destinations).

Effect of Proposed Changes

Section 13 of the bill repeals s. 338.2278, F.S., related to the M-CORES program and the motor vehicle license tax proceeds directed to other programs. Beginning in Fiscal Year 2021-2022, the annual allocation to the M-CORES program, the additional annual allocations over current

[1] The transfer in Fiscal Year 2019-2020 was $65.7 million and the transfer for Fiscal Year 2020-2021 is estimated to be $38.6 million.

[2] The Transportation Disadvantaged Program established in Part I of ch. 427, F.S., coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens. The Commission for the Transportation Disadvantaged (CTD) is authorized to use moneys in the TDTF to subsidize a portion of a transportation disadvantaged person's non-sponsored (for example, not paid for by Medicaid) transportation costs.

statutory funding for the SCRAP, the SCOP, and the TDTF, as well as the last year of funding for workforce development are repealed.

As discussed below, however, the increased revenues derived from redirecting to the STTF portions of motor vehicle license taxes remain in the STTF under the bill.

Conforming Revisions (Sections 1, 11, 14, 15, and 19)

Effect of Proposed Changes

Section 11 amends s. 334.044(35), F.S., to remove the M-CORES-related revisions enacted in 2019 with respect to workforce development, including authorization for the FDOT to enter into contracts with consultants and non-profit entities for the provisions of workforce recruitment, training curriculum, and support services, and a requirement for a report the FDOT has already completed. Current funding for the program would expire on July 1, 2021, instead of continuing through the end of the 2021-2022 fiscal year. The FDOT's authorization for the workforce development program is not repealed. The FDOT may continue administration of the program to the extent that future funding resources are available.

Section 1 repeals s. 163.3168(4), F.S., to remove an M-CORES-related provision relating to local applications for technical assistance from the Department of Economic Opportunity (DEO). This provision currently requires the DEO to give preference to a county with a population of 200,000 or less, and to a municipality located within such a county, for assistance in determining whether the area in and around a proposed M-CORES interchange contains appropriate land uses and natural resource protections and for aid in developing or amending a local government's comprehensive plan to provide for such uses, protections, and intended benefits under the M-CORES program.

Section 14 repeals an M-CORES-related provision contained in s. 338.236, F.S., relating to staging areas to be activated during a declared state of emergency on the turnpike system. That section currently requires the FDOT to give priority consideration to placement of such staging areas in counties with a population of 200,000 or less and in which an M-CORES corridor is located.

Section 15 amends s. 339.0801(2), F.S., to remove an M-CORES-related allocation and restore that subsection as it existed prior to enactment of the M-CORES program. This subsection currently provides $35 million in annual funding to the FTE to be used in accordance with turnpike requirements and to the maximum extent feasible for feeder roads, structures, interchanges, and appurtenances to create or facilitate access to the existing turnpike system, and beginning in Fiscal Year 2022-2023 the funds must be used for similar access to M-CORES corridors.[3]

This statute is also amended under Section 16 of the bill at a future date.

Section 19 repeals s. 339.1373, F.S., relating to M-CORES specific financing and planning requirements of the FDOT.

[3] The $35 million is from increased revenues to the STTF due to changes enacted in 2012.

Arterial Highway Projects (Sections 16, 17, 21, 22, 23, and 25)

Present Situation

The FDOT routinely manages and improves arterial roads to increase capacity and facilitate traffic throughput, while at the same time achieving the paramount goal of improving safety. The FDOT and the FTE are experienced in retrofitting transportation facilities with grade separations and adding new alignments for the same purposes.

An example of upgrades to existing arterial highways to maximize operational efficiency and safety is implementation of controlled access facilities. The FDOT's Access Control Classification System and Access Management Standards for roads on the State Highway System employs seven classes of controlled access facilities, beginning with Class 1 (limited access facilities providing for high speed and high volume traffic movements serving interstate, interregional, and intercity highways but which do not provide direct property connections).

According to the FDOT rule,

> Access Classes 2 through 7 consist of controlled access facilities and are arranged from the most restrictive (Access Class 2) to the least restrictive (Access Class 7) class based on development. Generally the roadways serving areas without existing extensive development are classified in the upper portion of the range (Access Class 2, 3 and 4). Those roadways serving areas with existing moderate to extensive development are generally classified in the lower portion of the range (Access Class 5, 6 and 7). The access management standards for each access class are further determined by the posted speed limit.[4]

The rule appears to provide the FDOT the flexibility, based on engineering decisions, to employ the most appropriate type of upgrade to an existing arterial highway given its characteristics and the particular goal of a given project, such as congestion management.

Effect of Proposed Changes

Section 21 creates s. 339.66, F.S., relating to upgrading arterial highways with controlled access facilities. The bill sets forth Legislative findings that provision and maintenance of safe, reliable, and predictably free-flowing facilities to support the movement of people and freight and to enhance hurricane evacuation efficiency is important; and that planning now for population growth and technology changes while prudently making timely improvements to address demand is in the best interest of the state.

The bill directs the FDOT, in coordination with the FTE, to evaluate existing or portions of existing roadways for development of specific controlled access facilities and include such projects as identified in the work program. The FDOT is authorized to upgrade roadways with

[4] Rule 14-97.003, F.A.C. The rule implements the FDOT's statutory duties with respect to regulation of access to the State Highway System, access permitting, and access management standards in ss. 335.182, 335.184, and 335.188, F.S.

targeted improvements, such as adding new tolled or non-tolled limited access alignments to manage congestion points and retrofitting existing roadway with tolled or non-tolled grade separations that provide alternatives to a signalized intersection for through traffic. Such improvements must enhance the economic prosperity and preserve the character of impacted communities.

The FDOT may *not* reduce any non-tolled general use lanes of an existing facility and *must*:

- Maintain existing access points to the roadway provided by designated streets, graded roads, or driveways, avoiding community impact.
- After construction is completed, provide property owners of land with no existing access the right to one access point and provide owners with more than one mile of roadway frontage along the facility with one access point for each mile owned.
- Locate any tolling points so that a non-tolled alternative exists for local traffic.

Under the bill, any portions of a controlled access facility to be tolled are approved turnpike projects that are part of the turnpike system, and a controlled-access portion of a roadway constructed under the new section of law is considered a SIS facility. All existing applicable requirements relating to FDOT or turnpike projects, including environmental review, also apply to any projects undertaken to upgrade the arterial roadways with controlled access facilities. Further, the FDOT and FTE must take into consideration the guidance and recommendations of any previous studies or reports relevant to the projects, including previous task force reports.[5]

The bill also requires the FDOT to consider innovative concepts to combine right-of-way acquisition with the acquisition of lands or easements to facilitate environmental mitigation or ecosystem, wildlife habitat, or water quality protection or restoration. Further, to the greatest extent practical, the FDOT must design roadway alignments, project alignment, and any interchange locations so that project rights-of-way are not located within conservation lands acquired under the Florida Preservation 2000 Act[6] and the Florida Forever Act.[7]

Lastly, the bill authorizes project funding through turnpike revenue bonds, right-of-way and bridge construction bonds, the FDOT Financing Corporation, the use of public-private partnerships, or by any combination thereof, as applicable. However, project construction is not eligible for funding until completion of 30 percent of the design phase, except for projects that are under construction or for which project alignment has been determined. The FDOT is also authorized to accept donations of land for use as transportation rights-of-way or to secure or use transportation rights-of-way for such projects.

To the extent legally available, any toll revenues from the turnpike system not required for payment of principal, interest, reserves, and other required deposits for bonds; costs of operations and maintenance; other contractual obligations; or system improvement project costs must be used to repay to the STTF advances made from that fund. In accordance with existing authority, the Division of Bond finance is authorized to issue right-of-way and bridge construction bonds,

[5] The bill also applies this requirement to ss. 339.67 and 339.68, F.S., created by the bill related to relating to U.S. 19 controlled access facilities and relating to U.S. 19 controlled access facilities, respectively.
[6] Section 259.101, F.S.
[7] Section 259.105, F.S.

turnpike revenue bonds, and FDOT financing corporation bonds to finance controlled access facilities as provided in the State Bond Act.

Section 22 creates s. 339.67, F.S., relating to U.S. 19 controlled access facilities. The bill directs the FDOT to develop and include in the work program construction of controlled access facilities necessary to achieve free flow of traffic on U.S. 19, beginning at the terminus of the Suncoast Parkway 2 Phase 3 north predominantly along U.S. 19 to a logical terminus on I-10 in Madison County. The bill deems the project as a SIS facility, which must be developed using existing or portions of existing roadway to ensure the free flow of traffic by improvements. The FDOT must develop the project no later than December 31, 2035.

Section 23 creates s. 339.68, F.S., relating to arterial rural highway projects. The bill directs the FDOT to identify and include in the work program projects to increase capacity by widening existing two-lane arterial rural roads to four lanes. To be included in a program project, the road must be classified as an arterial rural road and truck traffic using the road must amount to at least 15 percent of all such traffic, as determined by the FDOT. The bill directs the FDOT to fund at least $20 million annually for such projects.

Section 25 directs the FDOT to begin the PD&E phase of the extension of the Florida Turnpike from its northerly terminus in Wildwood to a logical and appropriate terminus determined by the FDOT. FDOT is required to submit a status report to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the result of the PD&E phase, including consideration of project configuration, alignment, cost, and schedule, by December 31, 2022. The bill does not authorize construction of the extension.

Section 16, effective July 1, 2023, amends s. 339.0801, F.S., to repeal the annual transfer from the STTF to the Turnpike Enterprise of the $35 million for feeder roads, etc. In effect, the annual $35 million will remain in the STTF to be used annually for existing or planned strategic transportation projects, as required under current law.

Section 17 creates s. 339.0803, F.S., to allocate the increased motor vehicle license tax revenues to the STTF from the 2019 M-CORES law. The funds must be used to fund arterial highway projects identified by the FDOT under s. 339.65, F.S., relating to the SIS, and may be used for controlled access facility projects specified in ss. 339.66 and 339.67, F.S., created by the bill. The FDOT must prioritize use of existing facilities when upgrading arterial highways to limited or controlled access facilities, but the FDOT is not precluded from use of such funding for projects that enhance the capacity of an arterial highway. These funds are in addition to any other statutorily required funding allocations.

Move Over Law (Section 7)

Present Situation

Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour (MPH) less than the posted speed limit when

the posted speed limit is 25 MPH or greater; or travel at 5 MPH when the posted speed limit is 20 MPH miles per hour or less when driving on a two-lane road.[8] The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.[9] The statutory base fine for a moving violation is $60, but with additional fees assessed by the state and local governments, the total fine increases to $158.[10]

Effect of Proposed Changes

Section 7 of the bill amends s. 316.126, F.S., to add road and bridge maintenance or construction vehicles displaying warning lights and operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades) to the list of vehicles subject to the Move Over Law. This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Section 24 of the bill reenacts s. 318.18, F.S., to incorporate these changes.

Debt Service Cap on Right-of-Way Acquisition and Bridge Construction Bonds (Section 3)

Present Situation

Section 215.605, F.S., authorizes the issuance of state bonds to finance or refinance the cost of acquiring real property for state roads or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, the Legislature must authorize bonds, which must be issued pursuant to the State Bond Act.[11] The proceeds from the sale of issued bonds must be deposited into the Right-of-Way Acquisition and Bridge Construction Trust Fund.[12]

Section 206.46, F.S., authorizes the FDOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year into the Right-of-Way Acquisition and Bridge Construction Trust Fund to meet outstanding or proposed bond obligations; or, at a minimum, an amount sufficient to pay for the debt service coverage of outstanding bonds.[13] The annual transfer amount, however, may not exceed that which is necessary to provide the required debt service coverage levels for a maximum debt service of $275 million. Thus, debt service may not exceed 7 percent of the revenues deposited into the STTF or $275 million, whichever is less.

The FDOT noted in 2020 that no adjustment has been made to the $275 million cap since 2007. The FDOT provided information that based on the FDOT's most recent bond sale and Revenue

[8] Section 316.126(1)(b), F.S.
[9] Section 316.126(6), F.S.
[10] Florida Court Clerks and Comptrollers Association, *2020 Distribution of Court Related Filing Fees, Service Charges, and Fines – Final, Corrected*, p. 39 available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited April 14, 2021).
[11] Sections 215.57-215.83, F.S.
[12] Section 215.605(4), F.S.
[13] The transfer is required to be payable primarily from the motor and diesel fuel taxes transferred to the STTF.

Estimating Conference projections [at that time], the limit on debt service based on the 7-percent-of-revenue threshold would have been $287 million in Fiscal Year 2019-2020 (based on revenues of $4.1 billion), growing to $350 million in Fiscal Year 2028-2029 (based on revenues of $5 billion). Additionally, the FDOT advised that under the current statutory limit, the $275 million cap leaves the FDOT with only about $100 million of available bonding capacity.[14]

Effect of Proposed Changes

Section 3 of the bill amends s. 206.46, F.S., to increase the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or $350 million, whichever is less.

Work Program Amendments (Section 18)

Present Situation

Current law authorizes the FDOT to amend its adopted work program and provides procedures for such amendments.[15] However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the LBC.

Prior to 2016, if a meeting of the LBC could not be held within 30 days after the FDOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.[16] In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the LBC could not meet.[17] In 2019, this authorization was reinstated with an expiration date of July 1, 2020.[18] In 2020, the authorization was reinstated with an expiration date of July 1, 2021.[19]

Effect of Proposed Changes

Section 18 of the bill amends s. 339.135(7)(g), F.S., to remove the expiration of authorization for LBC chair and vice chair approval of the identified amendments to the FDOT's adopted work program, thereby making the provision permanent.

Documentary Stamp Tax/General Revenue Fund Transfer (Section 2)

Present Situation

Chapter 201, F.S., levies an excise tax (documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the provisions of that chapter,[20] including provisions governing the collection of documentary stamp

[14] *See* the FDOT's 2020 Legislative Proposal, *Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap* (on file in the Senate Transportation Committee).
[15] Section 339.135(7), F.S.
[16] Section 339.135(7)(g), F.S. (2015).
[17] Chapter 2016-181, s. 16, Laws of Fla.
[18] Chapter 2019-116, s. 11, Laws of Fla.
[19] Chapter 2020-144, s. 93, Laws of Fla.
[20] Section 201.11, F.S.

taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

After certain required distributions to the Land Acquisition Trust Fund,[21] approximately 24 percent of the remainder of the taxes collected or $541.75 million, whichever is less, is paid into the State Treasury to the credit of the STTF, $75 million of which must be transferred to the General Revenue Fund. The remaining amount credited to the STTF must be used to fund certain transportation-related programs.[22] Although current law specifies the DOR as the administering agency of that chapter, the DOR is not expressly identified as the entity responsible for making the $75 million transfer each fiscal year.

Effect of Proposed Changes

Section 2 of the bill amends s. 201.15(4)(a), F.S., to expressly require the DOR to make the $75 million transfer each fiscal year from funds credited to the STTF in the State Treasury to the General Revenue Fund.

Metropolitan Planning Organizations Project Priority Submissions to the FDOT (Sections 18 and 20)

Present Situation

The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program, which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs.[23] Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

With respect to development of the tentative work program, as outlined in s. 339.135(4), F.S., the district work program is developed cooperatively with the various metropolitan planning organizations (MPOs) around the state and must include, to the maximum extent feasible, the project priorities submitted by the MPOs to the FDOT's districts by October 1 of each year. The FDOT and an MPO may agree in writing to vary the submission date.[24]

The FDOT advises that during a "normal" work program development cycle, submission of MPO project priorities by October 1 allows sufficient time for development of the tentative work program cycle. However, because the Legislature meets beginning in January in even-numbered years,[25] the tentative work program cycle is "compressed" by two months, creating a need for

[21] Section 201.15(1) and (2), F.S.
[22] Section 201.15(4)(a), F.S. The programs include the New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, and the Transportation Regional Incentive Program.
[23] Section 339.135(1), F.S.
[24] Section 339.135(4)(c)2., F.S.
[25] FLA. CONST. art. III, s. 3(b).

earlier submission of project information. The FDOT notes that no failure to submit a priority list has occurred, but earlier submission has been provided as a courtesy, rather than a mandate.[26]

The MPOs are also required, in cooperation with the state and affected public transportation operators, to develop a transportation improvement program for the area within the jurisdiction of the MPO. Similar to work program development, each MPO is required to submit to the appropriate FDOT district a list of project priorities by October 1 of each year. Again, the FDOT and an MPO may agree in writing to vary the submission date. The MPO-approved lists must be used by the FDOT districts in developing the district work programs.[27]

Effect of Proposed Changes

Sections 18 and 20 of the bill, respectively, amend ss. 339.135(4)(c) and 339.175(8)(b), F.S., to revise from October 1 to August 1 the deadline for MPOs to submit their project priority lists for purposes of developing the FDOT's tentative work program and for purposes of development of MPO transportation improvement programs.

Commercial Motor Vehicle Review Board/Remote Appearance (Section 8)

Present Situation

The Commercial Motor Vehicle Review Board (the Board), established within the FDOT, is composed of three permanent members (the FDOT secretary as chair, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their designees); three members appointed by the Governor (one each from the road construction industry and the trucking industry, and one with a general business or legal background); and one member appointed by the Commissioner of Agriculture from the agriculture industry.[28]

The Board is authorized to review any penalty imposed upon any vehicle or person under the provisions of ch. 316, F.S., relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations, and the Board may modify, cancel, revoke, or sustain any such penalty.[29] The Board is authorized to hold sessions and conduct proceedings at any place. According to the FDOT's website, the Board meets physically in Tallahassee.[30]

Any person against whom a penalty is imposed may apply to the Board for a modification, cancellation, or revocation of the penalty. A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the Board, but attendance "will provide the petitioner the opportunity to respond to Review Board inquiries into subjects that the petitioner may have overlooked when drafting his

[26] *See* the FDOT's 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities* (on file in the Senate Transportation Committee).
[27] Section 339.175(8), F.S.
[28] Section 316.545(7)(a) and (b), F.S. *See* the FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at https://www.fdot.gov/traffic/reviewboard.shtm (retrieved March 12, 2021).
[29] Section 316.545(4)(c), F.S.
[30] Section 316.545(7), F.S.

letter of protest."[31] Appearance by telephone is not available, but pursuant to the provisions of s. 316.545(7)(f), F.S., the FDOT is required to provide space and video conference capability at each of its seven district offices to enable a person requesting a hearing to appear remotely before the board, provided the requester notifies the Board at least 14 calendar days before the hearing date.[32]

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology; *i.e.,* the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.[33]

The current requirement for providing space and video conference capability at each of the seven FDOT district offices does not take advantage of the various forms of communications media technology authorized for use in conducting agency proceedings.

Effect of Proposed Changes

Section 8 of the bill amends s. 316.545(7), F.S., to remove the requirement that remote appearance before the Board by a person requesting a hearing must take place at one of the FDOT district offices by means of video conference capability and replace it with authorization for use of communications media technology by any means.

When using communications media technology the FDOT would be required to provide a notice to the requester specifying the address or addresses of all access points, specifically designating those which are in locations normally open to the public; the address of each access point where an interested person may go to attend the proceedings; an address, email address, and telephone number where an interested person may write or call for additional information; and an address, email address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the proceedings.[34]

This revision would allow the FDOT to more efficiently conduct proceedings before the Board and reduce the burden on a person requesting a hearing to travel to one of the FDOT district offices to be heard. The FDOT advises any person requesting to appear before the Board at one of the FDOT district offices will continue to be accommodated.[35]

Airport Zoning/FDOT Rulemaking (Section 10)

Present Situation

The Legislature in 2016 enacted a substantial re-write of ch. 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports.[36] Generally, the 2016 re-write:

[31] FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*.
[32] *Id.*
[33] Fla. Admin. Code R. 28-109.
[34] *Id.*
[35] Telephone conversation between Senate Transportation Committee staff and FDOT staff, February 1, 2021.
[36] Chapter 2016-239, Laws of Fla.

- Updated statutory definitions and terms in accordance with federal regulations.
- Streamlined the local airport protection zoning process to a simpler permitting model.
- Provided local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repealed duplicative requirements for obtaining a variance.

The FDOT has a long-standing rule that pre-dates the 2016 substantial re-write: Florida Administrative Code Rule Chapter 14-60, "*Airport Licensing, Registration, and Airspace Protection*," the purpose of which is "to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of Chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of Chapter 333, F.S."[37] The provisions of the rule appear to be critical to promotion of safe civil aviation. However, in the midst of the 2016 re-write, authority for the long-standing rule was apparently inadvertently overlooked.

Effect of Proposed Changes

Section 10 of the bill creates s. 333.15, F.S., to provide the FDOT with express authority to adopt rules to implement the provisions of ch. 333, F.S., thereby providing specific authorization for Florida Administrative Code Rule Chapter 14-60.

Transportation Projects/Modifying Access/Abutting Property Owners (Section 12)

Present Situation

Under current law, when the FDOT proposes a project on the State Highway System that will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the FDOT is required to notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. The notice must include a written explanation regarding the need for the project and an indication that all affected parties will be given an opportunity to provide comments to the FDOT regarding potential impacts of the change. The FDOT must hold at least one public hearing in the jurisdiction where the project is located to receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community. The FDOT must review all comments from the public hearing and take the comments and any alternatives presented by a local government during the hearing into consideration in the final design of the highway project.[38]

Effect of Proposed Changes

Section 12 of the bill amends s. 335.199, F.S., to make editorial revisions and improve readability. The bill clarifies that the FDOT must provide the required notice at least 180 days before the design phase of the project is completed, rather than finalized. The bill also revises all occurrences of the word "hearing" to "meeting," to remove any sort of legal connotation, as the

[37] Fla. Admin. Code R. 14-60.003(1) (2004).
[38] Section 335.199, F.S.

required events are not in the nature of any sort of judicial proceeding but are more closely akin to informational "meetings."

The bill clarifies that the FDOT must hold at least one public meeting *prior to completing* the design phase of the project, so that the FDOT reviews all comments from the public meeting and takes the comments and any alternatives presented by a local government during the meeting into consideration in the *final* design of the project.

Obsolete References to the General Revenue Service Charge (Sections 4, 5, 6, and 9)

Present Situation

Section 215.20(1), F.S., appropriates from revenue deposited into most state trust funds[39] an 8 percent service charge, which represents the estimated pro rata share of the cost of general government. All such appropriations are deposited into the General Revenue Fund.

Section 215.211(1), F.S., however, eliminated the service charge beginning July 1, 2000, for taxes distributed under:

- Section 206.606(1), F.S., relating to the distribution of motor and diesel fuel taxes;
- Section 212.0501(6), F.S., relating to taxes on diesel fuel used in self-propelled off-road equipment for business purposes; and
- Section 319.32(5), F.S., relating to the disposition of fees from certificate of title transactions.

Additionally, s. 215.211(2), F.S., eliminated the service charge beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Although the service charge on the specified taxes has been eliminated, references to the service charge remain in statute for the described taxes or fees.

Effect of Proposed Changes

Sections 4, 5, 6, and 9, respectively, remove the obsolete references to the general revenue service charge that remain in ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S.

Effective Date (Section 26)

Except as otherwise provided, the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[39] Section 215.22, F.S., sets out a list of items and trust funds that are exempt from the service charge, including trust funds administered by the Department of Transportation.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals requesting a hearing before the Commercial Motor Vehicle Review Board who are authorized to appear remotely via communications media technology may experience reduced expenses associated with travel to an FDOT district office to appear.

C. Government Sector Impact:

Currently, the amount transferred by the FDOT into the Right-of-Way Acquisition and Bridge Construction Trust Fund may not exceed 7 percent of the revenues deposited into the STTF, or $275 million, whichever is less. The bill provides that the amount transferred may not exceed 7 percent of the revenues deposited into the STTF or $350 million, whichever is less. This revision may provide the FDOT with additional bonding capacity. However, the resulting impact of any additional bonding capacity is unknown.

The M-CORES portions of the bill do not change the amount of revenue distributed to the STTF. The bill repeals the funding for the M-CORES program, the workforce development program, and the additional funds dedicated to the SCRAP, the SCOP, and the TDTF. Instead, these revenues will be used for arterial roads in the SIS.

The bill repeals the future change in use of $35 million of funds transferred to the FTE to conform to the repeal of the M-CORES law, and on July 1, 2023, the bill repeals the transfer of those funds to the FTE. Instead, the funds will be retained in the STTF. Any impact to FTE programming is reduced by the delayed effective date of the elimination of the transfer.

The impact to the 5-year Work Program is expected to be minimal. The funds remain in the STTF for use by the FDOT on arterial roads in the SIS. The bill does require the FDOT to incorporate into the work program projects related to upgrade of existing facilities with controlled access roads and expansion of certain two-lane arterial rural roadways.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3168, 201.15, 206.46, 206.606, 206.608, 212.0501, 316.545, 319.32, 334.044, 335.199, 339.135, 338,236, 339.0801, and 339.175.

This bill creates the following sections of the Florida Statutes: 333.15, 339.0803, 339.66, 339.67, and 339.68.

The bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 338.2278 and 339.1373.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute:

- Clarifies that when FDOT submits a work program amendment to the Legislative Budget Commission, but the commission does not consider the amendment within 30 days after submittal, the chair and vice chair of the commission may approve the amendment.
- Adds road and bridge maintenance or construction vehicles to the list of vehicles subject to the Move Over Law.
- Repeals statutes and provisions related to the Multi-use Corridors of Regional Economic Significance program and redirects the funding to the Strategic Intermodal System. Additionally, beginning July 1, 2023, the committee substitute discontinues a distribution from the STTF to the FTE for feeder roads.
- Authorizes the FDOT to upgrade existing arterial roadways with targeted improvements.

- Directs the FDOT to develop by December 31, 2035, and include in the work program construction of controlled access facilities to achieve free flow of traffic on U.S. 19.
- Directs the FDOT to identify and include in the work program projects to widen certain two lane arterial rural roads serving high volumes of truck traffic to four lanes.
- Directs the FDOT to begin the project development and environmental phase for a project to extend the Florida Turnpike from its current terminus in Wildwood to a terminus as determined by the FDOT.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Harrell

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A bill to be entitled

An act relating to the Department of Transportation; amending s. 201.15, F.S.; clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; amending s. 206.46, F.S.; revising a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; amending ss. 206.606, 206.608, and 212.0501, F.S.; removing a requirement for the deduction of certain service charges before the distribution of certain moneys; amending s. 316.545, F.S.; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department to allow a person requesting a hearing to appear remotely via communications media technology authorized by a specified rule; amending s. 319.32, F.S.; removing a requirement for the deduction of certain service charges before depositing fees for a certificate of title into the State Transportation Trust Fund; creating s. 333.15, F.S.; requiring the department to adopt rules to implement ch. 333, relating to airport

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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zoning; amending s. 335.199, F.S.; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed; requiring the department to hold at least one public meeting before completing the design phase of the project; making a technical change; amending s. 339.135, F.S.; revising the date by which a metropolitan planning organization must annually submit project priorities to the appropriate department district for purposes of developing department district work programs; removing the expiration of provisions relating to approval of department work program amendments when a meeting of the Legislative Budget Commission cannot be held within a specified timeframe; amending s. 339.175, F.S.; revising the date by which a metropolitan planning organization must annually submit a list of project priorities to the appropriate department district for purposes of developing department district work programs and developing metropolitan planning organization transportation improvement programs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s.

215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be transferred by the Department of Revenue to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2. The first $60 million of the funds allocated pursuant to this subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

Section 2. Subsection (2) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other ~~provisions of~~ law, from the revenues deposited into the State Transportation Trust Fund a

maximum of 7 percent in each fiscal year shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund created in s. 215.605, as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection may ~~shall~~ not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed $350 ~~$275~~ million. Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 3. Subsection (1) of section 206.606, Florida Statues, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.20,~~ the refunds granted pursuant to s. 206.41~~,~~ and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) $6.30 million shall be transferred to the Fish and Wildlife Conservation Commission in each fiscal year and deposited in the Invasive Plant Control Trust Fund to be used

for aquatic plant management, including nonchemical control of aquatic weeds, research into nonchemical controls, and enforcement activities. The commission shall allocate at least $1 million of such funds to the eradication of melaleuca.

(b) Annually, $2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission and used for recreational boating activities and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities, and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of $1.25 million shall be used to fund local projects to provide recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, and other public launching facilities, derelict vessel removal, and other local boating-related activities. In funding the projects, the commission shall give priority consideration to:

a. Unmet needs in counties having populations of 100,000 or less ~~fewer~~.

b. Unmet needs in coastal counties having a high level of boating-related activities from individuals residing in other counties.

2. The remaining $1.25 million may be used for recreational boating activities and freshwater fisheries management and research.

3. The commission may adopt rules to administer a Florida

Boating Improvement Program.

The commission shall prepare and make available on its Internet website an annual report outlining the status of its Florida Boating Improvement Program, including the projects funded, and a list of counties whose needs are unmet due to insufficient financial resources from vessel registration fees.

(c) 0.65 percent of moneys collected pursuant to s. 206.41(1)(g) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) $13.4 million in fiscal year 2007-2008 and each fiscal year thereafter of the moneys attributable to the sale of motor and diesel fuel at marinas shall be transferred from the Fuel Tax Collection Trust Fund to the Marine Resources Conservation Trust Fund in the Fish and Wildlife Conservation Commission.

Section 4. Section 206.608, Florida Statutes, is amended to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund, and, after deducting ~~the service charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) 0.65 percent of the proceeds of the tax levied pursuant to s. 206.41(1)(f) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund, and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected and, to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, no revenue from the taxes imposed pursuant to ss. 206.41(1)(f) and 206.87(1)(d) in a county shall be expended unless the projects funded with such revenues have been included in the work program adopted pursuant to s. 339.135.

Section 5. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund, to be distributed~~, after deduction of the general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 6. Paragraph (f) of subsection (7) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(7) There is created within the Department of Transportation the Commercial Motor Vehicle Review Board, consisting of three permanent members who shall be the Secretary of Transportation, the executive director of the Department of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed pursuant to paragraph (b), which may review any penalty imposed upon any vehicle or person under the provisions of this chapter relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations.

(f) The review board may hold sessions and conduct proceedings at any place within the state. As an alternative to physical appearance, ~~and in addition to any other method of appearance authorized by rule,~~ the Department of Transportation shall allow ~~provide space and video conference capability at each district office to enable~~ a person requesting a hearing to appear remotely before the board via communications media technology as authorized by chapter 28-109, Florida Administrative Code, regardless of the physical location of the board proceeding.

Section 7. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed $200

million in any fiscal year, and any collections in excess of that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. All other fees collected by the department under this chapter shall be paid into the General Revenue Fund.

Section 8. Section 333.15, Florida Statutes, is created to read:

333.15 Rulemaking authority.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter.

Section 9. Subsections (1), (3), and (4) of section 335.199, Florida Statutes, are amended to read:

335.199 Transportation projects modifying access to adjacent property.—

(1) Whenever the Department of Transportation proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the department shall notify all affected property owners, municipalities, and counties at least 180 days before the design

phase of the project is completed ~~finalized~~. The department's notice shall provide a written explanation regarding the need for the project and indicate that all affected parties will be given an opportunity to provide comments to the department regarding potential impacts of the change.

(3) The department shall hold at least one public meeting before completing the design phase of the project ~~hearing~~ in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.

(4) The department must review all comments from the public meeting ~~hearing~~ and take the comments and any alternatives presented by a local government under subsection (2) into consideration in the final design of the highway project.

Section 10. Paragraph (c) of subsection (4) and paragraph (g) of subsection (7) of section 339.135, Florida Statutes, are amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(c)1. For purposes of this section, the board of county commissioners shall serve as the metropolitan planning organization in those counties which are not located in a metropolitan planning organization and shall be involved in the development of the district work program to the same extent as a metropolitan planning organization.

2. The district work program shall be developed cooperatively from the outset with the various metropolitan

planning organizations of the state and include, to the maximum extent feasible, the project priorities of metropolitan planning organizations which have been submitted to the district by August 1 ~~October 1~~ of each year pursuant to s. 339.175(8)(b); however, the department and a metropolitan planning organization may, in writing, cooperatively agree to vary this submittal date. To assist the metropolitan planning organizations in developing their lists of project priorities, the district shall disclose to each metropolitan planning organization any anticipated changes in the allocation or programming of state and federal funds which may affect the inclusion of metropolitan planning organization project priorities in the district work program.

3. Before ~~Prior to~~ submittal of the district work program to the central office, the district shall provide the affected metropolitan planning organization with written justification for any project proposed to be rescheduled or deleted from the district work program which project is part of the metropolitan planning organization's transportation improvement program and is contained in the last 4 years of the previous adopted work program. By no later than 14 days after submittal of the district work program to the central office, the affected metropolitan planning organization may file an objection to such rescheduling or deletion. When an objection is filed with the secretary, the rescheduling or deletion may not be included in the district work program unless the inclusion of such rescheduling or deletion is specifically approved by the secretary. The Florida Transportation Commission shall include such objections in its evaluation of the tentative work program

only when the secretary has approved the rescheduling or deletion.

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g)1. Any work program amendment which also requires the transfer of fixed capital outlay appropriations between categories within the department or the increase of an appropriation category is subject to the approval of the Legislative Budget Commission.

2. If a meeting of the Legislative Budget Commission cannot be held within 30 days after the department submits an amendment to the Legislative Budget Commission, the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to s. 216.177. ~~This subparagraph expires July 1, 2021.~~

Section 11. Paragraph (b) of subsection (8) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the jurisdiction of the M.P.O. In the development of the transportation improvement program, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program.

(b) Each M.P.O. annually shall prepare a list of project

priorities and shall submit the list to the appropriate district of the department by August 1 ~~October 1~~ of each year; however, the department and a metropolitan planning organization may, in writing, agree to vary this submittal date. Where more than one M.P.O. exists in an urbanized area, the M.P.O.'s shall coordinate in the development of regionally significant project priorities. The list of project priorities must be formally reviewed by the technical and citizens' advisory committees, and approved by the M.P.O., before it is transmitted to the district. The approved list of project priorities must be used by the district in developing the district work program and must be used by the M.P.O. in developing its transportation improvement program. The annual list of project priorities must be based upon project selection criteria that, at a minimum, consider the following:

1. The approved M.P.O. long-range transportation plan;

2. The Strategic Intermodal System Plan developed under s. 339.64.

3. The priorities developed pursuant to s. 339.2819(4).

4. The results of the transportation management systems; and

5. The M.P.O.'s public-involvement procedures.

Section 12. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 18, 2021

Senator Gainer, Chair
Appropriations Subcommittee on Transportation, Tourism and Economic Development
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Gainer,

I respectfully request that **SB 1126 – Department of Transportation** be placed on the next available agenda for the Transportation, Tourism and Economic Development Appropriations Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Jennifer Hrdlicka, Staff Director
Robert Fourqurean, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 24, 2021

Senator Kelli Stargel
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 1126 – Department of Transportation** be placed on the next available agenda for the Appropriations Committee Meeting. SB 1126 has passed unanimously its previous two Committee references.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1146
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Brodeur and others
SUBJECT:	Florida Building Code
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1146 amends the Florida Building Codes Act adding several new provisions. Specifically, the bill:

- Allows a substantially affected person to petition the Florida Building Commission (commission) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Florida Building Code (building code), and establishes a process for such.
- Allows the commission to issue an "errata to the code" to correct demonstrated errors in provisions contained within the building code.
- Requires the commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.
- Provides that a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes.

The bill makes several changes to current law pertaining to private building inspectors, known as "private providers" by:

- Expressly authorizing private providers to conduct virtual building inspections.
- Allowing private provides to submit various inspection forms, records, and reports electronically to local building departments and utilize electronic signatures.
- Allowing private providers to conduct "single-trade inspections," as defined in the bill.
- Creating a "qualified private provider" registration process and providing that a qualified private provider, as defined in the bill, does not need to include information other than the services to be performed in their written notice to the local building official that a private provider has been contracted to perform inspections.
- Authorizing a private provider to conduct emergency inspection services without first notifying the local building official.

The bill also allows the owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health.

Finally, the bill prohibits the Department of Health from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.

The bill may have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida Building Code and Florida Building Commission

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (building code), and that first edition replaced all

[1] Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).

local codes on March 1, 2002.[2] The current edition of the building code is the seventh edition, which is referred to as the 2020 Building Code.[3]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [4]

The main purpose of the building code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[5]

The Florida Building Commission

The Florida Building Commission (commission) was statutorily created to implement the building code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code.[6]

The commission reviews several International Codes published by the International Code Council, the National Electric Code (NEC), and other nationally adopted model codes to determine if the building code needs to be updated and adopts an updated building code every three years.[7]

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[8] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[9]

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[10]

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[2] *Id.*; Department of Business and Professional Regulation (DBPR), *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited Feb. 15, 2021).
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 26, 2021).
[4] *See* s. 553.72(1), F.S.
[5] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).
[6] Sections 553.73, and 553.74, F.S.
[7] *Id.*
[8] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).
[9] Section 553.73(3), F.S.; Fla. Admin. Code R. 61G20-2.001.
[10] Section 553.72, F.S.

Every local government must enforce the building code and issue building permits.[11] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[12]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[13] A building official is a local government employee or a person contracted by a local government who supervises building code activities, including plan review, enforcement, and inspection to ensure work complies with the building code.[14]

Amendments to the Building Code

The commission and local governments may adopt technical and administrative amendments to the building code. A technical amendment to the building code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the building code.[15] All amendments adopted by the commission require a 75 percent supermajority vote of approval.[16]

The commission may approve technical amendments to the building code once each year for statewide or regional application upon a finding that the amendment:[17]

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the building code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the building code.

In order to adopt a technical amendment to the building code, the commission must meet the following requirements:[18]

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment;

[11] Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[12] *See* Sections 125.56(4)(a) and 553.79(1), F.S.
[13] Section 202 of the Building Code, Sixth Edition.
[14] Section 468.603(2), F.S.
[15] Section 553.73, F.S.; Fla. Admin. Code R. 61G20-2.002.
[16] Fla. Admin. Code R. 61G20-2.002(13).
[17] Section 553.73(9), F.S.
[18] Section 553.73(3) and (9), F.S.

- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the building code so the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.[19]

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120, F.S. The commission may adopt amendments using the rule adoption procedure to address the following:[20]

- Conflicts within the updated building code;
- Conflicts between the updated building code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the building code that are more stringent than the building code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the building code.[21]

Current law allows local governments to adopt technical amendments to the building code every six months if:[22]

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;

[19] Section 553.73(7), F.S.
[20] Section 553.73(8), F.S.; Fla. Admin. Code R. 61G20-2.002(2).
[21] Section 553.73(4), F.S.
[22] *Id*.

- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the building code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the building code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the commission.

A technical amendment adopted by a local government takes effect 30 days after the commission receives the amendment and publishes the amendment on its website.[23]

The commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the commission decides to review a local amendment, it must send the amendment to the applicable TAC for review.[24]

The TAC must then make a recommendation to the commission about whether the local amendment complies with the requirements of current law. The commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[25]

Each county and municipality that adopts technical amendments to the building code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[26]

A local government or the substantially affected party may appeal the compliance review board's decision to the commission within 14 days of the board's decision. The commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[27]

The commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the commission, the

[23] Section 553.73(4), F.S.; Fla. Admin. Code R. 61G20-2.003.
[24] *Id.*
[25] *Id.*
[26] Section 553.73(4), F.S.
[27] *Id.*

local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[28]

Interpretations of the Building Code

The commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the building code, and give binding interpretations of the building code.[29]

A substantially affected person, state agency, or a local government may petition the commission in writing for a declaratory statement relating to interpretations of the building code, or the enforcement or administration of the building code by local governments. The commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[30]

A substantially affected person may also petition the commission to review a local building official's interpretation of the building code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[31]
A substantially affected person may petition the commission to review a local building official's interpretation of the building code if:[32]

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the commission on a form adopted by the commission which contains:
  - The name and address of the local government and the local building official;
  - The name, address, and phone number of the substantially affected person, and an explanation of how they are substantially affected by the building official's interpretation;
  - A statement of the provisions of the building code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
  - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the building code, the commission must provide copies to a panel, and publish the petition and the local building official's response on the commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building

[28] *Id.*
[29] Section 553.775, F.S.
[30] Sections 553.775(3), 120.565, and 120.68, F.S.
[31] Section 553.775(3), F.S.
[32] *Id.*

officials, an architect, and an engineer. The commission must coordinate with the Building Officials Association of Florida[33] to designate the panel.[34]

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the commission's website. The panel must issue a determination within 21 days of the petition being filed with the commission. The determination is binding upon all parties and all jurisdictions in Florida.[35] The determination must be published on the commission's website and the Florida Administrative Register.[36]

A party may appeal the panel's determination by filing an appeal with the commission within 30 days of the panel's determination. The commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The commission's ruling is subject to judicial review by a district court of appeal.[37]

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 pandemic, which allows contractors to keep working.[38]

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, allowing contractors to immediately request an inspection once they finish work, and allowing the contractor to remain on the jobsite.[39]

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[33] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[34] *Id.*
[35] *Id.*
[36] *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, https://www.flrules.org/Help/newHelp.asp#FAW (last visited Jan. 15, 2020).
[37] Sections 553.775(3) and 120.68, F.S.
[38] Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-569485561.html (last visited Apr. 5, 2021).
[39] Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited Apr. 5, 2021); Boca Raton, Virtual Inspections, https://myboca.us/1846/Virtual-Inspections (last visited Apr. 5, 2021).

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Product Evaluation and Approval

Current law requires the commission to develop and implement an approval of products for statewide use. The commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.[40] The commission approves the products in several categories for statewide use.[41]

To obtain state approval, a manufacturer must demonstrate that a product complies with the applicable standards and provisions of the building code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed, and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.[42]

Currently, the commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the commission's rules.[43] However, the commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:[44]

- The name and address of the owner of the property;
- The name and address of the contractor;

[40] Section 553.842(1), F.S.; Fla. Admin. Code R. 61G20-3.001.
[41] Fla. Admin. Code R. 61G20-3.001. The categories considered by this rule are panel walls, exterior doors, roofing products, skylights, windows, shutters, structural components, and impact protective systems.
[42] Section 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 29, 2021).
[43] Fla. Admin. Code R. 61G20-3.008.
[44] Section 713.135(5) and (6), F.S.

- A description sufficient to identify the property to be improved, including the property's address and legal description;
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.[45]

Private Providers

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.[46]

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may not audit a private provider more than four times in a month unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.[47]

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as "septic systems," generally consist of two basic parts: the septic tank and the drainfield.[48] Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where

[45] *Id.*
[46] Sections 107, 110.1, and 110.3 of the Building Code, Sixth Edition.
[47] Sections 553.791(1), (13), and (18), F.S.
[48] Department of Health (DOH), *Septic System Information and Care*, http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html (last visited Mar. 31, 2021); Environmental Protection Agency (EPA), *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited Mar. 31, 2021).

anaerobic bacteria breakdown the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.[49]

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[50] In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[51] For example, in rural areas and low-density developments, central sewer systems are not cost-effective.

Permitting and official inspection of OSTDSs is administered by the Environmental Health Section of the Department of Health (DOH) in each county.[52] The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.[53] Much like other construction projects, installation, repair, alteration, modification, abandonment, and replacement of OSTDSs requires a permit.[54] Before an OSTDS is covered with earth, put into service, or repaired, the county DOH must inspect the system for compliance with statutory requirements and the DOH rules.[55] Chapter 2020-150, L.O.F., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[56] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[57] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[58]

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., Florida Administrative Code Rule 59A-36. In addition to a standard license, an assisted living facility

[49] *Id*.
[50] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Mar. 24, 2021).
[51] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.
[52] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Apr. 12, 2021).
[53] *Id*.
[54] Fla. Admin. Code R. 64E-6.003(1).
[55] Fla. Admin. Code R. 64E-6.003.
[56] Section 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.
[57] Section 429.02(16), F.S.
[58] Section 429.02(1), F.S.

may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty licenses include limited nursing services,[59] limited mental health services, and extended congregate care services.[60]

Current law requires rules governing assisted living facilities to promote a safe and sanitary environment that is residential and non-institutional in design or nature.[61] Current law also requires that rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires the AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.[62] Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.[63]

Public Pools

The DOH is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained. If the DOH determines that the public swimming pool is, or is reasonably expected to be, operated in compliance with state laws and rules, the DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. The DOH is authorized to establish a schedule of fees for plan approval and permitting.[64] Operating permits must be renewed annually and may be transferred from one name or owner to another.[65]

A public swimming pool includes "a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee, and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses."[66]

All public pools must be equipped with the following safety features:[67]

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[59] Section 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).
[60] Section 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.
[61] Section 429.41(1), F.S.
[62] Section 429.41(5), F.S. The Agency for Health Care Administration (AHCA) reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).
[63] Section 429.41(1)(f), F.S.
[64] Section 514.033, F.S.
[65] Section 514.031(2) and (3), F.S.
[66] *Id*.
[67] Fla. Admin. Code R. 64E-9.008(3) and (7).

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;[68]
- A shepherd's hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd's hook on each of the longer sides of the pool[69];
- At least one 18-inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Lifeguards

A "lifeguard" is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.[70]

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.[71]

Pools in Assisted Living Facilities

Current law gives the DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.[72] The DOH's rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.[73]

Group care facilities include public or private schools, assisted living facilities, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.[74]

On July 6, 2018, the DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the

[68] Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. s. 106.
[69] Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd's hook and lifesaving ring requirement. *Id.*
[70] Section 514.071, F.S.; Fla. Admin. Code R. 64E-9.008(2).
[71] *Id.*
[72] *Id.*
[73] Fla. Admin. Code R. 64E-12.011(3).
[74] Section 381.006(16), F.S.

possible rule updates.[75] The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by the DOH.[76]

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:[77]

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers; and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the building code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.[78]

Federal Emergency Management Agency Flood Maps

The Federal Emergency Management Agency (FEMA) is an agency within the United States Department of Homeland Security. The FEMA coordinates responses to disasters within the United States. The FEMA provides resources and assistance to local and state authorities when a disaster overwhelms local response capacities.

The FEMA is responsible for various services related to flood insurance, floodplain management, and flood mapping. The FEMA provides flood hazard and risk data products to help set insurance rates for the National Flood Insurance Program (NFIP) and help guide local and state governments' flood mitigation actions.

The National Flood Insurance Program

The NFIP is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The NFIP aims to share the risk of flood losses through flood insurance and reduce flood damage by restricting development within floodplains. The program enables property owners in participating communities to purchase insurance protection, administered by the government, against flooding losses. Participation in the NFIP is limited to

[75] DOH, *Group Care Facilities*, http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code and Florida Administrative Register https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011 (last visited Feb. 25, 2021).
[76] Email from Andrew Love, Legislative Planning Director, DOH, FW: Violations at pool inspections Re: Pool Bills - Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).
[77] *Id.*
[78] *Id.*

communities that adopt adequate land use and control measures with effective enforcement provisions to reduce flood damages by restricting development in areas exposed to flooding.[79]

Flood Insurance Rate Maps

The NFIP insurance rates are correlated with the unique flooding risks of a geographic area. To facilitate the allocation of insurance rates, the FEMA prepares flood insurance rate maps (FIRM). A FIRM is an official map of a community within the United States that displays the floodplains, more explicitly particular hazard areas and risk premium zones, as delineated by the FEMA.[80]

FIRMs display areas that fall within the 100-year flood boundary, special flood hazard areas, and insurance risk zones. FIRMs are used to set insurance rates against the risk of flood and whether buildings are insurable at all against flood. Furthermore, towns and municipalities use FIRMs for local land use policy and zoning.[81]

Local Government Flood Map Adoption Process

For local governments and individual homeowners to acquire property insurance and participation in the NFIP, local governments must officially adopt FIRMs by providing for such via ordinance. Local governments must also adopt updates and revisions to FIRMs made by the FEMA. Generally, the adoption process involves the FEMA issuing preliminary flood maps, a period for community review and appeal, the FEMA issuing a letter of determination, and local governments updating ordinances to reflect flood map changes. The process for adopting FIRMs is described in more detail below.[82]

Preliminary Flood Insurance Rate Maps

The FEMA prepares preliminary flood hazard data to provide the public an early look at their home or community's projected risk to flood hazards. Preliminary data may include new or revised FIRMs. Under the FEMA's Risk Mapping, Assessment, and Planning program, the FEMA with communities and other local stakeholders engage in a discovery process to obtain a comprehensive picture of the community's flooding issues, flood risk, and potential flood mitigation activities. This analysis may also include a review of more restrictive floodplain management criteria. Information obtained during the discovery process helps the FEMA prepare preliminary FIRMs.[83]

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[79] FEMA, *Flood Insurance*, *available at:* https://www.fema.gov/flood-insurance (last visited April 16, 2021).
[80] FEMA, *Flood Insurance Rate Map (FIRM)*, *available at:* https://www.fema.gov/glossary/flood-insurance-rate-map-firm (last visited April 16, 2021).
[81] *Id.*
[82] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, *available at:* https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).
[83] FEMA, *Flood Map Products*, *available at:* https://www.fema.gov/flood-maps/products-tools/products#gis (last visited April 16, 2021).

Local Government Flood Map Adoption Process

Next, the FEMA provides copies of a preliminary FIRM report for community review and holds meetings with various state and local officials involved in the study. The FEMA may also hold public meetings to introduce and discuss the preliminary FIRM and FIS report with community members.[84]

90-day Communities Appeals Period

After the Consultation Coordination Officer (CCO) meeting, the FEMA initiates a 90-day period for communities to submit appeals about the new or modified flood hazard information shown on the FIRM. Before the appeal period is initiated, the FEMA will publish a notice of proposed flood hazard determinations in the Federal Register, notify the community's Chief Executive Officer, and publish information at least twice in a local newspaper. The appeal period provides community officials and people who own or lease property in the community an opportunity to submit scientific or technical information if they believe the flood hazard determinations are scientifically or technically incorrect.[85]

Letter of Final Determination

Following the 90-day appeal period, the FEMA resolves all appeals and finalizes the changes to the FIRM and FIS report. The FEMA then sends each affected community a Letter of Final Determination (LFD), which establishes the final flood hazard data and the effective date of the new FIRM and FIS report for the community.[86]

Six-month Community Adoption Period

The LFD also initiates the six-month period during which each community must adopt or amend its floodplain management regulations to reference the date and title of the new FIRM report. The FIRM and FIS report become effective at the end of the six months. At that time, flood insurance rates will be based on the new flood data, and the community will apply any floodplain management ordinances related to the new mapping. Federally insured or regulated lenders will also use the newly effective FIRM to determine if flood insurance is required as a condition of a loan.[87]

Community Land Use Regulation Changes

Each time the FEMA provides a community with new or revised flood hazard data, the local government must either adopt new floodplain management regulations to incorporate the data into in a code of ordinances or amend the existing ones to reference the new FIRM report. Many communities have legally valid automatic adoption clauses to incorporate updated FIRM map reference sections.[88]

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[84] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).
[85] *Id.* at 3.
[86] *Id.* at 4.
[87] *Id.*
[88] *Id*. at 5.

If a new type of flood hazard data is added to a community's FIRM, local officials may need to enact an ordinance to meet additional requirements. This ordinance enactment could be needed when the FEMA upgrades a flood zone without Base Flood Elevations (BFEs), indicates a new Special Flood Hazard Area (SFHA), or designates a coastal high hazard area.[89]

Consequences for Failing to Adopt Appropriate Floodplain Management Regulations

If a community does not adopt or amend floodplain management regulations after six months, the community will be suspended from the NFIP. Suspension from the NFIP will have the following consequences:

- Property owners are prevented from purchasing NFIP flood insurance policies, and existing policies will not be renewed.
- Federal grants or loans for development will not be available in identified flood hazard areas.
- Federal disaster assistance will not be provided to permanently repair insurable buildings in identified flood hazard areas for damage caused by a flood.
- Federal mortgage insurance or loan guarantees, such as those written by the Federal Housing Administration and the Department of Veteran Affairs, will not be provided in identified flood hazard areas.

Federally insured or regulated lending institutions, such as banks and credit unions, can make conventional loans for insurable buildings in flood hazard areas of non-participating communities.[90]

III. Effect of Proposed Changes:

Section 1 amends s. 381.0065, F.S., to allow the owner of an onsite sewage treatment and disposal system (OSTDS), or the owner's contractor, to select a private provider to provide official inspection services of such systems in lieu of the Department of Health (DOH).[91] This authorization is substantially similar to the provisions governing private building inspectors in ch. 553, F.S.

An owner or contractor using a private provider must notify the DOH two days prior to the first inspection of their intention to use a private provider. This notification must include the private provider's business information, professional license or certification number, and qualification statements or resumes. It must also include an acknowledgement form with prescribed language stating the owner's rights and liabilities to the DOH. An owner or contractor who changes the listed private providers must also update the notice given to the DOH.

The DOH must reduce permit fees based on savings to the DOH due to a private provider providing the inspection services.

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[89] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).

[90] *Id.* at 5 – 6.

[91] Chapter 2020-150, Laws of Fla., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

The OSTDS inspection services may be performed only by a private provider, a duly authorized representative of a private provider, or a person who is:

- Certified as an environmental health professional[92] by the DOH under s. 381.0101, F.S.;
- A master septic contractor[93] licensed by the Department of Business and Professional Regulations pursuant to ch. 489, F.S.;
- A professional engineer who has passed all three parts of the Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training[94]; or
- A person working as staff under such an engineer, who has also passed all three parts of the OSTDS Accelerated Certification Training.

The DOH may audit the performance of OSTDS inspection services by private providers. Such an audit cannot occur more than four times per month unless the DOH determines that an inspected and passed OSTDS should not have passed. Audits may not delay work following a passed inspection.

Section 2 amends s. 514.0115, F.S., to prohibit the DOH from requiring assisted living facilities with pools to comply with the DOH rules relating to swimming pool lifeguards.

Section 3 amends s. 553.73, F.S., to provide that a substantially affected person[95] may petition the Florida Building Commission (commission) for a non-binding advisory opinion for any local government[96] regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Florida Building Code (building code) and was not adopted in accordance with the process for adopting local amendments to the building code.

The commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the building code if the substantially affected person submits a petition to the commission. The petition must also be submitted to the local government's general counsel or administrator by certified mail, return receipt requested. The

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[92] "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members. Section 381.0101(1)(d), F.S.

[93] "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least three years' experience as a Florida-registered septic tank contractor or a certified plumbing contractor who has provided septic tank contracting services for at least three years and who has the experience, knowledge, and skills to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems. Section 489.551(2), F.S.

[94] The Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training program, administered by the DOH, provides five days of training on OSTDSs and results in a special certification. The program is available to private individuals, septic tank contractors, licensed plumbers, professional engineers, and staff working under professional engineers. DOH, *Accelerated Environmental Health Professional Certification and Master Septic Tank Contractor Training Participation and Examination Guide, available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/training/_documents/act-part-n-exam-guide1-12-2021.pdf (last visited Apr. 1, 2021).

[95] A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

[96] A "local government" means a county, municipality, special district, or political subdivision of the state.

local government may respond within 14 days, and send a copy of its response to the commission. The petition must be made using a form adopted by the commission that contains at a minimum:

- The name of the local government that enacted the regulation;
- The name and address of the local government's general counsel;
- The name, address, and phone number of the substantially affected person;
- An explanation of how the person is substantially affected by the local government's regulation; and
- A statement of why the regulation is a technical amendment to the building code, and which provisions of the building code are amended by the regulation, if any.

Upon receiving a petition to review a local government's regulation, the commission must publish the petition and the local government's response on the building code information system and allow for comments to be posted by interested parties.

The commission must consider the petition, the local government's response, any comments posted on the commission's website, and any recommendation provided by a Technical Advisory Committee. The commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the building code within 30 days of receiving the petition. The commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

This section further provides that the commission may also issue an "errata to the code" to correct demonstrated errors in provisions contained with the building code. An "errata to the code" means a list of errors on current and previous editions of the building code. The determination of such errors and the issuance of an "errata to the code" must be approved by a 75 percent supermajority vote of the commission.

Finally, under the bill, a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency (FEMA) for any law, ordinance, rule, or other measure that has the effect of imposing land use changes. Under this provision, the named local government entities may have to provide that land use changes based on a preliminary FEMA map are not effective until the FEMA map becomes effective, and is no longer considered preliminary.

Section 5 amends s. 553.79, F.S., to prohibit a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

Section 6 amends s. 553.791, F.S., to allow private providers to conduct inspection services either virtually or in person.

This section revises the statutory provision regarding reduction of fees for utilizing private providers to expressly require local jurisdictions to reduce the permit fee by the amount of cost savings realized by the local enforcement agency based on a flat fee, percentage, or other reasonable means.

This section further allows electronic signatures to be used on several forms submitted by private providers to building code officials. "Electronic signature" is defined to mean any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record. Inspection records and affidavits attesting that plans have been reviewed for compliance may be signed physically or electronically. Such an affidavit may also be electronically submitted.

When a noncomplying item related to the building code or permitted documents is found at a work site, a deficiency notice must be posted at the job site by the private provider, the provider's representative, or the building department. The bill allows such deficiency notice to be electronically posted, in the alternative to physically posting at the jobsite

This section provides that if equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the building code, a private provider may perform emergency inspection services without first notifying the local building official. The building code provides that where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.[97] A private provider must conduct the inspection within three business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within one day after the inspection is completed.

This section defines "single-trade inspections" as any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical, and provides specific examples of single-trade work. The section expressly provides that private providers are allowed to perform single-trade inspections within the disciplines covered by that person's licensure or certification.

If an owner or contractor makes changes to the listed private providers or services to be conducted by private providers, they must update the notice of work to be performed within one business day. The bill amends the timing to allow, in the alternative, such notice to be updated two business days before the next scheduled inspection.

Further, the bill defines "qualified private providers" as those private providers who have previously performed plans review and inspection services in the local jurisdiction and has registered with the local enforcing agency by providing the local building official with the provider's:

- Name, firm, address, telephone number, and email address;
- Professional license or certification number, qualification statements, or resumes; and
- A certificate of insurance, if required by the local building official.

This information must be submitted on an annual basis to maintain qualifying status, and must be updated within 10 business days after any change. The local jurisdiction is required to keep a registry of active qualified private providers separate from the jurisdiction's private provider and duly authorized representative licensure registration system authorized by 553.791(16)(b), F.S.

[97] Section 105.2.1, Florida Building Code (7th ed.) 2020.

Qualified private providers are not required to re-provide the information listed above to the local building code administrator with each notice of work to be performed as otherwise required by s. 553.971(4), F.S.

Finally, this section expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

Section 7 amends s. 553.842, F.S., to require the commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

Sections 4, 8, and 9 correct statutory references to conform to changes made by the bill.

Section 10 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; ….

The bill may implicate this constitutional restriction, to the extent that local governments are required to expend funds to procure or enhance technology infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,[98] which for Fiscal Year 2020-2021 is forecast at $2.2 million.[99] The fiscal impact of this bill is indeterminate. If the total cost of this legislation is less than $2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed $2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of

[98] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited March 10, 2021).

[99] Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited March 10, 2021).

important state interest and meets one of the exceptions specified in State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate the constitutional single subject rule. Article III, s. 6 of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith...." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.

The title of the bill is "An act relating to the Florida Building Code." However, section one of the bill relates to the inspection of onsite sewage treatment and disposal systems, and section two relates to the Department of Health's lifeguard standards for pools serving assisted living facilities, which may not properly connect to the Florida Building Code.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing the use of private providers to inspect onsite sewage treatment and disposal systems (OSTDSs) may increase efficiencies and lower costs for OSTDS owners. Additionally, persons qualified to be a private provider under the bill will be able to offer official inspection services, increasing business opportunities.

Private providers generally will also have increased opportunities for emergency inspections, virtual inspections, and electronic submission and signature efficiencies, which will have a positive effect. To the extent that the clarification regarding fee reduction alters a local government's fee calculations, consumers utilizing private providers may experience an indeterminate impact.

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

C. Government Sector Impact:

Allowing the use of private providers to inspect OSTDSs may save government funds by lightening the burden on inspections performed by the government; however, each inspection performed by a private provider reduces the revenue received by the governmental entity that would have done the inspection. The Department of Health is currently responsible for performing these inspections; however, effective July 1, 2021, the Onsite Sewage Program will transfer to the Department of Environmental Protection.

According to Department of Business and Professional Regulation (DBPR), applicants for certification as product evaluation entities will be required to pay an initial application fee and renewals fees. The DBPR estimates no more than 75 new entities will apply for certification and estimates receiving no more than $45,000 in new application fees and $15,000 annually in renewal fees for such applicants.[100]

The Florida Building Commission may see an increased workload related to establishing a process for accepting petitions from affected persons, issuing non-binding advisory opinions. According to the DBPR, the technology contractor for the Florida Building Commission (commission) estimates updating the Building Code information system to implement the nonbinding advisory opinion process will cost approximately $60,000.[101]

The provision allowing the commission to adopt an "errata to the code" is not anticipated to have a significant impact on the commission's processes.[102]

Local governments may need to expend funds to procure or enhance electronic infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

Local building code administrators may incur costs, most likely insignificant, related to the provision requiring maintenance of a registry of "qualified private providers."

[100] *See* Department of Business and Professional Regulation, *HB 401 Bill Analysis*, p. 5, (Feb. 24, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[101] *Id.*
[102] Email from the Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Mar. 30, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 provides that certain onsite sewage treatment and disposal system inspections may be performed by a "private provider" or a representative thereof. "Private provider" is not defined in ch. 381, F.S., and the operation of the term in the bill is unclear. An amendment may be necessary to more clearly define the professional licensing standards and requirements of a private provider.

The provision in section 3 of the bill pertaining to land use changes and preliminary FEMA flood maps (lines 428-431) would be more appropriately placed within part II of ch. 163, F.S., pertaining to land development regulations. Additionally, this provision should specifically reference "***Flood Insurance Rate Map*** issued by the Federal Emergency Management Agency," as opposed to a general reference to FEMA maps.

Current law does not expressly authorize building inspections performed by local building departments to be conducted virtually. Section 6 provides express authorization for private building inspectors, "private providers," to conduct building inspections virtually. The sponsor may consider addressing this inconsistency.

Section 6 provides that private providers may electronically post certain documents "through the use of a website or other form of electronic communication used to transmit or display information." The bill is silent as to whether this capability must be authorized by the local building code administrator, or whether such website must be provided by the local building code administrator, as opposed to each private provider creating their own method of posting.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0065, 514.0115, 553.73, 553.77, 553.79, 553.791, 553.842, 125.01, and 125.56.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute makes several changes to current law pertaining to private providers to allow private providers to conduct virtual inspections, perform single-trade inspections, submit certain inspection documentation and reports electronically, conduct emergency inspection services, and register as a "qualified private provider" with a local government.

The CS also provides that a municipality, county, or special district may not use preliminary maps issued by Federal Emergency Management Agency (FEMA) for any measure that imposes land use changes.

CS by Community Affairs on March 30, 2021:
The CS incorporates the provisions allowing an owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health. It also expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Appropriations; and Community Affairs; and Senators Brodeur and Perry

576-04235-21 20211146c2

A bill to be entitled

An act relating to the Florida Building Code; amending s. 381.0065, F.S.; authorizing fee owners or fee owners' contractors to select private providers to provide inspection services for onsite sewage treatment and disposal systems if certain requirements are met; providing legislative intent; requiring the Department of Health to reduce certain permit fees; prohibiting the department from charging inspection fees if the fee owner or contractor hires a private provider to perform an inspection; providing requirements for private providers or duly authorized representatives of private providers performing such inspections; requiring fee owners or contractors to provide specified notice to the department when using a private provider for such inspections; providing requirements for the contents of such notice; prohibiting the department from charging a fee for changing the duly authorized representative named in a permit application; authorizing the department to audit the performance of private providers; providing requirements relating to work on a building, a structure, or an onsite sewage treatment and disposal system relating to such audits; amending s. 514.0115, F.S.; prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; amending s. 553.73, F.S.; authorizing a substantially affected person to file a

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petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; prohibiting a municipality, county, or special district from using preliminary maps issued by the Federal Emergency Management Agency for certain purposes relating to land use changes; authorizing the commission to issue errata to the code; defining the term "errata to the code"; making technical changes; amending s. 553.77, F.S.; conforming a cross-reference; amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit; amending s. 553.791, F.S.; revising and defining terms; providing requirements for qualified private providers; requiring local jurisdictions to reduce permit fees under certain circumstances; deleting legislative intent; specifying that contractors using private providers to provide building code inspections services must notify local building officials in writing; revising notice requirements; deleting a provision requiring fee owners or fee owners' contractors to post certain information at a project site before commencing construction; authorizing certain affidavits to be

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signed with electronic signatures and be submitted to local building officials electronically; authorizing certain inspections to be performed in-person or virtually; authorizing certain reports to be signed with electronic signatures; authorizing certain notices to be electronically posted; authorizing private providers to perform certain replacements and repairs without first notifying local building officials under certain circumstances; authorizing certain forms to be signed with electronic signatures; authorizing certain inspection records to be electronically posted and electronically submitted to local building officials; authorizing certificates of compliance to be electronically transmitted to local building officials; specifying that a certain registry must be distinct from the registry of qualified private providers; conforming provisions to changes made by the act; authorizing a county, a municipality, a school district, or an independent special district to use a private provider to provide building code inspection services for certain purposes; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; amending ss. 125.01 and 125.56, F.S.; conforming cross-references; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(8) PRIVATE PROVIDER INSPECTION SERVICES.—

(a) Notwithstanding any other law, ordinance, or policy, the fee owner of an onsite sewage treatment and disposal system, or the fee owner's contractor upon written authorization from the fee owner, may select a private provider to provide inspection services for onsite sewage treatment and disposal systems and may pay the private provider directly for such services if such services are the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner.

(b) It is the intent of the Legislature that owners and contractors pay reduced fees related to onsite sewage treatment disposal system inspections when selecting a private provider to provide such inspections. The department must calculate the cost savings to the department based on a fee owner or contractor hiring a private provider to perform inspections in lieu of the department and reduce permit fees accordingly. The department may not charge fees for an inspection if the fee owner or contractor hires a private provider to perform the inspection.

(c) Onsite sewage treatment and disposal system inspection services may be performed only by a private provider or a duly authorized representative of a private provider within the disciplines covered under such person's licensure or if the person is certified under s. 381.0101, is a master septic

contractor licensed pursuant to chapter 489, is a professional engineer who has passed all three parts of the OSTDS Accelerated Certification Training, or is a person working as staff under the supervision of a licensed professional engineer and has passed all three parts of the OSTDS Accelerated Certification Training.

(d)1. A fee owner or the fee owner's contractor using a private provider for onsite sewage treatment and disposal system inspection services must provide notice to the department at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the department. The notice must include the following information:

a. The name, firm, address, telephone number, and e-mail address of each private provider who is performing or will perform such services, the private provider's professional license or certification number, and qualification statements or resumes for each private provider; and

b. An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide onsite sewage treatment and disposal system inspection services that are the subject of the enclosed permit application. I understand that the department may not perform the required onsite sewage treatment and disposal system inspections to determine compliance with the applicable codes, except to the extent authorized by law. Instead, inspections will be performed by the licensed or certified personnel

identified in the application. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the department from any and all claims arising from my use of these licensed or certified personnel to perform onsite sewage treatment and disposable system inspections with respect to the onsite sewage treatment and disposable system that are the subject of the enclosed permit application.

2. If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by the private providers, the fee owner or the fee owner's contractor must update the notice to reflect the change within 1 business day after the change. A change of a duly authorized representative named in the permit application does not require a revision of the permit and the department may not charge a fee for making such change.

(e) The department may audit the performance of onsite sewage treatment and disposal system inspection services by private providers. However, the same private provider may not be audited more than four times in a month unless the department determines that an onsite sewage treatment and disposal system inspected by the private provider should not have passed inspection. Work on a building, a structure, or an onsite sewage treatment and disposal system may proceed after inspection and approval by a private provider if the fee owner or fee owner's

contractor has given notice of the inspection pursuant to subsection (4) and, subsequent to such inspection and approval, may not be delayed for completion of an inspection audit by the department.

Section 2. Present subsections (3) through (8) of section 514.0115, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) The department may not require compliance with rules relating to swimming pool lifeguard standards for pools serving assisted living facilities.

Section 3. Subsections (4), (5), and (8) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is

responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new

subject not addressed in the Florida Building Code.

(c) ~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d) ~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e) ~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f) ~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and

~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) ~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the

uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) ~~9.~~ An amendment adopted under this subsection ~~paragraph~~ must ~~shall~~ include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) ~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) ~~(c)~~ Any amendment adopted by a local enforcing agency under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical

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performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) ~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision

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may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local

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government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

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(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted pursuant to this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under ~~pursuant to~~ the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including

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provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under ~~pursuant to~~ this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1.~~(a)~~ Conflicts within the updated code;

2.~~(b)~~ Conflicts between the updated code and the Florida Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

3.~~(c)~~ Unintended results from the integration of previously adopted amendments with the model code;

4.~~(d)~~ Equivalency of standards;

5.~~(e)~~ Changes to or inconsistencies with federal or state law; or

6.~~(f)~~ Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code to correct demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent supermajority vote of the commission. For purposes of this

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paragraph, "errata to the code" means a list of errors in current and previous editions of the Florida Building Code.

Section 4. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

Section 5. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 6. Present subsections (10) through (19) of section 553.791, Florida Statutes, are redesignated as subsections (11) through (20), respectively, a new subsection (10) and subsection (21) are added to that section, and subsection (1), paragraph (b) of subsection (2), subsections (3), (4), and (6), paragraphs (b) and (d) of subsection (7), subsections (8) and (9), and present subsections (10), (11), (12), (14), and (15) are amended, to read:

553.791 Alternative plans review and inspection.—

(1) As used in this section, the term:

(a) "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code but

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does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) "Audit" means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with ~~affixed to~~ the permit documents and that the minimum mandatory inspections required under the building code have been performed and properly recorded. The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Deliver" or "delivery" means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who

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reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) "Electronically posted" means providing notices of decisions, results, or records, including inspection records, through the use of a website or other form of electronic communication used to transmit or display information.

(h) "Electronic signature" means any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record.

(i) "Electronic transmission" or "submitted electronically" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which is suitable for the retention, retrieval, and reproduction of information by the recipient and is retrievable in paper form by the receipt through an automated process. All notices provided for in this section may be transmitted electronically and shall have the same legal effect as if physically posted or mailed.

(j) ~~(f)~~ "Immediate threat to public safety and welfare" means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the

building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(k) ~~(g)~~ "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(l) ~~(h)~~ "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.

2. The affidavit from the private provider required under subsection (6).

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m) ~~(i)~~ "Plans" means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

(n) ~~(j)~~ "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter

481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(o) "Qualified private provider" means a private provider who has previously performed plans review and inspection services in the local jurisdiction and has registered with the local enforcing agency by providing the local building official with the private provider's name, firm, address, telephone number, and e-mail address; his or her professional license or certification number, qualification statements, or resumes; and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section. This information must be submitted on an annual basis to the local jurisdiction in order to maintain qualifying status. If at any time any of the information submitted to the local jurisdiction changes, the private provider must contact the local jurisdiction and update the information within 10 business days after the change. The local jurisdiction is required to keep a registry of active qualified private providers.

(p) ~~(k)~~ "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.

2. A certificate of compliance from the private provider

required under subsection (12) ~~(11)~~.

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(q) "Single-trade inspection" means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.

(r) ~~(l)~~ "Site work" means the portion of a construction project that is not part of the building structure, including, but not limited to, grading, excavation, landscape irrigation, and installation of driveways.

(s) ~~(m)~~ "Stop-work order" means the issuance of any written statement, written directive, or written order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be

calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services ~~It is the intent of the Legislature that owners and contractors pay reduced fees related to building permitting requirements when hiring a private provider for plans review and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.~~ The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official in writing at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the local building

official or building code enforcement agency that ~~for~~ a private provider has been contracted to perform the ~~performing~~ required inspections of construction under this section, including single-trade inspections, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and e-mail address ~~facsimile number~~ of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

However, the notice is not required to include such information for private providers who are qualified private providers within the local jurisdiction and have renewed such designation pursuant to this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I

understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly

authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. ~~In addition, the fee owner or the fee owner's contractor shall post at the project site, before the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.~~

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits ~~on a form reasonably acceptable to the commission~~ certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and may be submitted electronically to the local building official.

(7)

(b) If the local building official provides a written

notice of plan deficiencies to the permit applicant within the prescribed 20-day period, the 20-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit revisions to correct the deficiencies.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days from the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. Such inspection may be performed in-person or virtually. The private provider may have ~~shall be permitted to send~~ a duly authorized representative ~~to the building site to~~ perform the required inspections, provided all required reports are prepared by and bear the written or electronic signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must be an employee of the private provider entitled to receive reemployment assistance benefits under

chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside the local building official's normal operating hours, including after hours, weekends, or holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted ~~at the job site~~ by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. Such notice may be physically posted at the job site or electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private

provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11)~~(10)~~ Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must bear the written or electronic signature of ~~be signed by~~ the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, upon completion of the required inspection ~~before leaving the project site~~, shall post each completed inspection record, indicating pass or fail, ~~at the site~~ and provide the record to the local building official within 2 business days. Such inspection record may be electronically posted by the private provider or the private provider may post such inspection record physically at the project site. The private provider may electronically transmit the record to the local building official. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is electronically posted or posted at the project site and all such inspection records are submitted with the certificate of compliance. Unless the records have been electronically posted,

records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(12)~~(11)~~ Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1) or may be electronically transmitted to the local building official:

> To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(13)~~(12)~~ No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the

certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit a corrected request for a certificate of occupancy or certificate of completion.

(15)~~(14)~~ For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address ~~facsimile number~~ listed for that person or entity in the permit application or revised permit application, or, if no e-mail address ~~facsimile number~~ is stated, when actually received by that person or entity.

(16)(a)~~(15)(a)~~ A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(n) ~~(1)(j)~~ and the insurance requirements of subsection (17). Such registration must be

distinct from the registry of qualified private providers ~~(16)~~.

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(21) Notwithstanding any other law, a county, a municipality, a school district, or an independent special district may use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure pursuant to this section.

Section 7. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this

state are also approved to conduct product evaluations as provided in subsection (5).

Section 8. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 9. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to

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consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 10. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill 1146**, relating to the **Florida Building Code**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1166 (891930)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes
SUBJECT:	Juvenile Justice
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Forbes	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1166 amends section 20.316, Florida Statutes, to retain the creation of a new program entitled "Accountability and Program Support" and the revision of the name of an existing program, "Prevention and Victim Services" to "Prevention Services" within the Department of Juvenile Justice (DJJ).

This bill amends section 985.101, Florida Statutes, to revise the circumstances under which a child may be taken into custody for a failure to appear by requiring the court to consider whether the child's nonappearance was willful based on certain factors.

This bill amends section 985.435, Florida Statutes, to require each judicial circuit to jointly develop a plan specifying the alternative consequence component for when a child violates probation.

This bill amends section 985.6865, Florida Statutes, to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost.

This bill amends section 1003.52, Florida Statutes, to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an

alternative model for providing and funding education services for youth in detention and residential commitment for Fiscal Year 2021-2022.

The DJJ indicates that there will be an indeterminate positive fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

II. Present Situation:

The DJJ has traditionally managed juveniles under a rehabilitative model of justice.[1] The mission of the DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.[2] The secretary of the DJJ is appointed by the Governor and tasked with carrying out programs to help achieve this mission.

Programs within the Department of Juvenile Justice

Section 20.316, F.S., establishes six programs within the DJJ. The secretary of the DJJ appoints an assistant secretary to oversee these programs. The following DJJ programs have been established by law:

- Accountability and Program Support (OAPS). The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.[3]
- Administration. The Office of Administrative Services is responsible for providing services to department staff, including but not limited to, financial, computer information systems, personnel, and general services.[4, 5]
- Intake and Detention. Detention is the custody status for youth that are held pursuant to a court order or after being taken into custody for a violation of the law. The DJJ operates 21 secure detention centers in 21 counties.[6]
- Prevention. The Prevention program offers voluntary youth crime prevention programs throughout the state.[7]
- Probation and Community Corrections. When a youth is charged with a crime they may be referred to diversion, court ordered sanctions, or probation. Each youth is assigned a

[1] Learn about the History of the Juvenile Justice System in Florida, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/about-us/history (last visited March 5, 2021).
[2] Learn about the Vision, Mission and Guiding Principles of the Department of Juvenile Justice, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/about-us/mission (last visited March 5, 2021).
[3] DJJ, Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/OPA (last visited March 5, 2021).
[4] DJJ, Office of Administrative Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/administration (last visited March 5, 2021).
[5] Section 20.316(2), F.S.
[6] DJJ, Detention Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/detention (last visited March 5, 2021).
[7] DJJ, Prevention Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/prevention (last visited March 5, 2021).

probation officer who monitors compliance and helps the youth connect with service providers.[8]
- Residential and Correctional Facilities. The Office of Residential Services oversees the Department's development, maintenance, and management of facilities and programs that meet the needs of Florida's adjudicated delinquent youths and promote public safety.[9]

In order to carry out his or her duties, the secretary assigns an assistant secretary to administer each program. The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.[10]

The implementing bill for the General Appropriations Act for FY 2020-21 created the program of the OAPS in s. 20.316, F.S. This allowed the secretary to appoint an assistant secretary to oversee the OAPS. Section 65 of the implementing bill, which provided the changes to s. 20.316, F.S., will expire on July 1, 2021, and revert back to what it was on June 30, 2020.[11,12] Without such a change, the DJJ will no longer have the OAPS and the Prevention program will revert back to Prevention and Victim Services.

The secretary of the DJJ is responsible for planning, coordinating, and managing the delivery of all programs and services within the DJJ.[13] The secretary has many duties, including but not limited to:
- Ensuring that programs and services are implemented according to legislative intent; state and federal laws, rules, and regulations; statewide program standards; and performance objectives by reviewing and monitoring regional and circuit program operations and providing technical assistance to those programs.
- Identifying the need for and recommending the funding and implementation of an appropriate mix of programs and services, including prevention, diversion, nonresidential and residential commitment programs, training schools, and conditional release programs and services, with an overlay of educational, vocational, alcohol, drug abuse, and mental health services, where appropriate.
- Establishing program policies and rules and ensuring that those policies and rules encourage cooperation, collaboration, and information sharing with community partners in the juvenile justice system to the extent authorized by law.[14]

[8] DJJ, Probation & Community Intervention, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/probation (last visited March 5, 2021).
[9] DJJ. Residential Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/residential (last visited March 5, 2021).
[10] Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/OPA (last visited March 5, 2021).
[11] Chapter 2020-114 s. 64, Laws of Fla.
[12] Section 20.316, F.S. (2019), established 5 programs within the DJJ. The following DJJ programs have been established by this section: Prevention and Victim Services; Intake and Detention; Residential and Correctional Facilities; Probation and Community Corrections; and Administration.
[13] Section 20.316(1)(a) and (b), F.S.
[14] Section 20.316(1), F.S.

Detention of Children in Florida

A child may only be taken into custody of the DJJ under certain circumstances. A child may be taken into custody:

- Pursuant to an order of the circuit court issued under ch. 985, F.S., based on sworn testimony, either before or after a petition is filed;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing after being properly noticed; or
- By a law enforcement officer who has probable cause to believe that the child is in violation of the child's probation, supervised release detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.[15]

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care if:

- The result of the risk assessment instrument pursuant to s. 985.245, F.S., indicates secure or supervised release detention.
- The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- The child is detained on a judicial order for failure to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.[16]

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing for any of the above reasons. A child's failure to keep the clerk of court and defense counsel informed of a current mailing address is not an adequate excuse for the child's failure to appear.[17]

"Detention care" means "the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order."[18] There are two types of detention care, including:

- "Secure detention" which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- "Supervised release detention" which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or

[15] Section 985.101(1)(a)-(d), F.S.
[16] Section 985.255(1), F.S.
[17] *Id*.
[18] Section 985.03(18), F.S.

disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.[19]

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional nine days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile[20] offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.[21]

Juvenile Detention Cost Sharing

Detention cost sharing was previously governed by s. 985.686, F.S., and provided that non-fiscally constrained counties were responsible to pay all the costs of providing preadjudicatory detention care, exclusive of the costs of any nonmedical educational or therapeutic services. Section 985.686, F.S., required the state to pay all detention care costs of fiscally constrained counties.[22] This cost sharing methodology led to litigation between counties and the DJJ.

In 2016, as a response to the litigation on cost sharing, the Legislature passed s. 985.6865, F.S., creating a new cost sharing methodology. The passage of s. 985.6865, F.S., has rendered s. 985.686, F.S., obsolete.

Section 985.6865, F.S., provides that, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained[23] and that has dismissed any action or claim described in s. 985.6865(2), F.S.,[24] must pay 50 percent of the total shared detention cost.[25]

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for juveniles residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.[26]

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[19] *Id.*

[20] Section 985.255, F.S., provides that a "prolific juvenile offender" means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

[21] Section 985.26, F.S.

[22] Section 985.686(3) and (4), F.S.

[23] Section 985.6865(3)(b), F.S., defines "fiscally constrained county" as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

[24] Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Section 985.6865(1) and (2), F.S.

[25] Section 985.6865(4), F.S.

[26] *Id.*

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.[27] Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.[28] The DJJ will determine quarterly whether counties are complying with this section.[29]

The State must pay all costs of detention care for juveniles:
- Residing in a fiscally constrained county;
- Residing out of State; or
- Housed in state detention centers from counties that provide their own detention care for juveniles.[30]

Section 985.6865, F.S., also contains language that refers back to past litigation arising from s. 985.686, F.S. This language is outdated and has become obsolete.

Violation of Probation

After a child is found to have committed a delinquent act, the court must hold a disposition hearing.[31] At the disposition hearing, the court must determine whether the child will be committed to the DJJ or receive community based sanctions. If the court determines not to commit the child to the DJJ, the court must determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to:
- Participation in substance abuse treatment.
- A day-treatment probation program.
- Restitution in money or in kind.
- A curfew.
- Revocation or suspension of the driver license of the child.
- Community service.
- Appropriate educational programs as determined by the district school board.[32]

A probation program for a child adjudicated delinquent must include a penalty component,[33] and a rehabilitative program component.[34] A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this

[27] Section 985.6865(6), F.S.
[28] Section 985.6865(7), F.S.
[29] Section 985.6865(8), F.S.
[30] Section 985.6865(5), F.S.
[31] Section 985.433, F.S.
[32] Section 985.433(8), F.S.
[33] Section 985.435(2), F.S., provides a penalty component that may include restitution, community service, a curfew, revocation or suspension of the driver license, or other nonresidential punishment appropriate to the offense.
[34] Section 985.435(3), F.S., provides a rehabilitative component that may include a substance abuse treatment program, or a school or career and technical education program.

component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.[35]

The state attorney or the DJJ may bring a child before the court on a petition alleging a violation of probation if sanctions are sought.[36] A child taken into custody on an alleged violation of probation must be screened and either detained or released based on his or her risk assessment instrument score.[37] If the child admits to the violation, or the court finds that the child has violated his or her probation, the court must enter a new disposition order. The court may impose any sanction that the court could have imposed at the original disposition hearing.[38] The court may:

- Place the child in supervised release detention with electronic monitoring.
- If the violation of probation is technical in nature and not a new law violation, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.
  - Alternative consequence programs must be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.
  - Alternative consequence programs may be operated by an entity such as a law enforcement agency, the DJJ, a juvenile assessment center, a county or municipality, or another entity selected by the DJJ.
  - Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.
- Modify or continue the child's probation program.
- Revoke probation and commit the child to the DJJ.[39]

Additionally, the court may order the child submit to random testing to detect the use of alcohol or controlled substances at the time of disposition.[40]

III. Effect of Proposed Changes:

This bill amends s. 20.316, F.S., to retain the program entitled "Accountability and Program Support" within the Department of Juvenile Justice (DJJ). This program was created in statute by the implementing bill for the General Appropriations Act for FY 2020-21.[41] This change will also allow the secretary to keep the assistant secretary that was appointed for the program. The bill also retains the change made to s. 20.316, F.S., by the implementing bill for the General Appropriations Act for FY 2020-21, that revised the name of the existing program, "Prevention and Victim Services," to "Prevention Services."[42] This change is because the DJJ has not provided victim services for numerous years.

[35] Section 985.435(4), F.S.
[36] Section 985.439(1)(b), F.S.
[37] Section 985.439(2), F.S.
[38] Section 985.439(4), F.S.
[39] Section 985.439(4)(a)-(d), F.S.
[40] Section 985.439(5), F.S.
[41] Chapter 2020-114 s. 64, Laws of Fla.
[42] *Id.*

This bill amends s. 985.101, F.S., providing a court may order that a child be taken into custody for a failure to appear. Before the court issues such an order, it must consider all of the following information relating to whether the child's nonappearance was willful:

- Whether notice was sent to the address in the official court record.
- Whether notice was given to the child in any format by anyone.
- Whether counsel, if any, for the child had contact or attempted to have contact with the child.
- Whether a DJJ representative had contact or attempted to have contact with the child.
- Whether the DJJ has any specific information to assist the court in this decision.

This bill amends s. 985.435, F.S., providing that each judicial circuit must develop a written plan specifying the alternative consequence component. These plans must be based upon the principle that sanctions must reflect:

- The seriousness of the violation.
- The assessed criminogenic needs and risks of the child.
- The child's age and maturity level.
- How effective the sanction or incentive will be in moving the child to compliant behavior.

The plan must be made in consultation with the judges, the state attorney, the public defender, the relevant law enforcement agency in the judicial circuit, and the DJJ.

This bill also amends s. 985.6865, F.S., to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost. This bill also removes language related to detention cost sharing that is no longer relevant.

This bill repeals s. 985.686, F.S. Section 985.686, F.S., formerly provided for a detention cost sharing plan between the DJJ and counties. This cost sharing plan is now governed by s. 985.6865, F.S.

This bill amends s. 1003.52, F.S., to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an alternative model for providing and funding educational services for youth in detention and residential commitment for Fiscal Year 2021-2022. The model is required to provide for assessments and direct educational services, including special education and career and technical educational services, transitional planning; educational program accountability standards; research-based best practices for educating justice-involved youth; and the recruiting, hiring, and training of teachers. This subsection expires on June 1, 2022.

Additionally, for purposes of incorporating the amendments made by this act, this bill reenacts ss. 960.001, 985.439, and 985.565, F.S.

This bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates this PCS/CS/SB 1166 will have an indeterminate cost savings. The bill will likely decrease the number of youth held in secure detention for a failure to appear or violation of probation, therefore providing a cost savings for the state and the counties (who share in the cost of detention).[43]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[43] Department of Juvenile Justice, *2021 Agency Analysis of SB 1166* (February 22, 2021). On file with the Senate Committee on Criminal Justice.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.316, 985.101, 985.435, 985.6865, and 1003.52.

This bill repeals section 985.686 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 960.001, 985.439, and 985.565.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 17, 2021:
The committee substitute amends s. 1003.52, F.S., to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an alternative model for providing and funding education services for youth in detention and residential commitment for Fiscal Year 2021-2022.

CS by Criminal Justice on March 9, 2021:
The committee substitute:

- Amends s. 985.101, F.S., providing that a court may take a child into custody for failing to appear. Prior to issuing such order, the court must consider specified criteria to determine the child's nonappearance was willful.
- Amends s. 985.435, F.S., to provide that each circuit must develop, in consultation with judges, the state attorney, the public defender, relevant law enforcement agencies, and the DJJ, a written plan specifying the alternative sanctions and incentives for noncompliance with probation.
- Reenacts various statutes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

576-03014-21

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to juvenile justice; amending s. 20.316, F.S.; creating the Accountability and Program Support Program within the Department of Juvenile Justice and revising the name of an existing program; amending s. 985.101, F.S.; authorizing a court to order that a child be taken into custody for failure to appear; requiring a court to consider specified information before it issues such an order; amending s. 985.435, F.S.; requiring each judicial circuit to develop, in consultation with specified persons and entities, a written plan specifying the alternative consequence component which must be based upon certain principles; providing that the alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation; repealing s. 985.686, F.S., relating to the shared county and state financial support responsibility for juvenile detention; amending s. 985.6865, F.S.; deleting provisions relating to legislative findings and intent; requiring the Department of Juvenile Justice to calculate annually by a certain date and provide to each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles its annual percentage share of detention costs; requiring each county that

576-03014-21

is not a fiscally constrained county and that does not provide its own detention care for juveniles to incorporate into its annual county budget sufficient funds to pay its annual percentage share of detention costs; amending s. 1003.52, F.S.; authorizing the Department of Juvenile Justice, in consultation with the Department of Education, to evaluate the viability of an alternative model for providing and funding education services for youth in detention and residential facilities; providing requirements; providing for expiration; reenacting ss. 960.001(1)(b) and 985.439(2), F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems and violation of probation or postcommitment probation, respectively, to incorporate the amendment made to s. 985.101, F.S., in references thereto; reenacting s. 985.565(4)(b), F.S., relating to sentencing alternatives, to incorporate the amendment made to s. 985.435, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Upon the expiration and reversion of the amendment made to section 20.316, Florida Statutes, pursuant to section 65 of chapter 2020-114, Laws of Florida, subsections (2) and (3) of section 20.316, Florida Statutes, are amended to read:

20.316 Department of Juvenile Justice.—There is created a

Department of Juvenile Justice.

(2) DEPARTMENT PROGRAMS.—The following programs are established within the Department of Juvenile Justice:

(a) Accountability and Program Support.

(d) ~~(a)~~ Prevention ~~and Victim~~ Services.

(c) ~~(b)~~ Intake and Detention.

(f) ~~(c)~~ Residential and Correctional Facilities.

(e) ~~(d)~~ Probation and Community Corrections.

(b) ~~(e)~~ Administration.

The secretary may establish assistant secretary positions and a chief of staff position as necessary to administer the requirements of this section.

(3) JUVENILE JUSTICE OPERATING CIRCUITS.—The department shall plan and administer its programs through a substate structure that conforms to the boundaries of the judicial circuits prescribed in s. 26.021. A county may seek placement in a juvenile justice operating circuit other than as prescribed in s. 26.021 for participation in the Prevention ~~and Victim~~ Services Program and the Probation and Community Corrections Program by making a request of the chief circuit judge in each judicial circuit affected by such request. Upon a showing that geographic proximity, community identity, or other legitimate concern for efficiency of operations merits alternative placement, each affected chief circuit judge may authorize the execution of an interagency agreement specifying the alternative juvenile justice operating circuit in which the county is to be placed and the basis for the alternative placement. Upon the execution of said interagency agreement by each affected chief

circuit judge, the secretary may administratively place a county in an alternative juvenile justice operating circuit pursuant to the agreement.

Section 2. Subsection (5) is added to section 985.101, Florida Statutes, to read:

985.101 Taking a child into custody.—

(5) A court may order that a child be taken into custody for failure to appear. Before the court issues such an order, it must consider all of the following information relating to whether the child's nonappearance was willful:

(a) Whether notice was sent to the address in the official court record.

(b) Whether notice was given to the child in any format by anyone.

(c) Whether counsel, if any, for the child had contact or attempted to have contact with the child.

(d) Whether a department representative had contact or attempted to have contact with the child.

(e) Whether the department has any specific information to assist the court in this decision.

Section 3. Subsection (4) of section 985.435, Florida Statutes, is amended to read:

985.435 Probation and postcommitment probation; community service.—

(4) A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. Each circuit shall develop, in consultation with judges, the state attorney,

the public defender, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect the seriousness of the violation, the assessed criminogenic needs and risks of the child, the child's age and maturity level, and how effective the sanction or incentive will be in moving the child to compliant behavior. The alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of ~~to any noncompliance with technical conditions of~~ probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order.

Section 4. Section 985.686, Florida Statutes, is repealed.

Section 5. Subsections (1) through (6) of section 985.6865, Florida Statutes, are amended to read:

985.6865 Juvenile detention.—

~~(1) The Legislature finds that various counties and the Department of Juvenile Justice have engaged in a multitude of legal proceedings regarding detention cost sharing for juveniles. Such litigation has largely focused on how the Department of Juvenile Justice calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Additionally, litigation pending in 2016 is a financial burden on the taxpayers of this state.~~

~~(2) It is the intent of the Legislature that all counties that are not fiscally constrained counties and that have pending administrative or judicial claims or challenges file a notice of voluntary dismissal with prejudice to dismiss all actions pending on or before February 1, 2016, against the state or any state agency related to juvenile detention cost sharing. Furthermore, all counties that are not fiscally constrained shall execute a release and waiver of any existing or future claims and actions arising from detention cost share prior to the 2016-2017 fiscal year. The department may not seek reimbursement from counties complying with this subsection for any underpayment for any cost-sharing requirements before the 2016-2017 fiscal year.~~

(1)~~(3)~~ As used in this section, the term:

(a) "Detention care" means secure detention and respite beds for juveniles charged with a domestic violence crime.

(b) "Fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount includes the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(2)~~(4)~~ ~~Notwithstanding s. 985.686, for the 2017-2018 fiscal~~

~~year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has taken the action fulfilling the intent of this section as described in subsection (2) shall pay its annual percentage share of 50 percent of the total shared detention costs. By~~ Annually by July 15, ~~2017, and each year thereafter,~~ the department shall calculate and provide to each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles its annual percentage share by dividing the total number of detention days for juveniles residing in the county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each such county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care.

(3) ~~(5)~~ The state shall pay all costs of detention care for juveniles residing in a fiscally constrained county and for juveniles residing out of state. The state shall pay all costs of detention care for juveniles housed in state detention centers from counties that provide their own detention care for juveniles.

(4) ~~(6)~~ Each county that is not a fiscally constrained

county and that does not provide its own detention care for juveniles ~~has taken the action fulfilling the intent of this section as described in subsection (2)~~ shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of the total shared detention costs required by subsection (2) ~~(4)~~.

Section 6. Subsection (23) is added to section 1003.52, Florida Statutes, to read:

1003.52 Educational services in Department of Juvenile Justice programs.—

(23) Notwithstanding this section, during fiscal year 2021-2022, the Department of Juvenile Justice, in consultation with the Department of Education, is authorized to evaluate the viability of an alternative model for providing and funding education services for youth in detention and residential facilities. This evaluation must include material gathered through a request for information process. Such model must provide for assessments and direct educational services, including, but not limited to, special education and career and technical educational services; transition planning; educational program accountability standards; research-based best practices for educating justice-involved youth; and the recruiting, hiring, and training of teachers. This subsection expires June 1, 2022.

Section 7. For the purpose of incorporating the amendment made by this act to section 985.101, Florida Statutes, in references thereto, paragraph (b) of subsection (1) of section 960.001, Florida Statutes, is reenacted to read:

960.001 Guidelines for fair treatment of victims and

witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(b) *Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.*—In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.

2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete

the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:

a. The name, address, and phone number of the victim; or

b. The name, address, and phone number of the appropriate next of kin of the victim; or

c. The name, address, and telephone number of a designated contact other than the victim or appropriate next of kin of the victim; and

d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the

appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

Section 8. For the purpose of incorporating the amendment made by this act to section 985.101, Florida Statutes, in a reference thereto, subsection (2) of section 985.439, Florida Statutes, is reenacted to read:

985.439 Violation of probation or postcommitment probation.—

(2) A child taken into custody under s. 985.101 for violating the conditions of probation shall be screened and detained or released based on his or her risk assessment instrument score.

Section 9. For the purpose of incorporating the amendment made by this act to section 985.435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(b) *Juvenile sanctions.*—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency may not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for

further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days before discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 10. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1166
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Brandes
SUBJECT:	Juvenile Justice
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Forbes	Harkness	ACJ	**Recommend: Fav/CS**
3.	Forbes	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1166 amends section 20.316, Florida Statutes, to retain the creation of a new program entitled "Accountability and Program Support" and the revision of the name of an existing program, "Prevention and Victim Services" to "Prevention Services" within the Department of Juvenile Justice (DJJ).

This bill amends section 985.101, Florida Statutes, to revise the circumstances under which a child may be taken into custody for a failure to appear by requiring the court to consider whether the child's nonappearance was willful based on certain factors.

This bill amends section 985.435, Florida Statutes, to require each judicial circuit to jointly develop a plan specifying the alternative consequence component for when a child violates probation.

This bill amends section 985.6865, Florida Statutes, to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost.

This bill amends section 1003.52, Florida Statutes, to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an

alternative model for providing and funding education services for youth in detention and residential commitment for Fiscal Year 2021-2022.

The DJJ indicates that there will be an indeterminate positive fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2021.

II. Present Situation:

The DJJ has traditionally managed juveniles under a rehabilitative model of justice.[1] The mission of the DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.[2] The secretary of the DJJ is appointed by the Governor and tasked with carrying out programs to help achieve this mission.

Programs within the Department of Juvenile Justice

Section 20.316, F.S., establishes six programs within the DJJ. The secretary of the DJJ appoints an assistant secretary to oversee these programs. The following DJJ programs have been established by law:

- Accountability and Program Support (OAPS). The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.[3]
- Administration. The Office of Administrative Services is responsible for providing services to department staff, including but not limited to, financial, computer information systems, personnel, and general services.[4, 5]
- Intake and Detention. Detention is the custody status for youth that are held pursuant to a court order or after being taken into custody for a violation of the law. The DJJ operates 21 secure detention centers in 21 counties.[6]
- Prevention. The Prevention program offers voluntary youth crime prevention programs throughout the state.[7]
- Probation and Community Corrections. When a youth is charged with a crime they may be referred to diversion, court ordered sanctions, or probation. Each youth is assigned a

[1] Learn about the History of the Juvenile Justice System in Florida, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/about-us/history (last visited March 5, 2021).
[2] Learn about the Vision, Mission and Guiding Principles of the Department of Juvenile Justice, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/about-us/mission (last visited March 5, 2021).
[3] DJJ, Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/OPA (last visited March 5, 2021).
[4] DJJ, Office of Administrative Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/administration (last visited March 5, 2021).
[5] Section 20.316(2), F.S.
[6] DJJ, Detention Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/detention (last visited March 5, 2021).
[7] DJJ, Prevention Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/prevention (last visited March 5, 2021).

probation officer who monitors compliance and helps the youth connect with service providers.[8]

- Residential and Correctional Facilities. The Office of Residential Services oversees the Department's development, maintenance, and management of facilities and programs that meet the needs of Florida's adjudicated delinquent youths and promote public safety.[9]

In order to carry out his or her duties, the secretary assigns an assistant secretary to administer each program. The OAPS emphasizes the DJJ's commitment to ensuring programs operated or contracted by the DJJ effectively provide for the safety, well-being, and treatment of youth under the state's care.[10]

The implementing bill for the General Appropriations Act for FY 2020-21 created the program of the OAPS in s. 20.316, F.S. This allowed the secretary to appoint an assistant secretary to oversee the OAPS. Section 65 of the implementing bill, which provided the changes to s. 20.316, F.S., will expire on July 1, 2021, and revert back to what it was on June 30, 2020.[11,12] Without such a change, the DJJ will no longer have the OAPS and the Prevention program will revert back to Prevention and Victim Services.

The secretary of the DJJ is responsible for planning, coordinating, and managing the delivery of all programs and services within the DJJ.[13] The secretary has many duties, including but not limited to:

- Ensuring that programs and services are implemented according to legislative intent; state and federal laws, rules, and regulations; statewide program standards; and performance objectives by reviewing and monitoring regional and circuit program operations and providing technical assistance to those programs.
- Identifying the need for and recommending the funding and implementation of an appropriate mix of programs and services, including prevention, diversion, nonresidential and residential commitment programs, training schools, and conditional release programs and services, with an overlay of educational, vocational, alcohol, drug abuse, and mental health services, where appropriate.
- Establishing program policies and rules and ensuring that those policies and rules encourage cooperation, collaboration, and information sharing with community partners in the juvenile justice system to the extent authorized by law.[14]

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[8] DJJ, Probation & Community Intervention, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/probation (last visited March 5, 2021).
[9] DJJ. Residential Services, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/residential (last visited March 5, 2021).
[10] Office of Accountability and Program Support, *The Department of Juvenile Justice*, available at http://www.djj.state.fl.us/services/support/OPA (last visited March 5, 2021).
[11] Chapter 2020-114 s. 64, Laws of Fla.
[12] Section 20.316, F.S. (2019), established 5 programs within the DJJ. The following DJJ programs have been established by this section: Prevention and Victim Services; Intake and Detention; Residential and Correctional Facilities; Probation and Community Corrections; and Administration.
[13] Section 20.316(1)(a) and (b), F.S.
[14] Section 20.316(1), F.S.

Detention of Children in Florida

A child may only be taken into custody of the DJJ under certain circumstances. A child may be taken into custody:

- Pursuant to an order of the circuit court issued under ch. 985, F.S., based on sworn testimony, either before or after a petition is filed;
- For a delinquent act or violation of law;
- By a law enforcement officer for failing to appear at a court hearing after being properly noticed; or
- By a law enforcement officer who has probable cause to believe that the child is in violation of the child's probation, supervised release detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.[15]

A child is entitled to a hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care if:

- The result of the risk assessment instrument pursuant to s. 985.245, F.S., indicates secure or supervised release detention.
- The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- The child is detained on a judicial order for failure to appear, after proper notice:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.[16]

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing for any of the above reasons. A child's failure to keep the clerk of court and defense counsel informed of a current mailing address is not an adequate excuse for the child's failure to appear.[17]

"Detention care" means "the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order."[18] There are two types of detention care, including:

- "Secure detention" which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- "Supervised release detention" which is the temporary, nonsecure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or

[15] Section 985.101(1)(a)-(d), F.S.
[16] Section 985.255(1), F.S.
[17] *Id*.
[18] Section 985.03(18), F.S.

disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.[19]

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional nine days if the child is charged with certain offenses, and there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case. Additionally, a prolific juvenile[20] offender must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.[21]

Juvenile Detention Cost Sharing

Detention cost sharing was previously governed by s. 985.686, F.S., and provided that non-fiscally constrained counties were responsible to pay all the costs of providing preadjudicatory detention care, exclusive of the costs of any nonmedical educational or therapeutic services. Section 985.686, F.S., required the state to pay all detention care costs of fiscally constrained counties.[22] This cost sharing methodology led to litigation between counties and the DJJ.

In 2016, as a response to the litigation on cost sharing, the Legislature passed s. 985.6865, F.S., creating a new cost sharing methodology. The passage of s. 985.6865, F.S., has rendered s. 985.686, F.S., obsolete.

Section 985.6865, F.S., provides that, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained[23] and that has dismissed any action or claim described in s. 985.6865(2), F.S.,[24] must pay 50 percent of the total shared detention cost.[25]

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for juveniles residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.[26]

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[19] *Id.*

[20] Section 985.255, F.S., provides that a "prolific juvenile offender" means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

[21] Section 985.26, F.S.

[22] Section 985.686(3) and (4), F.S.

[23] Section 985.6865(3)(b), F.S., defines "fiscally constrained county" as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

[24] Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Section 985.6865(1) and (2), F.S.

[25] Section 985.6865(4), F.S.

[26] *Id.*

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.[27] Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.[28] The DJJ will determine quarterly whether counties are complying with this section.[29]

The State must pay all costs of detention care for juveniles:
- Residing in a fiscally constrained county;
- Residing out of State; or
- Housed in state detention centers from counties that provide their own detention care for juveniles.[30]

Section 985.6865, F.S., also contains language that refers back to past litigation arising from s. 985.686, F.S. This language is outdated and has become obsolete.

Violation of Probation

After a child is found to have committed a delinquent act, the court must hold a disposition hearing.[31] At the disposition hearing, the court must determine whether the child will be committed to the DJJ or receive community based sanctions. If the court determines not to commit the child to the DJJ, the court must determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to:
- Participation in substance abuse treatment.
- A day-treatment probation program.
- Restitution in money or in kind.
- A curfew.
- Revocation or suspension of the driver license of the child.
- Community service.
- Appropriate educational programs as determined by the district school board.[32]

A probation program for a child adjudicated delinquent must include a penalty component,[33] and a rehabilitative program component.[34] A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. If the probation program includes this

[27] Section 985.6865(6), F.S.
[28] Section 985.6865(7), F.S.
[29] Section 985.6865(8), F.S.
[30] Section 985.6865(5), F.S.
[31] Section 985.433, F.S.
[32] Section 985.433(8), F.S.
[33] Section 985.435(2), F.S., provides a penalty component that may include restitution, community service, a curfew, revocation or suspension of the driver license, or other nonresidential punishment appropriate to the offense.
[34] Section 985.435(3), F.S., provides a rehabilitative component that may include a substance abuse treatment program, or a school or career and technical education program.

component, specific consequences that apply to noncompliance with specific technical conditions of probation must be detailed in the disposition order.[35]

The state attorney or the DJJ may bring a child before the court on a petition alleging a violation of probation if sanctions are sought.[36] A child taken into custody on an alleged violation of probation must be screened and either detained or released based on his or her risk assessment instrument score.[37] If the child admits to the violation, or the court finds that the child has violated his or her probation, the court must enter a new disposition order. The court may impose any sanction that the court could have imposed at the original disposition hearing.[38] The court may:

- Place the child in supervised release detention with electronic monitoring.
- If the violation of probation is technical in nature and not a new law violation, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.
  - Alternative consequence programs must be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.
  - Alternative consequence programs may be operated by an entity such as a law enforcement agency, the DJJ, a juvenile assessment center, a county or municipality, or another entity selected by the DJJ.
  - Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.
- Modify or continue the child's probation program.
- Revoke probation and commit the child to the DJJ.[39]

Additionally, the court may order the child submit to random testing to detect the use of alcohol or controlled substances at the time of disposition.[40]

III. Effect of Proposed Changes:

This bill amends s. 20.316, F.S., to retain the program entitled "Accountability and Program Support" within the Department of Juvenile Justice (DJJ). This program was created in statute by the implementing bill for the General Appropriations Act for FY 2020-21.[41] This change will also allow the secretary to keep the assistant secretary that was appointed for the program. The bill also retains the change made to s. 20.316, F.S., by the implementing bill for the General Appropriations Act for FY 2020-21, that revised the name of the existing program, "Prevention and Victim Services," to "Prevention Services."[42] This change is because the DJJ has not provided victim services for numerous years.

[35] Section 985.435(4), F.S.
[36] Section 985.439(1)(b), F.S.
[37] Section 985.439(2), F.S.
[38] Section 985.439(4), F.S.
[39] Section 985.439(4)(a)-(d), F.S.
[40] Section 985.439(5), F.S.
[41] Chapter 2020-114 s. 64, Laws of Fla.
[42] *Id.*

This bill amends s. 985.101, F.S., providing a court may order that a child be taken into custody for a failure to appear. Before the court issues such an order, it must consider all of the following information relating to whether the child's nonappearance was willful:

- Whether notice was sent to the address in the official court record.
- Whether notice was given to the child in any format by anyone.
- Whether counsel, if any, for the child had contact or attempted to have contact with the child.
- Whether a DJJ representative had contact or attempted to have contact with the child.
- Whether the DJJ has any specific information to assist the court in this decision.

This bill amends s. 985.435, F.S., providing that each judicial circuit must develop a written plan specifying the alternative consequence component. These plans must be based upon the principle that sanctions must reflect:

- The seriousness of the violation.
- The assessed criminogenic needs and risks of the child.
- The child's age and maturity level.
- How effective the sanction or incentive will be in moving the child to compliant behavior.

The plan must be made in consultation with the judges, the state attorney, the public defender, the relevant law enforcement agency in the judicial circuit, and the DJJ.

This bill also amends s. 985.6865, F.S., to ensure that only a county that is not fiscally constrained and that does not provide for its own detention care contributes 50 percent of the detention cost. This bill also removes language related to detention cost sharing that is no longer relevant.

This bill repeals s. 985.686, F.S. Section 985.686, F.S., formerly provided for a detention cost sharing plan between the DJJ and counties. This cost sharing plan is now governed by s. 985.6865, F.S.

This bill amends s. 1003.52, F.S., to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an alternative model for providing and funding educational services for youth in detention and residential commitment for Fiscal Year 2021-2022. The model is required to provide for assessments and direct educational services, including special education and career and technical educational services, transitional planning; educational program accountability standards; research-based best practices for educating justice-involved youth; and the recruiting, hiring, and training of teachers. This subsection expires on June 1, 2022.

Additionally, for purposes of incorporating the amendments made by this act, this bill reenacts ss. 960.001, 985.439, and 985.565, F.S.

This bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ indicates this PCS/CS/SB 1166 will have an indeterminate cost savings. The bill will likely decrease the number of youth held in secure detention for a failure to appear or violation of probation, therefore providing a cost savings for the state and the counties (who share in the cost of detention).[43]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[43] Department of Juvenile Justice, *2021 Agency Analysis of SB 1166* (February 22, 2021). On file with the Senate Committee on Criminal Justice.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.316, 985.101, 985.435, 985.6865, and 1003.52.

This bill repeals section 985.686 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 960.001, 985.439, and 985.565.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute amends s. 1003.52, F.S., to add a new subsection that authorizes the department in consultation with the Department of Education to evaluate the viability of an alternative model for providing and funding education services for youth in detention and residential commitment for Fiscal Year 2021-2022.

CS by Criminal Justice on March 9, 2021:
The committee substitute:

- Amends s. 985.101, F.S., providing that a court may take a child into custody for failing to appear. Prior to issuing such order, the court must consider specified criteria to determine the child's nonappearance was willful.
- Amends s. 985.435, F.S., to provide that each circuit must develop, in consultation with judges, the state attorney, the public defender, relevant law enforcement agencies, and the DJJ, a written plan specifying the alternative sanctions and incentives for noncompliance with probation.
- Reenacts various statutes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Criminal Justice; and Senator Brandes

591-02610-21 20211166c1

A bill to be entitled

An act relating to juvenile justice; amending s. 20.316, F.S.; creating the Accountability and Program Support Program within the Department of Juvenile Justice and revising the name of an existing program; amending s. 985.101, F.S.; authorizing a court to order that a child be taken into custody for failure to appear; requiring a court to consider specified information before it issues such an order; amending s. 985.435, F.S.; requiring each judicial circuit to develop, in consultation with specified persons and entities, a written plan specifying the alternative consequence component which must be based upon certain principles; providing that the alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation; repealing s. 985.686, F.S., relating to the shared county and state financial support responsibility for juvenile detention; amending s. 985.6865, F.S.; deleting provisions relating to legislative findings and intent; requiring the Department of Juvenile Justice to calculate annually by a certain date and provide to each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles its annual percentage share of detention costs; requiring each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02610-21 20211166c1

incorporate into its annual county budget sufficient funds to pay its annual percentage share of detention costs; reenacting ss. 960.001(1)(b) and 985.439(2), F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems and violation of probation or postcommitment probation, respectively, to incorporate the amendment made to s. 985.101, F.S., in references thereto; reenacting s. 985.565(4)(b), F.S., relating to sentencing alternatives, to incorporate the amendment made to s. 985.435, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Upon the expiration and reversion of the amendment made to section 20.316, Florida Statutes, pursuant to section 65 of chapter 2020-114, Laws of Florida, subsections (2) and (3) of section 20.316, Florida Statutes, are amended to read:

20.316 Department of Juvenile Justice.—There is created a Department of Juvenile Justice.

(2) DEPARTMENT PROGRAMS.—The following programs are established within the Department of Juvenile Justice:

(a) Accountability and Program Support.

(d) ~~(a)~~ Prevention ~~and Victim~~ Services.

(c) ~~(b)~~ Intake and Detention.

(f) ~~(c)~~ Residential and Correctional Facilities.

(e) ~~(d)~~ Probation and Community Corrections.

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(b) ~~(c)~~ Administration.

The secretary may establish assistant secretary positions and a chief of staff position as necessary to administer the requirements of this section.

(3) JUVENILE JUSTICE OPERATING CIRCUITS.—The department shall plan and administer its programs through a substate structure that conforms to the boundaries of the judicial circuits prescribed in s. 26.021. A county may seek placement in a juvenile justice operating circuit other than as prescribed in s. 26.021 for participation in the Prevention ~~and Victim~~ Services Program and the Probation and Community Corrections Program by making a request of the chief circuit judge in each judicial circuit affected by such request. Upon a showing that geographic proximity, community identity, or other legitimate concern for efficiency of operations merits alternative placement, each affected chief circuit judge may authorize the execution of an interagency agreement specifying the alternative juvenile justice operating circuit in which the county is to be placed and the basis for the alternative placement. Upon the execution of said interagency agreement by each affected chief circuit judge, the secretary may administratively place a county in an alternative juvenile justice operating circuit pursuant to the agreement.

Section 2. Subsection (5) is added to section 985.101, Florida Statutes, to read:

985.101 Taking a child into custody.—

(5) A court may order that a child be taken into custody for failure to appear. Before the court issues such an order, it

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

must consider all of the following information relating to whether the child's nonappearance was willful:

(a) Whether notice was sent to the address in the official court record.

(b) Whether notice was given to the child in any format by anyone.

(c) Whether counsel, if any, for the child had contact or attempted to have contact with the child.

(d) Whether a department representative had contact or attempted to have contact with the child.

(e) Whether the department has any specific information to assist the court in this decision.

Section 3. Subsection (4) of section 985.435, Florida Statutes, is amended to read:

985.435 Probation and postcommitment probation; community service.—

(4) A probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. Each circuit shall develop, in consultation with judges, the state attorney, the public defender, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect the seriousness of the violation, the assessed criminogenic needs and risks of the child, the child's age and maturity level, and how effective the sanction or incentive will be in moving the child to compliant behavior. The alternative consequence component is designed to provide

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of ~~to any noncompliance with technical conditions of~~ probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order.

Section 4. Section 985.686, Florida Statutes, is repealed.

Section 5. Subsections (1) through (6) of section 985.6865, Florida Statutes, are amended to read:

985.6865 Juvenile detention.—

~~(1) The Legislature finds that various counties and the Department of Juvenile Justice have engaged in a multitude of legal proceedings regarding detention cost sharing for juveniles. Such litigation has largely focused on how the Department of Juvenile Justice calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Additionally, litigation pending in 2016 is a financial burden on the taxpayers of this state.~~

~~(2) It is the intent of the Legislature that all counties that are not fiscally constrained counties and that have pending administrative or judicial claims or challenges file a notice of voluntary dismissal with prejudice to dismiss all actions pending on or before February 1, 2016, against the state or any state agency related to juvenile detention cost sharing. Furthermore, all counties that are not fiscally constrained shall execute a release and waiver of any existing or future~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~claims and actions arising from detention cost share prior to the 2016-2017 fiscal year. The department may not seek reimbursement from counties complying with this subsection for any underpayment for any cost-sharing requirements before the 2016-2017 fiscal year.~~

(1)~~(3)~~ As used in this section, the term:

(a) "Detention care" means secure detention and respite beds for juveniles charged with a domestic violence crime.

(b) "Fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(c) "Total shared detention costs" means the amount of funds expended by the department for the costs of detention care for the prior fiscal year. This amount includes the most recent actual certify forward amounts minus any funds it expends on detention care for juveniles residing in fiscally constrained counties or out of state.

(2)~~(4) Notwithstanding s. 985.686, for the 2017-2018 fiscal year, and each fiscal year thereafter, each county that is not a fiscally constrained county and that has taken the action fulfilling the intent of this section as described in subsection (2) shall pay its annual percentage share of 50 percent of the total shared detention costs. By~~ Annually by July 15, ~~2017, and each year thereafter,~~ the department shall calculate and provide to each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles its

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

annual percentage share by dividing the total number of detention days for juveniles residing in the county for the most recently completed 12-month period by the total number of detention days for juveniles in all counties that are not fiscally constrained counties during the same period. The annual percentage share of each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles must be multiplied by 50 percent of the total shared detention costs to determine that county's share of detention costs. Beginning August 1, each such county shall pay to the department its share of detention costs, which shall be paid in 12 equal payments due on the first day of each month. The state shall pay the remaining actual costs of detention care.

(3) ~~(5)~~ The state shall pay all costs of detention care for juveniles residing in a fiscally constrained county and for juveniles residing out of state. The state shall pay all costs of detention care for juveniles housed in state detention centers from counties that provide their own detention care for juveniles.

(4) ~~(6)~~ Each county that is not a fiscally constrained county and that does not provide its own detention care for juveniles ~~has taken the action fulfilling the intent of this section as described in subsection (2)~~ shall incorporate into its annual county budget sufficient funds to pay its annual percentage share of the total shared detention costs required by subsection (2) ~~(4)~~.

Section 6. For the purpose of incorporating the amendment made by this act to section 985.101, Florida Statutes, in

references thereto, paragraph (b) of subsection (1) of section 960.001, Florida Statutes, is reenacted to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(b) *Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.*—In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048; or domestic violence, pursuant to s. 25.385:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to

complete the victim notification card.

2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:

a. The name, address, and phone number of the victim; or

b. The name, address, and phone number of the appropriate next of kin of the victim; or

c. The name, address, and telephone number of a designated contact other than the victim or appropriate next of kin of the victim; and

d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other

designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

Section 7. For the purpose of incorporating the amendment

made by this act to section 985.101, Florida Statutes, in a reference thereto, subsection (2) of section 985.439, Florida Statutes, is reenacted to read:

985.439 Violation of probation or postcommitment probation.—

(2) A child taken into custody under s. 985.101 for violating the conditions of probation shall be screened and detained or released based on his or her risk assessment instrument score.

Section 8. For the purpose of incorporating the amendment made by this act to section 985.435, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(b) *Juvenile sanctions.*—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency may not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the

court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days before discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 9. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

1166
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-321-9386

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1194
INTRODUCER:	Appropriations Committee; Transportation Committee; and Senator Hooper
SUBJECT:	Transportation
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe	Sadberry	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1194 contains various transportation-related provisions, including:

- Authorizing a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a community development district under specified conditions.
- Precluding a governmental entity from prohibiting a bid relating to the entity's procurement of certain contractual services from a vendor possessing a valid certificate of qualification from the Florida Department of Transportation (FDOT) relating to certain road and bridge construction contracts or a license relating to construction, electrical and alarm, or septic tank contracting corresponding to the services being procured.
- Authorizing construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Authorizing flashing lights on vehicles during periods of extremely low visibility on roadways posted with a speed limit of 55 miles per hour or more.
- Substitutes an affidavit with an attestation on a form provided by the Florida Department of Highway Safety and Motor Vehicles (DHSMV) as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifies that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.

- Requires motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Dissolves the inactive Northwest Florida Transportation Corridor Authority and repeals part III of ch. 343, F.S., under which the authority was established.
- Prohibits the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Increases from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.
- Revising provisions relating to an annual cap on the FDOT's authorization to enter into contracts for innovative transportation projects.
- Amending financial statement requirements relating to applications for certificates of qualification to bid on contracts for the performance of work for the FDOT under certain construction contracts.
- Excluding certain airports from the prohibition against the same entity performing design and performing construction engineering and inspection services on a project funded by the FDOT and administered by a local governmental entity
- Substantially revising provisions relating to the State Arbitration Board, which hears claims for additional compensation arising out of construction and maintenance contracts between the FDOT and its contractors.
- Defining the term "borrow pit" and requiring a borrow pit operator to provide a notice of intent to extract to the DEP.
- Prohibiting the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements and proof is provided of currently valid permits required by the Florida Department of Environmental Protection (DEP) and the appropriate water management district.
- Requiring the FDOT, if it determines substances are being obtained and used from a noncompliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.
- Requires the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.

The bill does not appear to impact state and local revenues but may present other fiscal impacts. See the "Fiscal Impact Statement" for further information.

The bill takes effect July 1, 2021.

II. Present Situation:

For ease or organization and readability, the present situation is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

Closing and Abandonment of Roads/Optional Conveyance to a Community Development District (Section 1)

Present Situation

Community Development Districts

Community development districts (CDD) are a type of special-purpose local government intended to develop and provide basic urban community services cost-effectively. These independent special districts are created pursuant to and governed by the Uniform Community Development District Act of 1980.[1] The act lays out the exclusive and uniform procedures for establishing and operating a CDD.[2] CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.[3] As of April 15, 2021, there are 755 active CDDs in Florida.[4]

Powers of CDD Board of Supervisors

A CDD board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the general-purpose local government.[5] General powers include the authority to assess and impose ad valorem taxes within the district and to issue bonds.[6] In part, the special powers over public improvements and community facilities include, unless prohibited elsewhere,[7] the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:[8]

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse; and
- District roads and road improvements.[9]

CDDs are specifically granted "the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for…security, including, but not limited to, *guardhouses, fences and gates*, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies."[10]

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[1] Chapter 190, F.S.
[2] *See* ss. 190.004 and 190.005, F.S.
[3] Section 190.002(1)(a), F.S.
[4] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, *available at*: http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited April 14, 2021).
[5] *See* s. 190.004(3), F.S.
[6] Section 190.011, F.S.
[7] Sections 190.005(1)(f) and (2)(d), F.S.
[8] A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office. Section 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.
[9] Section 190.012, F.S.
[10] Section 190.012(2)(d), F.S. (emphasis added).

Closing and Abandonment of Roads/Optional Conveyance to Homeowner's Association

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, s. 1 of the Florida Constitution endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

County governing bodies are statutorily authorized to abandon the roads and rights-of-way dedicated in a recorded residential plat and simultaneously convey the county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a homeowners' association for the subdivision, if the following conditions have been met:

- The homeowners' association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.
- No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the homeowners' association.
- The homeowners' association is both a corporation nonprofit organized and in good standing under ch. 617, F.S., and a "homeowners' association" as defined in s. 720.301(9), F.S., with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.
- The homeowners' association has entered into and executed such agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied other requirements and conditions as may be established or imposed by the county with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision after the abandonment by the county.[11]

The homeowners' association is required to install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the private roads unless an agreement has been entered into between the county and the homeowners' association, as authorized under s. 316.006(3)(b), F.S., expressly providing that the county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance thereof to the homeowners' association, the homeowners' association has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the county. The homeowners' association holds the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision and operates, maintains, repairs, and, from time to time, replaces and reconstructs the roads, street lighting, sidewalks, and drainage

[11] Section 336.125, F.S.

facilities as necessary to ensure their use and enjoyment by the residents. These provisions are supplemental and additional to the provisions of s. 336.12, F.S.[12]

Municipalities likely have the same power under the broad home rule authority granted by the Florida constitution, as well as authorization in ch. 163, F.S., to enter into interlocal agreements.

Traffic Control Jurisdiction

Generally, municipalities and counties may exercise traffic control jurisdiction over any roads located within their respective jurisdictions. This includes exercising jurisdiction over any private road or roads, or any limited access road or roads owned or controlled by a special district, if the municipality or county enters into a written agreement approved by the respective governing body.[13]

As to municipalities, the agreement with the party owning or controlling the road at issue:

- May include provision for reimbursement for actual costs of traffic control and enforcement and for liability insurance and indemnification by the party, and such other terms as are mutually agreeable.
- May provide for the installation of multiparty stop signs by the parties controlling the roads covered by the agreement if a determination is made by such parties that the signage will enhance traffic safety.

The exercise of jurisdiction is in addition to jurisdictional authority exercised by municipalities under law, and nothing limits or removes any such jurisdictional authority. Such jurisdiction includes regulation of access to such road or roads by security devices or personnel. In addition, the board of directors of a homeowners' association as defined in ch. 720, F.S., may, by majority vote, elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. A municipality may also, by interlocal agreement with a county, agree to transfer traffic regulatory authority over areas within the municipality to the county.[14]

As to counties, the agreement with the party owning or controlling the road at issue may include the same two provisions identified above. The exercise of jurisdiction is likewise additional authority for counties, and a homeowner's association board may also elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. However, prior to entering into any agreement, the governing body of the county must consult with the county sheriff.[15]

If the county governing body abandons the roads and rights-of-way dedicated in a recorded residential subdivision, and simultaneously conveys the county's interest to a homeowners'

[12] That section provides the act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, abrogates the easement held by or on behalf of the public and the title of fee owners is released. If the fee title to the road space has been vested in the county, the same is surrendered and vests in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.
[13] Section 316.006(2)(b) and (3)(b), F.S.
[14] Section 316.006(2)(b), F.S.
[15] Section 316.006(3)(b), F.S.

association for the subdivision in the manner prescribed in s. 336.125, F.S., that county's traffic control jurisdiction over the abandoned and conveyed roads ceases unless an agreement exists for the exercise of traffic control jurisdiction in accordance with the above-described requirements.[16]

Effect of Proposed Changes

Section 1 creates s. 177.107, F.S., primarily, but not identically, modeled after s. 336.125, F.S. The bill authorizes a municipal or county governing body to abandon the roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously convey the municipality's or county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under ch. 190, F.S., in which the subdivision is located, if all of the following conditions are met:

- The CDD has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored (as opposed to "restricted," in the case of a homeowner's association) public access.
- The CDD has received approval for the conveyance by a vote of two-thirds (four-fifths in the case of a homeowner's association) of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.
- The CDD has executed an interlocal agreement with the municipality or county, as applicable, requiring the CDD to do all of the following:
    - Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.
    - Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Annually fund the amounts set forth in the reserve study.

The CDD must install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the CDD, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance to the CDD, the CDD has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the CDD holds the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

[16] Section 316.006(3)(c), F.S.

The bill provides that the new provisions are supplemental and additional to the powers of municipalities and counties.

Procurement of Public Construction Services (Section 2)

Present Situation

Procurement Methods

Chapter 287, F.S., sets out provisions governing agency[17] procurement of personal property and services. Agencies may use different methods, depending on the cost and characteristics of the goods or services being procured, which include:

- Invitations to bid, used when an agency is capable of specifically defining the scope of work for which a contractual service is required or of establishing precise specifications defining the actual commodity or group of commodities required.[18]
- Requests for proposals, used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Responsive vendors may propose various combinations or versions of commodities or contractual services to meet the agency's specifications.[19]
- Invitations to negotiate, used to determine the best method for achieving a specific goal or solving a particular problem. This procurement method identifies one or more responsive vendors with which the agency may negotiate to receive the best value.[20]
- Single source contracts, used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase and which may be excepted from competitive-solicitation requirements.[21]

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[22] Those rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. The rules also apply to applicants seeking to bid on road, bridge, or public transportation construction contracts in excess of $250,000.[23]

[17] "Agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government," but does not include university and college boards of trustees or the state universities and colleges. Section 287.012(1), F.S.
[18] Section 287.057(1)(a), F.S.
[19] Section 287.057(1)(b), F.S.
[20] Section 287.057(1)(c), F.S.
[21] Section 287.057(3)(c), F.S.
[22] Chapter 14-22, F.A.C.
[23] Section 337.14(1), F.S., and Rule 14-22.0011(1), F.A.C.

Licensure: Construction, Electrical and Alarm System, and Septic Tank Contracting

Chapter 489, F.S., is administered by the Department of Business and Professional Regulation and, in general, requires licensure of various types of contractors before contracting to perform work of the type for which they are licensed. Part I of ch. 489, F.S., relating to construction contracting, expressly does not apply to contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto.[24] "Services incidental thereto" specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroads, and those subcontractor categories, defined in s 489.105(3)(d)-(q), F.S., and includes directly contracting with a governmental entity for such work.[25] Section 489.105(3)(d)-(q), F.S., includes a wide variety of contractors including roofing, air-conditioning, plumbing, underground utility and excavation, and solar.

Effect of Proposed Changes

Section 2 of the bill creates s. 287.05705, F.S., to provide that if a competitive solicitation is limited to the classes of work for which the FDOT issues certificates of qualification and does not involve the construction, remodeling, repair, or improvement of any building, or if a vendor holds an FDOT certificate of qualification or license under ch. 489, F.S., corresponding to the contractual service being procured, the procuring governmental entity may not prohibit a vendor from responding (*e.g.*, submitting a bid or proposal) to that entity's competitive solicitation. The bill applies these provisions to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Lights on Vehicles (Section 3)

Present Situation

Current law generally prohibits a person from driving or otherwise moving on a road any vehicle or equipment that has a lamp or device that displays red, red and white, or blue lights visible from directly in front of such vehicle or equipment, with certain exceptions.[26] The display of blue lights on any vehicle or equipment is prohibited, except police vehicles and vehicles owned, operated, or leased by the Department of Corrections (DOC) or any county correctional agency when responding to emergencies.[27]

The display of flashing lights on vehicles is also prohibited, except:[28]

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicles is lawfully stopped or disabled upon the highway.
- When a motorist intermittently flashes his or her vehicles' headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so.
- Flashing blue lights on police, DOC, or county correctional agency vehicles.
- Flashing amber lights on road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier

[24] Section 489.103(1)
[25] Rule 61G4-12.011(9), F.A.C.
[26] Section 316.2397(1), F.S.
[27] Section 316.2397(2), F.S.
[28] Section 316.2397(7), F.S.

vehicles when in operation or when a hazard exists; and on commercial motor vehicles or trailers designed to transport unprocessed logs or pulpwood.
- Flashing red or red and white lights on vehicles such as those of a fire department or medical staff or facilities and ambulances.
- Flashing red lights on emergency response vehicles used by the Fish and Wildlife Conservation Commission, the DEP, and the Department of Health when responding to an emergency in the line of duty.
- Flashing white lights or flashing white strobe lights on road maintenance and construction equipment and vehicles when in operation and where a hazard exists; and on school buses and vehicles used to transport farm workers.
- Flashing white and red lights on bicycles and bicycle riders.
- Additional flashing lights authorized under s. 316.235, F.S., relating to additionally authorized lighting equipment on vehicles such as running board or fender lights.

Effect of Proposed Changes

Section 3 amends s. 316.2397, F.S., to authorize on roadways with a posted speed limit of 55 miles per hour or more:
- Flashing green, amber, and red lights on construction equipment within a work zone[29] during periods when workers are present.
- Flashing lights on vehicles during periods of extremely low visibility.[30]

Salvage Certificate of Title or Certificate of Destruction (Section 4)

Present Situation

In order to receive a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home that does not carry an electronic lien on the title under current law, among other requirements, an insurance company must provide proof of payment of the total loss claim and must provide an affidavit to the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail.[31]

Effect of Proposed Changes

Section 4 amends s. 319.30(3)(b), F.S., to remove the requirement for an affidavit, instead requiring that the insurance company has *attested* on a form provided by the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail, and has *attested* on a form provided by the DHSMV stating that attempts to obtain the title have failed.

[29] Section 316.003(105) defines "work zone *area*" to mean "the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic."
[30] With the exception of vehicles in funeral processions as provided in 316.1974(4)(c), F.S., Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use emergency flashers in instances of low visibility or rain and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road. Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook*, at p. 48, available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited April 7, 2021).
[31] Section 319.30(3)(b), F.S.

Permanent Motor Vehicle Registration (Section 5)

Present Situation

Currently, upon application for registration of a motor vehicle and payment of the appropriate license tax, the DHSMV generally issues one registration license plate.[32] Generally, upon registration renewal (and replacement of the license plate after a ten-year period), a validation sticker is issued based on the applicant's renewal period. The period is 12 months, the extended period is 24 months, and all expirations occur based on the applicant's appropriate registration period.[33] Owners of motor vehicles for hire taxed under s. 320.08(6), F.S., are authorized to elect a permanent registration period if payment of the appropriate license taxes and fees occurs annually.[34] According to the DHSMV, for-hire vehicles include both short-term and long-term *leased* vehicles,[35] and the department proposes clarifying that permanent registration is available only to rental vehicles.[36]

Effect of Proposed Changes

Section 5 amends s. 320.06(1)(b)1., F.S., providing that owners of *rental* vehicles taxed under s. 320.06(8), F.S., may elect a permanent registration period upon annual payment of the appropriate license taxes and fees.

Garage Liability Insurance (Section 6)

Present Situation

Motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer[37] has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer-owned vehicles driven by prospective purchasers.[38]

While the Florida law requires a dealer to provide at the time of licensure application proof of the required coverage for the duration of the licensure period and again at the beginning of each licensure renewal period, the statute does not cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer itself may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow a motor vehicle dealer to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure

[32] Section 320.06(1)(a), F.S.
[33] Section 320.06(1)(b)1., F.S.
[34] *Id.*
[35] Section 320.01(15)(a), F.S., defines "for-hire vehicle," in part, as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration, or offered for rent or hire as a means of transportation for compensation.
[36] *See* DHSMV email dated April 5, 2021 (on file in the Senate Transportation Committee).
[37] Section 320.27, F.S.
[38] Section 320.27(3), F.S.

period and then reinstate coverage at the beginning of the next licensure period. The cancellation and later reinstatement of a policy creates a gap wherein the dealer has no insurance coverage. A gap in insurance coverage at any time during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered. Currently, over 14,500 dealers are required to carry appropriate insurance coverage.[39]

The DHSMV currently advises vehicle dealers and recreational vehicle dealers about upcoming policy expirations by generating a list of dealers whose policies are set to expire. The DHSMV then sends out three separate notices that ask each dealer to submit an updated or current policy to the DHSMV. Additionally, after the policy has expired, the DHSMV sends a follow-up letter that indicates the DHSMV will take administrative action against the licensee for non-compliance with the insurance requirement if an updated policy is not received within fourteen days. In addition to this written communication, the DHSMV field offices follow up with telephone calls and emails to the dealers, attempting to bring them into compliance with the insurance requirement. Ultimately, if the dealer is unresponsive and does not provide the DHSMV with proof of the required coverage, the Bureau of Dealer Services forwards the relevant information to the Office of the General Counsel with a request to initiate an administrative action against the dealer under ch. 120, F.S.[40]

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap in coverage or does not obtain and maintain coverage.[41]

Effect of Proposed Changes

Section 6 amends s. 320.27(3) and (10), F.S., requiring motor vehicle dealer licensees to deliver to the FDHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.

Innovative Transportation Projects (Section 7)

Present Situation

The FDOT is currently authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction

[39] Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1500*, (March 5, 2021), p. 4 (on file in the Senate Committee on Transportation).
[40] *Ibid.*
[41] *Ibid.*

procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. [42]

The FDOT is limited to $120 million in contracts annually for the purposes of innovative transportation projects. This annual cap on contracts for innovative transportation projects does not apply to:

- Turnpike Enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.

Currently, minor design-build contracts are included in the annual cap for innovative transportation projects. These projects are bridges under $10 million and other transportation projects (resurfacing) that are not considered to be major design-build.[43]

Effect of Proposed Changes

Section 7 amends s. 337.025, F.S., to repeal redundant language relative to exclusion of Turnpike Enterprise projects and obsolete language relative to exclusion of transportation projects funded by the American Recovery and Reinvestment Act of 2009 from the annual $120 million cap.

The bill also excludes low-bid design-build milling and resurfacing contracts from the annual cap. Such contracts would not be counted toward the annual cap for innovative transportation projects, possibly resulting in increased opportunities for the FDOT to engage in innovative transportation projects.

Whether all low-bid milling and resurfacing contracts are "innovative," even with the design-build element, is unclear. The FDOT's work program instructions state that resurfacing deals with improvements to the structural condition of existing pavement, intended to preserve the pavement's structural integrity. The program provides for pavement milling and pavement resurfacing, among other activities.[44]

FDOT Certificates of Qualification (Section 9)

Present Situation

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified to perform the specific class of work for which the contractor seeks certification. A contractor who is not already qualified and in good standing with the FDOT as of January 1, 2019, and who desires to bid on FDOT contracts

[42] Section 337.025(1), F.S.
[43] FDOT Construction, *Design-Build Minor*, available at https://www.fdot.gov/construction/AltContract/General/DBMinor.shtm (last visited April 7, 2021).
[44] FDOT, *Work Program Instructions Tentative Work Program – FY 21/22-25/26*, Part III – Chapter 27: Resurfacing, (rev. April 1, 2021) available at https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf (last visited April 7, 2021).

in excess of $50 million must have satisfactorily completed two projects, each in excess of $15 million, for the FDOT or for any other state's department of transportation.[45]

When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[46] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.

Contractor Maximum Capacity Rating

The FDOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[47]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[48]

According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." For example, for new applicants and applicants not qualified under the rule for more than two years, the "ability score" determines the ability factor, which is determined from the total ability score resulting from evaluations of the applicant's organization, management, work experience, and letters of recommendation.[49]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application does not affect expiration of the certificate.[50]

[45] Section 337.14(1), F.S.
[46] The interim statement must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.
[47] Rule 14.22-003(1), F.A.C.
[48] Rule 14.22-003(1)(d) and (2), F.A.C.
[49] *Id*.
[50] Section 337.14(4), F.S.

Effect of Proposed Changes

Section 9 amends s. 337.14(1) and (4), F.S., to clarify that any contractor desiring to bid on contracts in excess of $50 million must first be certified by the FDOT as qualified, in addition to the existing requirement relating to satisfactory completion of two projects, each in excess of $15 million.

The bill requires each application for certification to be accompanied by *audited, certified* financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. The FDOT may not consider any financial information relating to the parent entity of the applying contractor, if any, and may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which the FDOT receives the application, the applying contractor must also submit interim *audited, certified* financial statements prepared in accordance with generally accepted accounting and auditing principles and standards by a certified public accountant licensed in this state or another state.

The bill provides that submission of an application *and subsequent approval* do not affect expiration of a contractor's certificate of qualification and, additionally, do not affect a contractor's ability factor or maximum capacity rating.

Construction, Engineering, and Inspection Services (Section 9)

Construction, engineering, and inspection (CEI) services include the activities required to review and inspect highway and bridge construction performed by a construction contractor for compliance with contract requirements. These services are critical to ensuring the safety of the traveling public.

Currently, a contractor[51] or affiliate[52] holding an FDOT certification of qualification may not also qualify to provide testing services or CEI services to the FDOT in connection with a construction contract under which the contractor is performing any work.[53] Simply stated, the contractor is prohibited from performing both the construction work *and* the CEI services on the same project, to avoid any conflict of interest that may arise in inspecting one's own work.[54]

Legislation enacted in 2019 restated the prohibition with respect to projects funded by the FDOT and administered by a local governmental entity; *i.e.,* that the entity performing design services

[51] Section 337.165(1)(d), F.S.
[52] Section 337.165(1)(a), F.S.
[53] Section 337.14(7), F.S.
[54] This limitation does not apply to any design-build prequalification pursuant to s. 337.11(7), F.S., and does not apply when the FDOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.

and CEI services may not be the same entity.[55] Specified seaports were made exempt from the prohibition in that legislation, but airports were not.[56]

According to the Florida Airports Council, the current prohibition increases airport project construction costs, lengthens project schedules due to additional coordination with consultants, and reduces project efficiency. Further:

- Florida airports leverage many different delivery methods for conducting CEI activities, depending on the project.
- Airports deliver more than road projects, such as building, hangars, ramps, and runways, and the CEI methods and processes the FDOT uses do not accommodate airport construction projects.
- "Airports need to remain agile with the many types of projects that they deliver, particularly as it pertains to the unique and specialized nature of airport projects, to ensure that each project is completed safely, timely and cost effectively."[57]

Effect of Proposed Changes

Section 9 amends s. 337.14(7), F.S., to provide that with respect to projects funded by the FDOT and administered by a local governmental entity, airports as defined in s. 332.004, F.S.,[58] are likewise exempt from the prohibition against the same entity performing design services and CEI services.

State Arbitration Board (Section 10)

Present Situation

Current law creates the State Arbitration Board (SAB) within the FDOT to facilitate the prompt settlement of claims[59] for additional compensation arising out of construction and maintenance contracts between the FDOT and its various contractors.[60] Every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract, which cannot be resolved by negotiation between the FDOT and the contractor must be arbitrated by the SAB after the FDOT's acceptance of the project. However, either party may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the SAB process has been exhausted.[61]

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[55] Chapter 2019-153, L.O.F.
[56] Those listed in s. 311.09, which include the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[57] *See* email to House committee staff relating to HB 1441 (2020) (on file in the Senate Transportation Committee).
[58] That section defines the term "airport" to mean "any area of land or water, or any manmade object or facility located therein, which is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for public use, for airport buildings or other airport facilities or rights-of-way."
[59] For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.
[60] Section 337.185(1), F.S.
[61] Section 337.185(1), F.S.

The SAB is composed of three members: one member is appointed by the FDOT Secretary; one member is elected by those construction or maintenance companies who are under contract with the FDOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The FDOT secretary may select an alternative or substitute to serve as the FDOT's member for any hearing or term. Each member serves a two-year term. The SAB elects a chair, each term, who is the administrator of the SAB and custodian of its records.[62]

An arbitration hearing may be requested by the FDOT or by a contractor who has a dispute with the FDOT.[63] For all contracts entered into after June 30, 1993, the request must be made to the SAB within 820 days after the final acceptance of the work. The SAB must conduct the hearing within 45 days of the request. The party requesting the SAB's consideration must give notice of the hearing to each SAB member. If the SAB finds that a third party is necessary to resolve the dispute, the SAB may vote to dismiss the claim, which may thereafter be pursued in accordance with Florida law.[64] All members must be present to conduct a meeting. Upon being called into session, the SAB must promptly proceed to a determination of the issue or issues in dispute.[65]

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the SAB may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the SAB must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the SAB as part of the record of its proceedings.[66] The SAB must hand down its order within 60 days after it is called into session. If all three SAB members do not agree, the order of the majority constitutes the order of the SAB.[67]

The SAB members may receive compensation for the performance of their duties from administrative fees received by the SAB, except that an FDOT employee may not receive compensation. The compensation amount is determined by the SAB, but may not exceed $125 per hour, up to $1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the SAB. Travel expenses for the industry member may be paid by an industry association, if necessary. The SAB may allocate funds annually for clerical and other administrative services.[68]

[62] Section 337.185(2), F.S.
[63] Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited April 8, 2020).
[64] Section 337.185(3), F.S.
[65] Section 337.185(4), F.S.
[66] Section 337.185(5), F.S.
[67] Section 337.185(6), F.S.
[68] Section 337.185(7), F.S.

The party requesting arbitration must pay a fee to the SAB in accordance with a schedule established by it, to cover the cost of administration and compensation of the SAB, not to exceed:

- $500 per claim which is $25,000 or less;
- $1,000 per claim which is in excess of $25,000 but not exceeding $50,000;
- $1,500 per claim which is in excess of $50,000 but not exceeding $100,000;
- $2,000 per claim which is in excess of $100,000 but not exceeding $200,000;
- $3,000 per claim which is in excess of $200,000 but not exceeding $300,000;
- $4,000 per claim which is in excess of $300,000 but not exceeding $400,000; or
- $5,000 per claim which is in excess of $400,000.[69]

The SAB in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the SAB's finding of liability.[70]

Effect of Proposed Changes

Section 10 substantially revises s. 337.185, F.S., relating to the SAB. The bill creates the following definitions:

- "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the FDOT and could not be resolved by negotiations between the FDOT and the contractor.
- "Contractor" means a person or firm having a contract for rendering services to the FDOT relating to the construction or maintenance of a transportation facility.
- "Final acceptance" means that the contractor has completely performed the work provided for under the contract, the FDOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the FDOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires every claim of up to $250,000 per contract that cannot be resolved by negotiations between the FDOT and the contractor to be arbitrated by the SAB. Authorization for either party to request that a claim be submitted to binding private arbitration is removed. An award issued by the SAB is final and enforceable by a court of law.

A contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the SAB. An award issued by the SAB is final if a request for a trial de novo[71] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[72] At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence

[69] Section 337.185(8), F.S.
[70] Section 337.185(9), F.S.
[71] A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance.
[72] Rule 1.830, Florida Rules of Civil Procedure, relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.

Code.[73] If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

An arbitration request may not be made to the SAB before final acceptance, but must be made within 820 days after final acceptance. The SAB must still schedule a hearing within 45 days after an arbitration request but, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45-day deadline.

The bill authorizes the SAB to administer oaths and conduct the proceedings as provided by court rules. The bill requires the hearing to be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The SAB must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the SAB, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the SAB for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided by law.

The SAB must issue its award within 45 days after the conclusion of the arbitration hearing (rather than within 60 days after being called into session under current law). If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If the first or second member has a conflict of interest regarding affiliation with one of the parties, the appointing entity must appoint an alternate member for that hearing. If the third member has such a conflict, the first and second members must select an alternate. Each member serves a 4-year term, instead of the current 2-year term. As under current law, the SAB still elects a chair for each term, and the chair is the SAB administrator and custodian of its records. The presence of all SAB members is required to conduct a meeting, whether in person or via videoconferencing.

The bill requires that SAB members receive compensation from deposits made by the parties based on an estimate of compensation by the SAB, except that, again, an FDOT employee may not receive SAB compensation. All deposits must be held in escrow by the chair in advance of the hearing. Each member eligible for compensation must be compensated at $200 per hour, up to a maximum of $1,500 per day (currently not to exceed $125 per hour up to a maximum of $1,000 per day), and a member must be reimbursed for the actual cost of his or her travel expenses. The SAB is authorized to allocate funds annually for clerical and other administration services.

The bill effectively maintains the same schedule of filing fees as in current law, based on the dollar amount of a claim, and authorizes the SAB to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

[73] Chapter 90, F.S.

Surplus Revenue/High-Occupancy Toll Lanes or Express Lanes (Section 11)

Present Situation

Current law authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on high-occupancy toll lanes (HOT lanes) or express lanes established on FDOT-owned facilities.[74] All collected tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT or express lanes project or associated transportation system. The FDOT may continue to collect tolls on HOT or express lanes after the discharge of any bond indebtedness related to such project.[75] The FDOT must use any remaining toll revenue from the HOT or express lanes for the construction, maintenance, or improvement of any road on the State Highway System (SHS) within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.[76]

Effect of Proposed Changes

Section 11 amends s. 338.166(3), F.S., providing that remaining toll revenue from HOT or express lanes, after payment of the annual cost of operation, maintenance, and improvement of the HOT or express lanes project and associated transportation system, the FDOT must use any remaining toll revenue to support public transportation projects that benefit the operation of HOT or express lanes on the State Highway System within the county or counties in which the toll revenues were collected. Use of the remaining revenue for such purpose is in addition to expenditures as currently specified for any road on the SHS within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Metropolitan Planning Organizations Member Fees (Section 12)

Present Situation

The FDOT is currently required to allocate to each metropolitan planning organization (MPO) for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds,[77] which generally make up the largest portion of MPO funding. However, governmental entity members of an MPO may, from time to time, voluntarily contribute various sums to an MPO to supplement the federal funding received through the FDOT, and an MPO may assess fees for municipalities, counties, or other governmental entities that are members of the MPO. Under current law, the MPO in a county as defined in s. 125.011(1), F.S. (*i.e.,* Miami-Dade County) is prohibited from assessing any fees for municipalities, counties, or other governmental entities that are members of that MPO.[78]

[74] Section 338.166(1), F.S.
[75] Section 338.166(2), F.S.
[76] Section 338.166(3), F.S.
[77] Section 339.175(6)(f)1., F.S.
[78] *Id.*

Effect of Proposed Changes

Section 12 amends s. 339.175(6)(f), F.S., to remove the current prohibition against the MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.

Northwest Florida Transportation Corridor Authority (Sections 13 and 20)

Present Situation

The Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the State of Florida, created in 2005 pursuant to ch. 343, Part IV, F.S. One of several transportation authorities in Florida, the governing body consists of eight voting members, one each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties, appointed by the Governor to a 4-year term. The appointees are residents of their respective counties and may not hold an elected office. The district secretary of the FDOT serving Northwest Florida also serves as an ex officio, nonvoting member of the NFTCA governing body.[79]

The primary purpose of the NFTCA is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.[80]

The NFTCA met on September 20, 2018, and during the meeting, the NFTCA Board voted unanimously, approving Resolution 18-02, to become inactive as an authority. The NFTCA Board also voted unanimously to approve their 2019 Budget, which utilized all of their remaining funds of $1,016, with $1,015 placed under Board Expenses and $1 placed in Total Reserves for the 2019 Budget before going inactive.[81]

Effect of Proposed Changes

Section 13 repeals Part III of ch. 343, F.S., consisting of ss. 343.80, 343.805, 343.81, 343.82, 343.83, 753 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 754 343.881, 343.884, and 343.89, F.S., in which the NFTCA was established.

Section 20, notwithstanding any other law, dissolves the inactive NFTCA. The NFTCA must discharge or make provisions for the their debts, obligations, and other liabilities; settle and close the NFTCA's activities and affairs; and provide for distribution of the their assets (estimated to be $1,016),[82] or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

[79] Section 343.81(2), F.S.
[80] Section 343.81(1), F.S.
[81] Northwest Florida Transportation Corridor Authority, Board Meeting Minutes, September 20, 2018 (on file in the Senate Transportation Committee).
[82] *Id.*

Central Florida Expressway Authority – Lake County (Section 14)

The Central Florida Expressway Authority (CFX) is established in Part III of ch. 348, F.S., and is granted the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the CFX Expressway System. Except as otherwise provided, the area served by the CFX is that within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola counties.[83]

The Wekiva Parkway (State Road 429) will ultimately connect to State Road 417 and complete the beltway around Central Florida. The project is a cooperative effort between the FDOT (which is responsible for constructing portions of the parkway)[84] the CFX, and the Turnpike Enterprise. Portions of the parkway are already open, and the entire parkway is scheduled to be open to traffic in 2023.[85]

Section 348.754(1)(c), F.S., notwithstanding any other provision of that section, provides that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consent of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

Effect of Proposed Changes

Section 14 amends s. 348.754(1)(c), F.S., to provide that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consultation (rather than consent) of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

Jacksonville Transportation Authority (Section 15)

Present Situation

Chapter 349, F.S., creates the Jacksonville Transportation Authority (the JTA) as a body politic and corporate and an agency of the state.[86] The JTA is authorized to acquire, hold, construct, improve, maintain, operate, and own the Jacksonville Expressway System,[87] but the authority also has multi-modal responsibilities. The JTA designs and constructs bridges and highways[88] and provides varied mass transit services including, but not limited to, express and regular bus service;[89] a downtown Skyway Monorail;[90] the St. Johns River Ferry;[91] the Gameday Xpress for

[83] Section 348.754(1)(a), F.S.
[84] *See Wekiva Parkway, Sections*, available at Wekiva Parkway - FDOT Sections (last visited April 14, 2021).
[85] *See Wekiva Parkway*, available at Wekiva Parkway - Home Page (last visited April 14, 2021).
[86] Section 349.03(1), F.S.
[87] Section 349.04(1)(a), F.S.
[88] *See* the JTA website for a list of projects, available at JTA Mobility Works - Projects (jtafla.com) (last visited April 14, 2021).
[89] *See* the JTA website, *Riding JTA*, available at Jacksonville Transportation Authority - Riding JTA (jtafla.com) (last visited April 14, 2021).
[90] *See* the JTA website, *Skyway*, available at Jacksonville Transportation Authority - Skyway (jtafla.com) (last visited April 14, 2021).
[91] *See* the JTA website, *St. Johns River Ferry*, available at JTA Ferry - St. John's River Ferry | Schedule, Costs, Information, Directions | JTA (jtafla.com) (last visited April 14, 2021).

various sporting events;[92] inter-county service between points in Baker, Clay, Nassau, Putnam, and St. Johns Counties;[93] and paratransit service.[94]

Current law authorizes the JTA to enter into lease agreements, including the authority to lease:

- As a lessor, the Jacksonville Expressway System,[95] a mass transit system employing motor cars or buses, street railway systems beneath the surface, on the surface, or above the surface, or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in Duval County.[96]
- Public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the Jacksonville, Duval County, metropolitan area.[97]
- As lessee or lessor, and use any franchise or any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it, including, without limitation, land, buildings, and other facilities located within or comprising transit-oriented developments which enhance the use or utility of transportation facilities owned or constructed by the authority and administrative and other buildings for the use of the authority in carrying out its powers and obligations.[98]

Various transportation, bridge, and expressway authorities are granted the power under current law to enter into agreements for similar or other types of leases, such as the South Florida Regional Transportation Authority,[99] the Central Florida Regional Transportation Authority,[100] the Tampa Bay Area Regional Transit Authority,[101] the Tampa-Hillsborough Expressway Authority,[102] and the Santa Rosa Bay Bridge Authority.[103] The authorization in each of these instances, however, is open-ended and not limited in duration. The duration for which the Central Florida Expressway Authority is authorized to enter into lease agreements is for a term not exceeding 99 years.[104]

Standing alone among these various transportation, bridge, and expressway authorities, the JTA is the only such entity with leasing authority limited to a duration of 40 years.

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[92] *See* the JTA website, *Gameday Xpress*, available at Jacksonville Transportation Authority - Gameday Xpress (jtafla.com) (last visited April 14, 2021).
[93] *See* the JTA website, *Regional Services*, available at Jacksonville Transportation Authority - Regional Services (jtafla.com) (last visited April 14, 2021).
[94] *See* the JTA website, *Paratransit*, available at Jacksonville Transportation Authority - Paratransit (jtafla.com) (last visited April 14, 2021). Some of the JTA services listed have been modified or suspended due to the COVID virus.
[95] Section 349.04(1)(a), F.S.
[96] Section 349.04(1)(b), F.S.
[97] Section 349.04(1)(e), F.S.
[98] Section 349.04(2)(c), F.S.
[99] Section 343.54(1)(b) and (3)(d), (e), and (i), F.S.
[100] Section 343.64(1)(b) and (3)(d), (e), and (i), F.S.
[101] Section 343.922(5)(d), (e), and (i), F.S.
[102] Section 348.54(3), F.S.
[103] Section 348.968(2)(c), and (d), F.S.
[104] Section 348.754(1)(a) and (2)(c), F.S.

Effect of Proposed Changes

Section 15 amends s. 349.04(2)(d), F.S., to increase from 40 years to 99 years the limitation on the term of a lease into which the Jacksonville Transportation Authority (JTA) is authorized to enter.

Borrow Pits (Sections 8, 16, 17, and 18)

Present Situation

Currently, the term "borrow pit" is not defined in Florida law.

Part III of ch. 378, F.S., contains the Resource Extraction Reclamation Act, which prohibits an operator[105] from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in ch. 378, F.S., at a new mine[106] without notifying the secretary of the DEP of the intention to mine.[107] The operator's notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.[108]

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.[109]

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[110]

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of the DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools that are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.

[105] Section 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.
[106] Section 348.403(10), F.S., defines the term "mine" as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.
[107] Section 378.801(1), F.S.
[108] Section 378.801(2), F.S.
[109] Section 378.802, F.S.
[110] Section 378.403(17), F.S., defines the term "resource" as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate.

- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards discussed above.

Effect of Proposed Changes

Section 16 amends s. 378.403, F.S., to define the term "borrow pit" as an area of land:
- Upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the mining trade; and
- Not considered a mine.

Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 8 creates s. 337.0262, F.S., to prohibit the FDOT, and any contractor or subcontractor of the FDOT, from purchasing or using any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit unless:
- The operator certifies to the FDOT, the contractor, or the subcontractor that the borrow pit is in compliance with the notice requirement and the substantive requirements of s. 378.801, F.S., and
- The operator is in compliance with the performance standards described above, including providing proof of currently valid permits required by the DEP and the appropriate water management district.

The bill mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.

If the FDOT determines that substances are being obtained and used from a borrow pit not in compliance with the bill's provisions, the FDOT is required to cease accepting any substances from that pit within 48 hours. The FDOT is authorized to resume acceptance once the pit has reestablished compliance with the bill's provisions.

Section 17 amends s. 378.801, F.S., revising the title to address a notice of intent to extract, rather than to mine. The bill prohibits an operator from beginning the operation of a borrow pit (in addition to the current prohibition again beginning the process of extracting clay, peat, gravel, etc.) at a new *location* (instead of at a new mine) without notifying the DEP secretary of the intent to *extract* (instead of the intent to mine). The operator's notice of intent to *extract* must consist of the operator's estimated life of the *extraction location* (instead of the estimated life of the mine).

Section 18 amends s. 378.802, F.S., revising the title to address existing extraction locations (rather than existing mines). The bill requires that after January 1, 1989, all operators of existing *locations* for the extraction of the resources described in s. 378.801, F.S., must meet the performance standards in s. 378.803, F.S., for any new surface area disturbed at such *locations*.

Outdoor Advertising (Section 19)

Present Situation

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the HBA include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all interstates, federal-aid primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs[111] along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.
- States and localities may enact stricter laws than stipulated in the HBA.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[112]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)[113] incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and the 1972 agreement.[114] That chapter expressly provides that its provisions do not

[111] A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. Section 479.01(16), F.S.
[112] 23 U.S.C. § 131(b).
[113] For a copy of the agreement, *see* ScenicAmerica, available at Florida Agreement (scenic.org) (last visited March 25, 2021).
[114] Some local governments have their own ordinances regulating outdoor advertising in their communities. *See* FDOT, *Outdoor Advertising*, available at Outdoor Advertising (fdot.gov) (last visited March 26, 2021). The current database may be accessed using the same link.

supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.[115]

Permitting and Metal Tags

A person is prohibited from engaging in the business of outdoor advertising in this state without first obtaining a license from the FDOT.[116] Except as otherwise provided,[117] a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area,[118] or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from FDOT (and paying the required annual fee).[119]

Once obtaining a license to engage in the business of outdoor advertising and having been issued a permit by the FDOT for an outdoor advertising sign, the FDOT is required to furnish to a permittee a serially numbered, permanent metal permit tag which the permittee is responsible for maintaining on each permitted sign facing at all times. The tag must be securely attached to the upper 50 percent of the sign structure in such a manner as to be plainly visible from the main traveled way.[120] The tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance and, if the permittee fails to erect a completed sign on the permitted site within 270 days after the date of permit issuance, the permit becomes void. The FDOT is prohibited from issuing a new permit to that permittee for the same locations for 270 days after the date on which the permit becomes void.[121] Current law also provides for the FDOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed. [122] The fee for a replacement tag, set by FDOT rule, is $12 per tag.[123]

At least 105 days before a license or a sign permit expires, the FDOT must send to each permittee a notice of fees due for all licenses and permits issued to a licensee/permittee before the date of the notice, and the permittee must advise the FDOT of any additions, deletions, or errors contained in the notice no later than 45 days before the expiration date.[124] Permits tags that are not renewed must be returned to the FDOT for cancellation by the expiration date. Permits that are not renewed or are canceled must be certified in writing at canceled or not renewed by

[115] Section 479.155, F.S.
[116] Section 479.04, F.S. However, a person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.
[117] *See, e.g.,* s. 479.16, F.S., for a list of signs for which permits are not required.
[118] "Urban area" means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Section 334.03(31), F.S.
[119] The annual permit fee for each sign facing is $71. See Rule 14-10.0043, F.A.C. A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. Section 479.01(22), F.S. An "automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process. Section 479.01(2), F.S.
[120] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas. Section 479.01(12), F.S.
[121] Section 479.07(5), F.S.
[122] Section 479.07(5). F.S.
[123] Rule 14-10.004(14), F.A.C.
[124] Section 479.07(8), F.S.

the permittee, and permit tags for such permits must be returned to the FDOT or accounted for in writing by the permittee.[125]

Effect of Proposed Changes

Section 19 amends s. 479.07, F.S., relating to outdoor advertising sign permits, requiring the FDOT to create and implement as soon as practicable a publicly accessible electronic database which includes permit details for each permit issued by the FDOT. The details in the database must include at a minimum the:

- Name and contact information of the permit operator;
- Structure identification number of numbers;
- Panel or face identification number or numbers;
- Latitude and longitude of the permitted sign;
- Compass bearing; and
- Most recent date the FDOT visually inspected the permitted sign.

Additionally, the database must also include images of the permitted sign once constructed.

Upon implementation of the database, the FDOT may not:

- Furnish permanent metal permit tags or replacement tags to permittees; or
- Enforce specified provisions of current law relating to permanent metal permit tags or replacement tags.

In addition, permittees are not then required to return permit tags to the FDOT, as is the case under current law.

Section 21 provides that the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[125] *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance companies may incur insignificant expenses associated with providing the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home.

Motor vehicle dealer licensees may incur insignificant expenses associated with delivering to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit.

The bill increases hourly compensation for SAB members from $150 to $200, and increases the daily maximum compensation from $1,000 to $1,500 per member. Both current law and the bill require parties bringing arbitrations to the SAB to pay fees, based on the amount of the dispute, to defray the costs of operating the board. Contractors requesting arbitration through the SAB may experience indeterminate increased costs associated with submitting a claim to the SAB.

To the extent the bill results in contractors determining that the new procedural and evidentiary provisions governing SAB proceedings warrant hiring legal counsel, the bill may result in increased costs to contractors in the form of legal representation.

Contractors seeking certificates of qualification may experience indeterminate increased costs associated with the bill's requirements for audited, certified financial statements.

C. Government Sector Impact:

Municipalities, counties, and CDDs that undertake conveyance of a road and rights-of-way dedicated in a recorded subdivision plat and enter into an interlocal agreement may incur expenses in accomplishing the conveyance, which expenses are likely not significant. CDDs that choose not to enter into agreements for traffic control jurisdiction over a conveyed road will incur indeterminate expenses associated with installing, operating, maintaining, repairing and replacing all signs, signals, markings, striping, guardrails and other traffic control devices. If there is such an agreement, such costs remain with the municipality or county.

The DHSMV will incur expenses associated with creating the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home, which expenses are likely insignificant.

The FDOT will incur likely significant expenses associated with creating and implementing the publicly accessible electronic database for sign permit information but, as the bill allows the FDOT to do so "as soon as practicable," these significant expenses may be incurred over time.

As to the increased SAB compensation, the fees are static. The extent of time for which the fees will adequately cover SAB costs is unknown.

Local governments operating airports may experience a reduction in expenditures due to the exemption from the CEI requirements. Any reduction is dependent on project specifics and is therefore indeterminate.

The bill does not otherwise appear to impact state or local government revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT currently requires, by contract specification, contractors to take any dispute before what is called a Dispute Review Board (DRB) before invoking the SAB process. The DRB process establishes a per hearing cost of $9,000 to provide compensation to all DRB members for participation in an actual hearing, with the DRB chair receiving $3,500 and the other two members receiving $2,750 each. The FDOT and the contractor equally provide compensation to the DRB for participation in an actual hearing. The FDOT compensates the contractor in the amount of $4,500 as its contribution to the hearing cost. DRB rulings are not binding and can be rejected by either party.[126]

Under the revised SAB provisions, proceedings must be conducted "as provided by court rules." The bill also requires a preliminary hearing not currently required. The FDOT will presumably continue to require the DRB process, by contract, before a contractor may submit a claim to the SAB. The bill requires SAB hearings to be conducted informally, with the presentation of testimony and evidence kept to a minimum, yet matters are to be presented to the SAB primarily through the statements and arguments of counsel.

[126] *See* FDOT Dispute Review Board, *Three Party Agreement Form # 700-011-02, Section VI Payment*, at p. 5 (July 2019), available at https://www.fdot.gov/construction/constadm/drb/drbmain.shtm (last visited April 13, 2021).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.2397, 319.30, 320.06, 320.27, 337.025, 337.14, 337.185, 338.166, 339.175, 348.754, 349.04, 378.403, 378.801, 378.802, and 479.07.

This bill creates the following sections of the Florida Statutes: 177.107, 287.05705, and 337.0262.

This bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Authorizes a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a CDD under specified conditions.
- Substitutes an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifies that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.
- Requires motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Requires the FDOT to also use surplus toll revenues from HOT or express lanes for any public transportation project that benefits the operation of an HOV or express lane on the state highway system within the county or counties in which the revenue was collected, in addition to current use of these revenues for construction, maintenance, or improvement of any road on the state highway system, or to support express bus service on the facility, within the county or counties in which the toll revenues were collected.
- Repeals a prohibition against an MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.
- Repeals part III of ch. 343, F.S., relating to the inactive Northwest Florida Transportation Corridor Authority.

- Prohibits the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Requires the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.
- Increases from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.

CS by Transportation on March 24, 2021:
The committee substitute:

- Authorizes construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Prohibits the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements, and provides proof of currently valid permits required by the FDEP and the appropriate water management district.
- Mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.
- Requires the FDOT, if it determines substances are being obtained and used from a non-compliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Appropriations; and Transportation; and Senator Hooper

576-04243-21 20211194c2

A bill to be entitled

An act relating to transportation; creating s. 177.107, F.S.; authorizing governing bodies of municipalities and counties to abandon and convey their interests in certain roads and rights-of-way dedicated in a recorded residential subdivision plat to community development districts under specified conditions; specifying duties for community development districts relating to such roads and rights-of-way; providing for traffic control jurisdiction of such roads; specifying that the community development district has all rights, title, and interest in such roads and rights-of-way upon abandonment and conveyance; requiring community development districts to thereafter hold such roads and rights-of-way in trust; providing construction; creating s. 287.05705, F.S.; providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.2397, F.S.; revising provisions authorizing vehicles and equipment to show or display flashing lights; amending s. 319.30, F.S.; revising conditions under which insurance companies are authorized to receive salvage certificates of title or certificates of destruction for motor vehicles and mobile homes from the Department of Highway Safety and Motor Vehicles; amending s. 320.06, F.S.; clarifying that certain rental vehicles are authorized to elect a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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permanent registration period; amending s. 320.27, F.S.; requiring motor vehicle dealer licensees to deliver copies of renewed, continued, changed, or new insurance policies to the department within specified timeframes under certain conditions; requiring such licensees to deliver copies of renewed, continued, changed, or new surety bonds or irrevocable letters of credit to the department within specified timeframes under certain conditions; amending s. 337.025, F.S.; revising the type of transportation project contracts that are subject to an annual cap; creating s. 337.0262, F.S.; prohibiting the Department of Transportation and contractors and subcontractors of the department from purchasing specified substances from a borrow pit unless specified conditions are satisfied; requiring certain contracts, subcontracts, and purchase orders to require compliance with the prohibition; requiring the department to cease acceptance of substances from a borrow pit under certain conditions; authorizing the department to resume acceptance of such substances under certain conditions; amending s. 337.14, F.S.; requiring contractors wishing to bid on certain contracts to first be certified by the department as qualified; revising requirements for applying for and issuing a certificate of qualification; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities

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performing engineering and inspection services; amending s. 337.185, F.S.; revising and providing definitions; revising requirements for arbitration of certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 338.166, F.S.; requiring that specified toll revenue be used to support certain public transportation projects; amending s. 339.175, F.S.; deleting a provision prohibiting certain metropolitan planning organizations from assessing any fees for municipalities, counties, or other governmental entities that are members of the organization; repealing part III of ch. 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority; amending s. 348.754, F.S.; prohibiting the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation; amending s. 349.04, F.S.; revising a limitation on the terms of leases that the Jacksonville Transportation Authority may enter into and make; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of Environmental Protection of

the intent to extract; conforming provisions to changes made by the act; amending s. 378.802, F.S.; revising application of provisions to exclude existing locations; amending s. 479.07, F.S.; requiring the department to create and implement a publicly accessible electronic database for sign permit information; specifying requirements for the database; prohibiting the department from furnishing permanent metal permit tags or replacement tags and from enforcing specified provisions once the department creates and implements the database; specifying that permittees are not required to return permit tags to the department once the department creates and implements the database; dissolving the Northwest Florida Transportation Corridor Authority and requiring the authority to discharge its liabilities, settle and close its activities and affairs, and provide for the distribution of the authority's assets; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 177.107, Florida Statutes, is created to read:

177.107 Closing and abandonment of roads; optional conveyance to a community development district; traffic control jurisdiction.—

(1) The governing body of a municipality or county may abandon the roads and rights-of-way dedicated in a recorded

residential subdivision plat and simultaneously convey the municipality's or county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under chapter 190 in which the subdivision is located, if all of the following conditions are met:

(a) The community development district has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored public access.

(b) The community development district has received approval for the conveyance by a vote of two-thirds of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.

(c) The community development district has executed an interlocal agreement with the municipality or county, as applicable, requiring the community development district to do all of the following:

1. Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

2. Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.

3. Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

4. Annually fund the amounts set forth in the reserve study.

(2) The community development district shall install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the community development district, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

(3) Upon abandonment of the roads and rights-of-way and the conveyance thereof to the community development district, the community development district shall have all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the community development district shall hold the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

(4) The provisions of this section are supplemental and additional to the powers of municipalities and counties.

Section 2. Section 287.05705, Florida Statutes, is created to read:

287.05705 Procurements of road, bridge, and other specified public construction services.—

(1) With respect to competitive solicitations for the procurement of contractual services that are limited to the classes of work for which the Department of Transportation issues certificates of qualification pursuant to s. 337.14, and which services do not involve the construction, remodeling, repair, or improvement of any building, a governmental entity procuring such services may not prohibit a response from a vendor possessing a valid certificate of qualification under s. 337.14 or license under chapter 489 corresponding to the contractual services being procured.

(2) This section applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Section 3. Subsections (5) and (7) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(5) Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists. Construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher may show or display a combination of flashing green, amber, and red lights in conjunction with periods when workers are present. Additionally, school buses and vehicles that are used to transport farm workers may display flashing white strobe lights.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully

stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;

(c) During periods of extremely low visibility on roadways with a posted speed limit of 55 miles per hour or higher; and

(d) ~~(c)~~ For the lamps authorized under subsections (1), (2), (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may flash.

Section 4. Paragraph (b) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle

or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

b. Has attested on a form provided by the department that ~~provided proof of~~ payment of the total loss claim has been distributed; and

c. Has attested on a form provided by the department and ~~provided an affidavit on letterhead~~ signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form ~~affidavit~~ must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

2. If the owner or lienholder is notified of the request

for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.

3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

Section 5. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, as amended by section 1 of chapter 2020-181, Laws of Florida, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate

number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period. Rental vehicles taxed pursuant to s. 320.08(6)(a) may elect a permanent registration period, provided payment of the appropriate license taxes and fees occurs annually. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.

2. In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 6. Subsection (3) and paragraph (a) of subsection (10) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of

residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. The application shall contain other relevant information as may be required by the department, including evidence that

the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of the renewed, continued, changed, or new policy. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any

other fees required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of $25,000. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance

of a new surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

Section 7. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more

than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) The annual cap on contracts provided in subsection (1) does ~~shall~~ not apply to:

(a) Turnpike enterprise projects~~, and turnpike enterprise projects shall not be counted toward the department's annual cap~~.

(b) Low-bid design-build milling and resurfacing contracts ~~Transportation projects funded by the American Recovery and Reinvestment Act of 2009~~.

Section 8. Section 337.0262, Florida Statutes, is created to read:

337.0262 Purchase and use of clay, peat, gravel, sand, or any other solid substance extracted from borrow pits.—

(1) The department, and any contractor or subcontractor of the department, may not purchase or use any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit as defined in s. 378.403 unless:

(a) Certification is provided to the department, contractor, or subcontractor by the operator of the borrow pit that it is in compliance with the notice requirements and substantive requirements of s. 378.801; and

(b) The operator of the borrow pit is in compliance with the performance standards in s. 378.803, including, but not limited to, providing proof of currently valid permits required by the Department of Environmental Protection and the appropriate water management district.

(2) All contracts and purchase orders executed by the department, and all subcontracts and purchase orders executed by

contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with this section.

(3) In the event that the department determines that substances are being obtained and used from a borrow pit that is not in compliance with this section, the department must cease to accept any substances from that borrow pit within 48 hours after such determination. The department may resume acceptance of substances from the borrow pit once the borrow pit is in compliance with this section.

Section 9. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of

$15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~ within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor who fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, the applicant must also submit ~~an~~ interim audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in

this state or another state ~~statement and an updated application must be submitted~~. The interim financial statements ~~statement~~ must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18

months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect expiration of the certificate of qualification, the ability factor of the applicant, or the maximum capacity rating of the applicant. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering,

and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 10. Section 337.185, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

(1) To facilitate the prompt resolution of claims arising out of or in connection with a construction or maintenance contract with the department, the Legislature establishes the State Arbitration Board, referred to in this section as the "board."

(2) As used in this section, the term:

(a) "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the department and could not be resolved by negotiation between the department and the contractor.

(b) "Contractor" means a person or firm having a contract for rendering services to the department relating to the construction or maintenance of a transportation facility.

(c) "Final acceptance" means that the contractor has

completely performed the work provided for under the contract, the department or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the department or its agent has submitted written notice of final acceptance to the contractor.

(3) Every claim in an amount of up to $250,000 per contract that could not be resolved by negotiation between the department and the contractor must be arbitrated by the board. An award issued by the board pursuant to this section is final and enforceable by a court of law.

(4) The contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code. If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

(5) An arbitration request may not be made to the board before final acceptance but must be made to the board within 820 days after final acceptance.

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the

hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the rules of the court. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. The board shall address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and are enforceable in the manner provided by law.

(7) The board must issue an award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third

member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

(9) The presence of all board members is required to conduct a meeting in person or via videoconferencing.

(10) The members of the board shall receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation by the board, except that an employee of the department may not receive compensation from the board. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation shall be compensated at $200 per hour, up to a maximum of $1,500 per day. A member shall be reimbursed for the actual cost of his or her travel expenses. The board may allocate funds annually for clerical and other administrative services.

(11) To cover the cost of administration and initial compensation of the board, the party requesting arbitration shall pay a filing fee to the board, according to a schedule established by the board, of:

(a) Up to $500 for a claim that is $25,000 or less.

(b) Up to $1,000 for a claim that is more than $25,000 but is $50,000 or less.

(c) Up to $1,500 for a claim that is more than $50,000 but is $100,000 or less.

(d) Up to $2,000 for a claim that is more than $100,000 but is $200,000 or less.

(e) Up to $3,000 for a claim that is more than $200,000 but is $300,000 or less.

(f) Up to $4,000 for a claim that is more than $300,000 but is $400,000 or less.

(g) Up to $5,000 for a claim that is more than $400,000.

The board may apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Section 11. Subsection (3) of section 338.166, Florida Statutes, is amended to read:

338.166 High-occupancy toll lanes or express lanes.—

(3) Any remaining toll revenue from the high-occupancy toll lanes or express lanes shall be used by the department for the construction, maintenance, or improvement of any road or to support public transportation projects that benefit the operation of high-occupancy toll lanes or express lanes on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 12. Paragraph (f) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It

is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(f)~~1.~~ The department shall allocate to each M.P.O., for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds.

~~2. In a county as defined in s. 125.011(1), the M.P.O. may not assess any fees for municipalities, counties, or other governmental entities that are members of the M.P.O.~~

Section 13. Part III of chapter 343, Florida Statutes, consisting of sections 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89, Florida Statutes, is repealed.

Section 14. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with ~~consent of~~ the secretary of the department, construct any extensions, additions, or improvements to the expressway system in Lake County.

Section 15. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Section 16. Present subsections (3) through (19) of section 378.403, Florida Statutes, are redesignated as subsections (4) through (20), respectively, and a new subsection (3) is added to that section, to read:

378.403 Definitions.—As used in this part, the term:

(3) "Borrow pit" means an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the mining trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 17. Section 378.801, Florida Statutes, is amended to read:

378.801 Other resources; notice of intent to extract ~~mine~~ required.—

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere

in this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

(2) The operator's notice of intent to extract ~~mine~~ shall consist of the operator's estimated life of the extraction location ~~mine~~ and the operator's signed acknowledgment of the performance standards provided by s. 378.803.

Section 18. Section 378.802, Florida Statutes, is amended to read:

378.802 Existing extraction locations ~~mines~~.—After January 1, 1989, all operators of existing locations ~~mines~~ for the extraction of resources as described in s. 378.801 shall meet the performance standards provided by s. 378.803 for any new surface area disturbed at such locations ~~mines~~.

Section 19. Subsection (5) of section 479.07, Florida Statutes, is amended to read:

479.07 Sign permits.—

(5)(a) For each permit issued, the department shall furnish to the applicant a serially numbered permanent metal permit tag. The permittee is responsible for maintaining a valid permit tag on each permitted sign facing at all times. The tag shall be securely attached to the upper 50 percent of the sign structure, and attached in such a manner as to be plainly visible from the main-traveled way. The permit tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance. If the permittee fails to erect a completed sign on the permitted site within 270 days after the date on which the permit was issued, the permit will be void, and the department may not issue a new permit to that permittee for the same location for 270 days after the date on which the

permit becomes void.

(b) If a permit tag is lost, stolen, or destroyed, the permittee to whom the tag was issued must apply to the department for a replacement tag. The department shall establish a service fee for replacement tags in an amount that will recover the actual cost of providing the replacement tag. Upon receipt of the application accompanied by the service fee, the department shall issue a replacement permit tag.

(c)1. As soon as practicable, the department shall create and implement a publicly accessible electronic database to include all permits issued by the department. At a minimum, the database must include the name and contact information of the permit operator, the structure identification number or numbers, the panel or face identification number or numbers, the latitude and longitude of the permitted sign, the compass bearing, images of the permitted sign once constructed, and the most recent date the department visually inspected the permitted sign.

2. Once the department creates and implements the publicly accessible electronic database:

a. The department may not furnish permanent metal permit tags or replacement tags to permittees;

b. The department may not enforce the provisions relating to permanent metal permit tags or replacement tags specified in paragraphs (a) and (b); and

c. Permittees are not required to return permit tags to the department as provided in subsection (8).

Section 20. Notwithstanding any other law, the Northwest Florida Transportation Corridor Authority is dissolved. The authority shall discharge or make provision for the authority's

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debts, obligations, and other liabilities; settle and close the authority's activities and affairs; and provide for distribution of the authority's assets, or the proceeds of such assets, such that each local general-purpose government represented on the authority's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Section 21. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

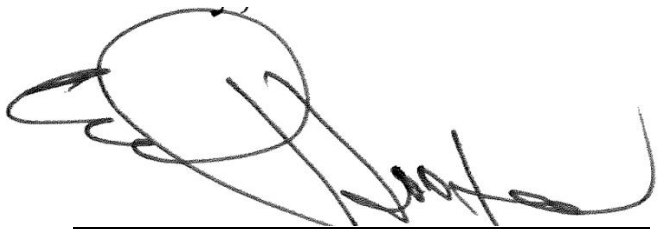
Subject: Committee Agenda Request

Date: March 30, 2021

I respectfully request that **Senate Bill # 1194**, relating to Transportation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1324
INTRODUCER:	Senator Harrell
SUBJECT:	Digital Driver Licenses and Identification Cards
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Favorable**
2.	Wells	Sadberry	AP	**Favorable**
3.			RC	

I. Summary:

SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The DHSMV may contract with one or more private entities to develop an electronic credentialing system. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual. The bill creates a civil penalty of up to $5,000 per occurrence for violations of these provisions.

Notwithstanding any law prescribing the design for, or information required to be displayed on, a driver license or identification card, a digital proof of driver license or identification may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

A person may not be issued a digital proof of driver license or identification card until the person satisfies all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. Related to false digital identification cards, the bill creates a third degree felony for a person who manufacturers a false card and a second degree misdemeanor for a person who possesses a false card, similar to current penalties related to false digital driver licenses.

The bill may have an insignificant fiscal impact on state government. The bill has an effective date of July 1, 2021.

II. Present Situation:

Digital Driver License

Eleven states are testing mobile driver's licenses or planning pilot projects, including Florida, Arkansas, Colorado, Oklahoma, Louisiana, Iowa, Delaware, Idaho, Maryland, Wyoming and the District of Columbia. New Jersey and Texas have passed legislation to start the process. "A digital driver's license would come in the form of a phone app protected by biometrics or a PIN. Instead of handing over a physical license to a police officer or store clerk, an individual could display the relevant information or send it electronically."[1]

Florida Digital Proof of Driver License

Current Florida law provides for the establishment of a digital proof of driver license. Specifically, current law requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. The statute authorizes the DHSMV to contract with one or more private entities to develop a digital proof of driver license system.[2]

The digital proof of driver license developed by the DHSMV or by an entity contracted by DHSMV must be in a format that allows law enforcement to verify the authenticity of the digital proof of driver license.[3] The DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[4] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[5]

False Digital Proof of Driver License

Current law also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license.[6] Specifically, a person who:

- Manufactures a false digital proof of driver license commits a third degree felony, punishable by up to five years in prison[7] and a fine not to exceed $5,000,[8] or punishable under the habitual felony offender statute.[9]
- Possesses a false digital proof of driver license commits a second degree misdemeanor, punishable by up to 60 days in prison[10] and a fine not to exceed $500.[11]

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[1] Veronica Combs, *Mobile Driver's License Would Replace the Physical Card With a Digital Identity*, Tech Republic, April 15, 2020, https://www.techrepublic.com/article/mobile-drivers-license-would-replace-the-physical-card-with-a-digital-identity/ (last visited March 12, 2021).
[2] Section 322.032(1), F.S.
[3] Section 322.032(2), F.S.
[4] *Id.*
[5] Section 322.032(3), F.S.
[6] Section 322.032(4), F.S.
[7] Section 775.082, F.S.
[8] Section 775.083(1)(c), F.S.
[9] Section 775.084, F.S.
[10] *Supra* note 7.
[11] Section 775.083(1)(e), F.S.

AAMVA and Mobile Driver Licenses

The American Association of Motor Vehicle Administrators (AAMVA) has worked since 2012 to develop identity credential standards, cross-jurisdictional use, authentication, data privacy protection, and other uses of mobile driver licenses. AAMVA has collaborated with Underwriter Laboratories to establish international guidelines and interoperability for industry leaders to test their mobile driver license solutions with one another.[12]

Motorist Modernization

The DHSMV's Motorist Modernization Project is a multi-phased program to modernize legacy applications and processes. The Motorist Modernization Project has committed resources and approved funding to procure a mobile driver license solution as part of Phase II of the Motorist Modernization effort. The Fiscal Year 2020-2021 appropriation for Motorist Modernization Phase II was $9,877,400. Of this amount, $400,000 was allocated for mobile driver license. The mobile driver license includes a digital identification, which is a digital representation of a person's identity; however, the actual mobile driver license is a digital representation of a physical credential and driving privileges. The DHSMV has branded this effort as the "Florida Smart ID." Below is an overview of the Florida Smart ID timeline:

- Received legislative authority to implement in 2014;
- AAMVA standards completed in 2019;
- Vendor awarded contract in June 2020;
- Started work in July 2020; and
- Pilot program slated to start March 25, 2021, and planned to run for 90 days.[13]

Florida Smart ID

The Florida Smart ID has multiple interactions occurring between the systems components comprising the Florida Smart ID solution, including a credential service provider (CSP),[14] the Florida Smart ID device, and an associated verifier device.[15]

The CSP is the gateway or broker between the Florida Smart ID and verifier device interactions with the DHSMV. The CSP uses open data standards and public key infrastructure[16] to

[12] Department of Highway Safety and Motor Vehicles, *2021 Agency Legislative Bill Analysis SB 1324*, (March 5, 2021), p. 2 (on file with the Senate Committee on Transportation).
[13] *Id*. at p. 3.
[14] A credential service provider (CSP) is a trusted entity that issues or registers subscriber tokens and issues electronic credentials to subscribers. The CSP may encompass registration authorities and verifiers that it operates. A CSP may be an independent third party, or may issue credentials for its own use. National Information Technology Laboratory, Computer Security Resource Center, *Glossary*, https://csrc.nist.gov/glossary/term/credential_service_provider (last visited March 12, 2021).
[15] Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, Email to Senate Committee on Transportation, *Mobile DL info*, February 23, 2021.
[16] "Public Key Infrastructure (PKI) is the combination of software, encryption technologies, and services that enables entities to protect the security of their communications and business transactions on networks. Using a combination of private (e.g., secret) key and public key cryptography, PKI enables a number of other security services, including data confidentiality, data integrity and non-repudiation. PKI integrates digital certificates, public key cryptography, and certification authorities into one complete network security architecture." U.S. General Services Administration, Fed ID Card, *What is PKI (Public Key*

accomplish the required communications and security. Interactions from the Florida Smart ID, the verifier device, and the CSP are performed over secure web communications.[17]

The Florida Smart ID is used by customers to present proof of identity or age. The application is downloaded from the Apple App or Google Play store and installed on a smart device, such as a smartphone or tablet. Once downloaded, a secure enrollment process occurs using the DHSMV's Virtual Office website. The DHSMV validates the identity and eligibility to activate the Florida Smart ID for use on the device.[18]

Once activated, the Florida Smart ID can be used to interact with retailer or law enforcement verifier devices. This interaction occurs at the consent of the customer and uses Bluetooth, near field communication,[19] or Wi-Fi Direct to communicate with the verifier device. The communication method is determined by a "handshake" between the devices where one device displays a QR code[20] to the other device's camera, which signals how the devices can communicate to each other. The customer selects the type of verification needed (proof of age or law enforcement) and presents a QR to be scanned by the verifier device.[21]

The Florida Smart ID Verifier application may also be integrated into a point of sale system for a seamless interaction with customers to verify a customer's identity or proof or age. When the customer's QR code is scanned, the required information displays on the verifier device. The interaction with the customer device does not store any data, which is protected using encryption within the process.[22]

Verification can be performed in an offline or online mode depending on the verification type. For example, age verification by a retailer is completely offline and does not need to "call back" or interact with the CSP, and would utilize methods, such as Bluetooth, to communicate with the customer's Florida Smart ID. Law enforcement online verification could interact with the CSP to receive the customer's most current driving record.[23]

Infrastructure) and why do I need it?, https://www.fedidcard.gov/faq/what-pki-public-key-infrastructure-and-why-do-i-need-it# (last visited March 12, 2021).

[17] *Supra* note 15.

[18] *Id*.

[19] Near field communication (NFC) is a set of short-range wireless technologies, typically requiring a distance of 4 cm or less to initiate a connection. Developers, *Documentation Guides, Near field communication overview*, https://developer.android.com/guide/topics/connectivity/nfc (last visited March 11, 2021).

[20] QR codes or quick response codes are two-dimensional codes that are scanned with a smartphone, connecting individuals to additional online content or information. They are made up of modules arranged on a contrasting background. Digital.gov, *QR Codes*, https://digital.gov/2013/02/14/qr-codes/ (last visited March 11, 2021).

[21] *Supra* note 15.

[22] *Id*.

[23] *Id*.

III. Effect of Proposed Changes:

Digital Proof of Driver License or Identification Card

The bill revises the current law related to DHSMV review and development of an optional digital proof of driver license to require the DHSMV to establish a secure and uniform system that also includes identification cards.[24]

Section 1 amends s. 322.032, F.S., to authorize the DHSMV to contract with one or more private entities to develop an electronic credentialing system, which is defined as a computer system accessed using a computer, a cellphone, or any other personal device which queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

A digital proof of driver license or identification card established by the DHSMV or by a contracted entity must be in a format that allows verification of the authenticity of the digital proof of driver license or identification card. The bill removes the limitation on the use of the digital proof of driver license or identification card to only law enforcement verification.

Unlike the requirements for a physical driver license or identification card, the bill allows a digital proof of driver license or identification card to comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.[25]

A person may not be issued a digital proof of driver license or identification card until the person satisfies all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if the person's driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card.

Personal Information

The DHSMV may use a telephone number submitted by a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records of the licensee or cardholder.

[24] The bill defines the terms "digital proof of driver license" and "digital proof of identification card" to mean an electronic credential viewable on an electronic credentialing system.
[25] The bill defines the term "limited profile" to mean an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

The bill authorizes the DHSMV to enter into a contract with a private entity that authorizes online data calls or offline data verification through the electronic credentialing system that queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

An individual may consent to allow a private entity to collect and store personal information obtained by scanning[26] the individual's digital proof of driver license or identification card. However, the individual must be informed of what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan the digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

Except as provided above, a private entity that contracts with the DHSMV and that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card.

A private entity that violates these provisions is subject to a civil penalty not to exceed $5,000 per occurrence. However, this does not apply to a financial institution as defined in s. 655.005(1)(i), F.S.[27]

SB 1326, which is linked to this bill, creates public records exemptions for:
- Secure login credentials held by the DHSMV; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

False Digital Proof of Identification Card

The bill establishes penalties for a person who manufacturers or possesses a false digital identification card. Specifically, a person who:
- Manufactures a false digital proof of identification card commits a third degree felony, punishable by up to five years in prison[28] and a fine not to exceed $5,000,[29] or punishable under the habitual felony offender statute.[30]

[26] The bill defines the term "scanning" to mean obtaining data from a digital proof of driver license or identification card in an electronic format.
[27] Section 655.005(1)(i), F.S., defines "financial institution" to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.
[28] Section 775.082, F.S.
[29] Section 775.083(1)(c), F.S.
[30] Section 775.084, F.S.

- Possesses a false digital proof of identification card commits a second degree misdemeanor, punishable by up to 60 days in prison[31] and a fine not to exceed $500.[32]

Rulemaking Authority

The bill authorizes the DHSMV to adopt rules to ensure valid authentication of digital driver licenses and identification cards.

Other Related Changes

Section 2 amends s. 322.14, F.S., to clarify that upon successful completion of all required examinations and payment of the required fee the DHSMV will issue to every qualified applicant a *printed* driver license.

Section 3 amends s. 322.15, F.S., to provide that if a law enforcement officer or authorized representative of the DHSMV is unable to immediately verify the digital proof of driver license, upon the demand of the law enforcement officer or authorized representative of the DHSMV, the licensee must present or submit the licensee's printed driver license.

Section 4 reenacts s. 322.15(2), F.S., to incorporate changes made by the bill.

Effective Date

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not change any current public records exemptions. SB 1326, which is linked to this bill, creates a public records exemption for certain information related to the credentialing system.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[31] Section 775.082, F.S.
[32] Section 775.083(1)(e), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on the private sector. Businesses who wish to provide electronic verification of Florida Smart ID will need the retail reader application installed on a mobile device that supports either the android or IOS operating systems. Additionally, if the business prefers to integrate the verification process into its point of sale systems rather than use a mobile device it would require development to be done by the business to integrate a retail reader application into the point of sale systems.[33]

The bill creates a civil penalty of up to $5,000 for each violation of provisions related to personal information and data collection.

C. Government Sector Impact:

State and local law enforcement agencies will need to train their members and update associated enforcement policies for the Florida Smart ID. This may have an indeterminate, likely insignificant fiscal impact on state and local government.[34]

The DHSMV has already undertaken development of the Florida Smart ID through existing law and therefore already has the resources to continue with the expanded requirements of the bill. Due to this, the fiscal impact on the DHSMV is minimal and can be handled within existing resources.[35]

The Criminal Justice Estimating Conference met on March 24, 2021, and estimated that the bill would have an impact of an increase of 10 or fewer prison beds (positive insignificant impact). The bill creates a third degree felony for manufacturing a false digital proof of driver license.

VI. Technical Deficiencies:

None.

[33] *Supra* note 12 at p. 7.
[34] *Id*. at p. 6.
[35] *Id*.

VII. Related Issues:

The bill authorizes the DHSMV to adopt rules to ensure valid authentication of digital driver licenses and identification cards.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 322.032, 322.14, and 322.15.

The bill reenacts section 322.121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Harrell

25-01611A-21 20211324__

A bill to be entitled

An act relating to digital driver licenses and identification cards; amending s. 322.032, F.S.; defining terms; requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; prohibiting such electronic credentialing system from retaining certain information; revising requirements for digital proofs of driver licenses and providing requirements for digital proofs of identification cards; revising the department's rulemaking authority; revising requirements for the issuance of digital proofs of driver licenses and identification cards; authorizing the department to use telephone numbers submitted by licensees and cardholders for specified purposes only; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards; providing an exception by authorizing individuals to consent to allow private entities to collect and store such personal information; requiring that an individual is informed what information is collected in such scans and the purposes for which the

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25-01611A-21 20211324__

information will be used; authorizing private entities to manually collect personal information from individuals under certain circumstances; providing a civil penalty; providing applicability; conforming provisions to changes made by the act; amending s. 322.14, F.S.; conforming a provision to changes made by the act; amending s. 322.15, F.S.; conforming a provision to changes made by the act; requiring a licensee to present or submit his or her printed driver license to a law enforcement officer or an authorized representative of the department under specified circumstances; reenacting s. 322.121(2), F.S., relating to periodic reexamination of all drivers, to incorporate the amendment made to s. 322.15, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 322.032, Florida Statutes, is amended to read:

322.032 Digital proof of driver license or identification card.—

(1) As used in this section, the term:

(a) "Digital proof of driver license" means an electronic credential viewable on an electronic credentialing system.

(b) "Digital proof of identification card" means an electronic credential viewable on an electronic credentialing system.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) "Electronic credentialing system" means a computer system accessed using a computer, a cellular telephone, or any other personal device which queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials.

(d) "Limited profile" means an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

(e) "Scanning" means obtaining data from a digital proof of driver license or identification card in an electronic format.

(2)(a) The department shall establish ~~begin to review and prepare for the development of~~ a secure and uniform system for issuing an optional digital proof of driver license or identification card. The department may contract with one or more private entities to develop an electronic credentialing ~~a digital proof of driver license~~ system.

(b) The electronic credentialing system may not retain Internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

(3)(a) ~~(2)~~ The digital proof of driver license or identification card established ~~developed~~ by the department or by an entity contracted by the department must be in such a format as to allow verification of ~~law enforcement to verify~~ the authenticity of the digital proof of driver license or identification card. The department may adopt rules to ensure valid authentication of digital driver licenses and

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identification cards ~~by law enforcement~~.

(b)1. Notwithstanding ss. 322.14, 322.141, 322.142, and any other law prescribing the design for, or information required to be displayed on, a driver license, a digital proof of driver license may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

2. Notwithstanding ss. 322.051, 322.141, and any other law prescribing the design for, or information required to be displayed on, an identification card, a digital proof of identification card may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

(4) ~~(3)~~ A person may not be issued a digital proof of driver license or identification card until he or she satisfies all ~~has satisfied all of the~~ requirements of this chapter for issuance of the respective ~~a physical~~ driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if his or her driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card under s. 322.051 ~~as provided in this chapter~~.

(5) The department may use a telephone number submitted by

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a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records, as defined in s. 119.0712(2)(a), of the licensee or cardholder.

(6) The department may enter into a contract with a private entity which authorizes online data calls or offline data verification through the electronic credentialing system that queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

(7)(a) Except as provided in paragraph (b), a private entity that contracts with the department and that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card.

(b) An individual may consent to allow a private entity to collect and store personal information obtained by scanning his or her digital proof of driver license or identification card. However, the individual must be informed what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan his or her digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

(c) A private entity that violates this subsection is subject to a civil penalty not to exceed $5,000 per occurrence.

(d) This subsection does not apply to a financial institution as defined in s. 655.005(1)(i).

(8)~~(4)~~ A person who:

(a) Manufactures a false digital proof of driver license or identification card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false digital proof of driver license or identification card commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 2. Paragraph (a) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)(a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a printed driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's gender and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

Section 3. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand;

fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit a digital proof of driver license as provided in s. 322.032 in lieu of his or her printed ~~a physical~~ driver license; however, if the law enforcement officer or authorized representative of the department is unable to immediately verify the digital proof of driver license, upon the demand of the law enforcement officer or authorized representative of the department, the licensee must present or submit his or her printed driver license.

Section 4. For the purpose of incorporating the amendment made by this act to section 322.15, Florida Statutes, in a reference thereto, subsection (2) of section 322.121, Florida Statutes, is reenacted to read:

322.121 Periodic reexamination of all drivers.—

(2) For each licensee whose driving record does not show any revocations, disqualifications, or suspensions for the preceding 7 years or any convictions for the preceding 3 years except for convictions of the following nonmoving violations:

(a) Failure to exhibit a vehicle registration certificate, rental agreement, or cab card pursuant to s. 320.0605;

(b) Failure to renew a motor vehicle or mobile home registration that has been expired for 6 months or less pursuant to s. 320.07(3)(a);

(c) Operating a motor vehicle with an expired license that has been expired for 6 months or less pursuant to s. 322.065;

(d) Failure to carry or exhibit a license pursuant to s. 322.15(1); or

(e) Failure to notify the department of a change of address or name within 10 days pursuant to s. 322.19,

the department shall cause such licensee's license to be prominently marked with the notation "Safe Driver."

Section 5. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 18, 2021

Senator Kelli Stargel
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 1324 – Digital Derivers Licenses and Identification Cards** be placed on the next available agenda for the Appropriations Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Senator Gayle Harrell
Senate District 25

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
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❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1326
INTRODUCER:	Transportation Committee and Senator Harrell
SUBJECT:	Public Records/Department of Highway Safety and Motor Vehicles
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Wells	Sadberry	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 creates public record exemptions related to creation of a digital proof of driver license and identification card and an electronic credentialing system to use such digital cards. The bill makes the following information exempt from public records:

- Secure login credentials held by the Department of Highway Safety and Motor Vehicles (DHSMV); and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses the public-facing portal.

The bill is subject to the Open Government Sunset Review Act and the new exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill takes effect on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each chamber of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives* (2020-2022)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Driver Privacy Protection Act of 1994

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act of 1994.[27] Personal information covered by the act includes: access to an individual's social security number, driver license or identification card number, name, address (except the zip code), telephone number, and medical or disability information contained in motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to s. 119.0712(2), F.S.[28]

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[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] 18 USC 2721 et seq., and s. 119.0712(2), F.S.
[28] DHSMV, *Privacy Statement: Driver Privacy Protection Act*, available at https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/ (last visited on April 8, 2021).

Information that is not covered by the Driver's Privacy Protection Act, and therefore considered public information, includes non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations, and driver status information.[29]

The Driver's Privacy Protection Act allows the release of personal information in motor vehicle and driver license records for specific permissible uses. These include uses for:[30]

- Matters related to motor vehicle or driver safety and theft, motor vehicle recalls;
- By any government agency, including any court or law enforcement agency, in carrying out its functions;
- Verifying personal information submitted in the normal course of business by a legitimate business or its agents, employees, or contractors;
- Claims investigation activities, antifraud activities, rating, or underwriting by insurers;
- Other activities when there is consent of the individual to whom the information pertains; and
- Other specifically authorized activities under state law if such use is related to the operation of a motor vehicle or public safety.

SB 1324 – Digital Driver Licenses and Identification Cards

SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The bill amends s. 322.032, F.S., to authorize the DHSMV to contract with one or more private entities to develop an electronic credentialing system, which is defined as a computer system accessed using a computer, a cellphone, or any other personal device which queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system. The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual.

III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., creating public record exemptions for the following information held by the DHSMV before, on, or after the effective date of the exemption (July 1, 2021):

- Secure login credentials; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user

[29] *Id*.
[30] 18 USC 2721(b) (2000). *See also* Driver's Privacy Protection Act exemptions listed in DHSMV forms *Driver License Records Request*, HSMV 90511 (Revised 11/19), available at https://www.flhsmv.gov/pdf/forms/90511.pdf and *Motor Vehicle, Vessel, and Mobile Home Records Request*, HSMV 90510 (Revised 03/19), available at https://www.flhsmv.gov/pdf/forms/90510.pdf (both last visited April 8, 2021).

accesses a public-facing portal and the dates and times that a user accesses a public-facing portal.

The bill defines "secure login credentials" as:

- Information collected or issued by the DHSMV to authenticate a user logging into an account on a computer, computer system, computer network, or an electronic device; or
- An online user account accessible over the Internet by a mobile device, website, or other electronic means.
- The term includes user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

The bill defines "public-facing portal" as a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering motor vehicle titles and registrations, driver licenses, identification cards, vessel titles and registrations, or any other provision of law conferring duties upon the DHSMV.

The bill is subject to the Open Government Sunset Review Act and the exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill contains a public necessity statement as required by the Florida Constitution. It provides that the Legislature finds that:

- Safeguarding the integrity and accuracy of data systems maintained by the DHSMV is of paramount public importance. Because the data systems contain critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records, some of which is also protected from disclosure by the federal Driver's Privacy Protection Act, unauthorized access to the systems poses a serious threat to the integrity and accuracy of the data contained therein. Additionally, unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts.
- Development in information technology allows the DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet. However, public release of users secure login credentials, Internet protocol addresses, and geolocation data could make the data systems vulnerable to unauthorized access.
- To safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records requirements. Without the public records exemption, the effective and efficient administration of user accounts would be hindered.

The bill is effective on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for secure login credentials held by the DHSMV and Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal and the dates and times that a user accesses a public-facing portal. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The purpose of the law is to protect secure login credentials and certain Internet protocol addresses, geolocation data, and other information held by the DHSMV. This bill exempts only that specific information. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0712 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 10, 2021:

- Amends the effective date to reflect the linked bill SB 1324.

B. Amendments:

None.

By the Committee on Transportation; and Senator Harrell

596-02656-21 20211326c1

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing retroactive application; defining the terms "secure login credentials" and "public-facing portal"; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) is added to subsection (2) of section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(e)1. Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information collected or issued by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer

network, or an electronic device; or an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means. The term includes, but is not limited to, user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

2. Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "public-facing portal" means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chapter 319, chapter 320, chapter 322, chapter 328, or any other provision of law conferring duties upon the department.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data held by the Department of

Highway Safety and Motor Vehicles for purposes of authenticating a user logging into a user account be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that safeguarding the integrity and accuracy of data systems maintained by the Department of Highway Safety and Motor Vehicles is of paramount public importance. Those systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records. Those systems also comprise personal information restricted from public disclosure by the federal Driver's Privacy Protection Act of 1994. Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein. Moreover, the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts. The Legislature further finds that development in information technology allows the Department of Highway Safety and Motor Vehicles to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses. The public release of secure login credentials, Internet protocol addresses, and geolocation data would render these data systems vulnerable to unauthorized access. The Legislature finds that, to safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

Section 3. This act shall take effect on the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 18, 2021

Senator Kelli Stargel
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Chair Stargel,

I respectfully request that **SB 1326 – Public Records – Department of Highway Safety and Motor Vehicles** be placed on the next available agenda for the Appropriations Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
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❒ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1372
INTRODUCER:	Appropriations Committee; and Senator Burgess
SUBJECT:	Literacy Improvement
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1372 establishes the New Worlds Reading Initiative to improve literacy skills and instill a love of reading by providing high-quality free books to students in kindergarten through grade 5 who are reading below grade level. Specifically, the bill requires:

- The Department of Education (DOE) to designate a state-level administrator of the program.
- School districts to partner with local nonprofit organizations to provide free monthly book deliveries to students in kindergarten through grade 5 who exhibit a substantial deficiency in reading and choose to participate in the program.
- The DOE to publish information on its website about the program, including the process for a tax payer to contribute to the program through taking a tax credit.

The bill provides for tax credit contributions to the program.

The cost of the book distribution initiative created by this bill are to be funded through tax credit contributions. See Section V.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Forty-three percent of the students entering kindergarten in 2020 demonstrated literacy skills that fell below grade-level expectations.[1] Forty-two percent of third grade students were assessed as reading below grade level in 2019.[2] Students who read below grade level at the end of third grade are less likely to graduate high school by age 19.[3]

The availability of learning materials in the home supports children's language and literacy skills.[4] Children who participate in free book distribution programs between birth to age five experience a positive effect on literacy development.[5]

Student Reading Progression

Each district school board is required to establish a comprehensive plan for student progression, which must provide for a student's progression from one grade to another based on the student's mastery of English Language Arts, mathematics, science, and social studies standards.[6] The plan must include criteria that emphasize student reading proficiency in kindergarten through grade 3. Students in kindergarten through grade 3, who exhibit a substantial deficiency in reading based upon screening, diagnostic, progress monitoring, or assessment data; statewide assessments; or teacher observations, must be provided intensive, explicit, systematic, and multisensory reading interventions immediately following the identification of the reading deficiency.[7]

Research-Based Reading Instruction Allocation

The state allocates funding to school districts for research-based reading instruction to students in kindergarten through grade 12.[8] Funds must be used to provide a system of comprehensive reading instruction to students enrolled in kindergarten through grade 12, including, for example:[9]

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[1] Florida Department of Education (DOE), FLKRS Statewide Results, *Fall 2020 Florida Kindergarten Readiness Screener (FLKRS)*, *available at* http://www.fldoe.org/accountability/assessments/k-12-student-assessment/flkrs/flkrs-sw-results.stml (download excel file "Fall 2020 FLKRS Results by District") (last visited Mar. 5, 2021).
[2] DOE, *Florida Standards Assessments* (2019), *available at* http://www.fldoe.org/core/fileparse.php/5668/urlt/80FSAResults19.pdf, at 4.
[3] Donald J. Hernandez, The Annie E. Casey Foundation, *Double Jeopardy: How Third-Grade Reading Skills and Poverty Influence High School Graduation* (2012), *available at* https://www.aecf.org/m/resourcedoc/AECF-DoubleJeopardy-2012-Full.pdf#page=3 (last visited Mar. 5, 2021).
[4] Eileen T. Rodriguez & Catherine S. Tamis-LeMonda, *Trajectories of the Home Learning Environment Across the First 5 Years: Associations with Children's Vocabulary and Literacy Prekindergarten*, 82 CHILD DEVELOPMENT 1058, 1059 (2011).
[5] Merel de Bondt et al., *Do Book Giveaway Programs Promote Home Literacy Environment and Children's Literacy-Related Behavior and Skills?*, 90 Review of Education Research 349 (2020), *available at* https://journals.sagepub.com/doi/pdf/10.3102/0034654320922140.
[6] Section 1008.25(2), F.S.
[7] Section 1008.25(5)(a), F.S. Students in kindergarten through grade 2 do not participate in statewide, standardized assessments.
[8] Section 1011.62(9), F.S. The state appropriated $130 million to school districts for the research-based reading instruction allocation for the 2020-2021 fiscal year. Specific Appropriations 8 and 92, ch. 2020-111, s. 2, Laws of Fla.
[9] Section 1011.62(9)(c), F.S. The state also appropriated $236.6 million to school districts for instructional materials for the 2020-2021 fiscal year. Specific Appropriations 8 and 92, ch. 2020-111, s. 2, Laws of Fla. School districts are authorized to use half of the funds allocated for instructional materials for library books. Section 1006.40(3)(b), F.S. School district expenditures for library books in the 2019-2020 fiscal year totaled $63.4 million. DOE, *School District Annual Financial*

- Summer reading camps for students in kindergarten through grade 5 who exhibit certain reading deficiencies, depending on grade level.[10]
- Supplemental instructional materials that are grounded in scientifically based reading research as identified by the Just Read, Florida! Office.[11]
- Intensive interventions for students in kindergarten through grade 12 who have been identified as having a reading deficiency or who are reading below grade level as determined by the statewide, standardized English Language Arts assessment.

District school boards must develop K-12 comprehensive reading plans that detail the specific uses of the research-based reading instruction allocation. The plans must provide for intensive reading interventions through integrated curricula that incorporate strategies identified by the Just Read, Florida! Office and are delivered by a teacher who is certified or endorsed in reading.[12] In the 2020-2021 fiscal year, school districts allocated $36.9 million of the total $130 million appropriated under the research-based reading instruction allocation[13] for elementary reading intervention teachers, supplemental reading materials and interventions, and summer reading camps.[14]

Parental Notification and Choice

The parent of any student who exhibits a substantial deficiency in reading must be notified in writing of the deficiency and of all available services and proposed interventions, and be provided with a "read at home plan," which outlines strategies that parents can use to help their children improve in reading.[15]

Students enrolled in public school in grades 3 through 5 and score below grade level on the statewide, standardized English Language Arts (ELA) assessment in the prior school year may also be eligible for a reading scholarship account of $500.[16] A total of 6,763 students received reading scholarship accounts in the 2019-2020 school year.[17] The state appropriated $7.6 million for reading scholarship accounts for the 2020-2021 school year.[18]

In the 2020-2021 school year, 112,295 students enrolled in public schools in kindergarten through grade 5 were identified as having substantial deficiencies in reading and receiving Tier III supports.[19]

Reports (2019-2020), *available at* http://www.fldoe.org/core/fileparse.php/7507/urlt/1920afrStateSummary.PDF, at 23 (last visited Mar. 5, 2021).

[10] All students in kindergarten through grade 2 who demonstrate a reading deficiency as determined by district and state assessments, and students in grades 3 through 5 who score at Level 1 on the statewide, standardized English Language Arts assessment. Section 1011.62(9)(c)5., F.S.

[11] Just Read, Florida! is an office within the DOE established to help students read at their highest potential. Section 1001.215, F.S.

[12] Section 1011.62(9)(d)1., F.S.

[13] *Supra*, note 8.

[14] Email, DOE (Mar. 11, 2021) (on file with the Senate Education Committee).

[15] Section 1008.25(5)(c), F.S.

[16] Section 1002.411, F.S.

[17] Email, Office of Program Policy Analysis and Government Accountability, *School Choice Landscape*, at 34 (March 5, 2021) (on file with the Senate Education Committee).

[18] Specific Appropriation 112, ch. 2020-111, s. 2, Laws of Fla.

[19] Email, DOE (Mar. 11, 2021) (on file with the Senate Education Committee).

Book Distribution Programs

An Act to amend the national reading program in 1975[20] authorized the federal government to contract with a third-party entity to subcontract with local agencies to establish, operate, and provide an equal share of the cost of reading motivational programs that include the distribution of books to schoolchildren.[21] The inexpensive book distribution program was last financed with $25 million in 2010.[22] The Every Student Succeeds Act of 2015[23] repealed the inexpensive book distribution program.[24]

In 2020, the Tennessee Governor's Early Literacy Foundation (GELF) and the Tennessee Department of Education, in collaboration with Scholastic, the global children's publishing, education and media company, announced the launch of a new K-3 Book Delivery program to deliver 580,000 books to 58,000 kindergarten through third grade students and teachers across the state.[25] The GELF has operated a book distribution program in collaboration with Dolly Parton's Imagination Library to distribute books to children from birth to the age of five since 2004.[26] The Tennessee Legislature appropriated $4,525,000 for the Governor's Books from Birth Fund for the 2019 fiscal year,[27] and the Books from Birth program mailed 3.4 million books.[28]

III. Effect of Proposed Changes:

The bill creates s. 1003.485, F.S., to establish the New Worlds Reading Initiative to improve literacy skills and instill a love of reading by providing high-quality free books to students in kindergarten through grade 5 who are reading below grade level expectations.

Under the initiative, a high-quality, hardcopy book is delivered on a monthly basis to eligible students. Parents of students who participate in the program are provided resources to help improve their student's reading skills and instill a love of reading.

State Tax Credits

The bill provides tax credits for contributions to the New Worlds Reading Initiative. The credits are authorized against taxes under:

- Section 624.509, related to insurance premium tax.
- Section 175.101, related to state excise tax on property insurance premiums
- Section 185.08, related to state excise tax on casualty insurance premiums

[20] Pub. L. No. 94-194, 89 Stat. 1103.
[21] *Id.* at 89 Stat. 1105.
[22] U.S. Office of Management and Budget, *Appendix, Budget of the United States Government, Fiscal Year 2012*, *available at* https://www.govinfo.gov/content/pkg/BUDGET-2012-APP/pdf/BUDGET-2012-APP.pdf, at 344.
[23] Pub. L. 114-95, 129 Stat. 1802.
[24] *Id.* at 129 Stat. 1967.
[25] Governor's Early Literacy Foundation, *Press Release* (Oct. 21, 2020), https://governorsfoundation.org/governors-early-literacy-foundation-scholastic-and-tn-department-of-education-to-provide-580000-books-to-k-3-students-and-teachers-in-tennessee/ (last visited Mar. 11, 2020).
[26] Governor's Books from Birth Foundation, *2019 Year in Review*, *available at* https://gelf.app.box.com/s/z7w8nj75b82ofkbs0pkq1f9sij1826ho (last visited Mar. 11, 2021).
[27] 2019 Tenn. Pub. Ch. 405 page no. 3, *available at* https://legiscan.com/TN/text/HB1508/2019 (last visited Mar. 11, 2021).
[28] Governor's Books from Birth Foundation, *2019 Year in Review*, *available at* https://gelf.app.box.com/s/z7w8nj75b82ofkbs0pkq1f9sij1826ho, at 9 (last visited Mar. 11, 2021).

- Chapter 220, related to corporate income tax.
- Section 211.02, related to oil production tax
- Section 211.025, related to gas production tax
- Section 212.183, related to direct pay permit-holders (aka toilet paper tax, unlikely to apply to book publishers).
- Section 563.05, related to excise taxes on malt beverages
- Section 564.06, related to excise taxes on wines and beverages
- Section 565.12, related to excise tax on liquors and beverages

A tax credit cap in the amount of $10 million is established for the 2021-2022 state fiscal year, $30 million for the 2022-2023 state fiscal year, and $50 million in each state fiscal year

The Department of Revenue may adopt rules necessary to administer the tax credit provisions of the bill, which include establishing application forms, procedures governing the approval of tax credits and carryforward tax credits, and procedures for taxpayers when claiming approved tax credits on their returns.

State-Level Administrator

Implementation of the initiative is split between school districts, in partnership with local nonprofit organizations, and a state administrator. The state administrator is a state university designated by the DOE who must have an academic innovation institution with extensive experience in:

- Conducting academic research in early literacy instruction.
- Implementing online delivery of early learning and literacy training for educators nationally.
- Developing online support materials that assist parents and caregivers in developing early literacy skills.
- Conducting fundraising and public awareness campaigns to support the development and growth of evidence-based educational initiatives that support learning at home and in schools.

The bill requires the state-level administrator to:

- Develop, in consultation with the Just Read, Florida! Office, a selection of high-quality books, encompassing diverse subjects and genres, appropriate for each grade level to be mailed to students in the initiative.
- Facilitate book distribution directly or through an agreement with a book distribution company.
- Develop and provide marketing materials to help school districts and their local partners raise funding and awareness of the initiative, including through the use of partnerships between public libraries and participating entities to implement family engagement events, such as family library nights, library card drives, summer access, and other activities.
- Maintain a clearinghouse for information on national, state, and local nonprofit organizations that support efforts to provide books to children.
- Develop online support materials that assist parents and caregivers in developing early literacy skills.

- Periodically distribute to participating families helpful tips and hyperlinks to video modules via text message and e-mail.
- Annually submit to the DOE an annual financial report that, at a minimum, includes:
  - Amount of eligible contributions received;
  - Amount spent on each activity required of the administrator in law; and
  - Number of students and households served.
- Maintain separate accounts for operating funds and funds for purchase and delivery of books.
- Expend eligible contributions received only for the purchase and delivery of books, and an administrative fee not to exceed two percent of total eligible contributions.
- Provide taxpayers with a certificate of contribution upon receipt of a contribution.

Reporting Requirements

Beginning September 30, 2022, and annually thereafter, the DOE must report on its website the number of students in the initiative in each school district, the academic achievement and learning gains of participating students based on available data provided by school districts. The DOE is required to establish a date by which the administrator and school districts must annually provide the necessary data to complete the report.

In addition, the DOE is required to publish information about the initiative and tax credits on its website, including the process for a taxpayer to select the administrator as the recipient of funding through the tax credit.

Student Participation

A student in kindergarten through grade 5 must be provided books through the initiative if the student has a substantial reading deficiency or scored below a level 3 on the prior year's statewide, standardized English Language Arts (ELA) assessment. The bill requires each school district to notify the parents of eligible students that the student is eligible to receive books at no cost through the New Worlds Reading Initiative and provide the parent with the application form developed by the administrator, which must allow for the selection of specific book topics or genres for the student.

After a student is identified, the bill requires the school district to coordinate with the administrator to initiate monthly book delivery during the school year, which must begin no later than December 31. Students remain in the initiative until they are promoted to sixth grade or their parent opts out, whichever is earlier.

School districts and partnering nonprofit organizations are required by the bill to raise awareness of the initiative, including information on eligibility and video training modules, through:

- The student handbook.
- The read-at-home plan provided to the parents of students identified with a substantial reading deficiency. The bill also amends s. 1008.25, F.S., to require that the parents of students with a substantial reading deficiency be provided information about the student's eligibility for the New Worlds Reading Initiative, and information on parent training modules and other reading engagement resources available through the initiative.

- Curriculum or parent nights or separate initiative awareness events at each elementary school.
- Events held jointly with the local public library. The bill specifies that library events should coincide with similar family engagement initiatives, such as library card drives.

The bill requires books to be delivered at no cost to students.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The revenue estimating conference has not yet reviewed the fiscal impact of this bill.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost of the book distribution initiative created by this bill will be funded through tax credit contributions. The Department of Education estimates that the total cost to provide books free of charge is $48,512,740. This estimate is based on 551,294 eligible students identified who would receive a free book mailed to them monthly for nine months of the school year, at an average cost of $8 a book.[29]

[29] DOE, *Senate Bill 1372 Legislative Bill Analysis* (Feb. 23, 2021) (on file with the Senate Appropriations Subcommittee on Education).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 220.02, 220.13, 220.186, and 1008.25.

The bill creates the following sections of the Florida Statutes: 211.0252, 212.1833, 220.1876, 561.1212, 624.51056, and 1003.485.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 19, 2021:
The committee substitute:

- Adds legislative findings, including that programs that deliver books directly to students' homes and support engagement in reading enable parents to develop their child's reading skills and enjoyment of reading and foster improved outcomes for students.
- Makes mandatory the provision of the bill authorizing school districts to participate in the program.
- Removes the specification that funding be shared equally by the state administrator and the local funding source on a pro rata basis for each enrolled student.
- Provides tax credits for contributions to the New Worlds Reading Initiative, which provides monthly books to students at no cost to families, and authorizes the state administrator to use 2% for administrative expenses.
- Establishes a tax credit cap amount of $10 million for the 2021-2022 state fiscal year, $30 million for the 2022-2023 state fiscal year, and $50 million in each state fiscal year thereafter.
- Requires the DOE to designate an experienced academic innovation institution as the state administrator.
- Requires the DOE to publish information about the initiative and tax credits on its website.
- Removes requirement for the DOE to submit an annual report to the Governor and the Legislature and instead requires the administrator to submit an annual report to the DOE.
- Requires the Department of Education to set the annual date for school districts to provide data to enable the Department to report on the program.
- Establishes the process by which the Department of Revenue must administer the tax credit provisions.

- Postpones to December 31, 2021, the first required book delivery but still requires nine books to be delivered before the 2022-2023 school year.
- Authorizes the DOR to adopt rules and emergency rules.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/20/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Legislature finds that the ability to read is fundamental to a productive, fulfilling, culturally rewarding, and civically engaged life. Furthermore, a literacy-rich home environment helps develop reading and writing skills in young learners to prepare them for future academic and career success. Research shows that students who read more perform

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better academically than those who do not. Unfortunately, statistics show students who have fewer books and literacy-based interactions at home than their peers have lower educational attainment and lifetime income-earning potential. Programs that deliver books directly to students' homes and support engagement in reading enable parents to develop their child's reading skills and enjoyment of reading and foster improved outcomes for students.

Section 2. Section 1003.485, Florida Statutes, is created to read:

1003.485 The New Worlds Reading Initiative.—

(1) The New Worlds Reading Initiative is established under the Department of Education to improve literacy skills and instill a love of reading by providing high-quality, free books to students in kindergarten through grade 5 who are reading below grade level.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Administrator" means the Department of Education or a third-party entity contracted to administer the initiative.

(b) "Initiative" means the New Worlds Reading Initiative.

(3) The administrator shall:

(a) Develop, in consultation with the Just Read, Florida! Office under s. 1001.215, a selection of high-quality books encompassing diverse subjects and genres for each grade level to be mailed to students in the initiative.

(b) Facilitate the distribution of books as provided in paragraph (5)(c) either directly or through an agreement with a book distribution company.

(c) Assist local implementation of the initiative by:

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1. Providing assistance to local communities to raise awareness of the initiative, including through the use of partnerships between public libraries and school districts to implement events such as family library nights, library card drives, summer access and activities, and other activities designed to increase family engagement and instill a love of reading in students.

2. Developing and providing marketing materials to school districts and any partnering nonprofit organizations to assist with public awareness campaigns.

(d) Maintain a clearinghouse for information on national, state, and local nonprofit organizations that support efforts to provide books to children.

(e) Develop training materials for parents of students in the initiative, including brief video training modules, which engage families in reading and assist with improving student literacy skills. The administrator shall periodically send, via text message and e-mail, tips for facilitating reading at home and hyperlinks to the video training modules.

Beginning September 30, 2022, and annually thereafter, the Department of Education shall report to the President of the Senate, the Speaker of the House of Representatives, and the Commissioner of Education the number of students participating in the initiative in each school district and the academic achievement and learning gains, as applicable, of participating students based on data provided by school districts as permitted under s. 1002.22. The department shall establish a date by which each school district must annually provide the data necessary to

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complete the report.

(4) Each school district shall participate in the initiative by partnering with local nonprofit organizations, raising awareness of the initiative using marketing materials developed by the administrator, coordinating book delivery, and identifying students and notifying parents pursuant to subsection (5).

(5)(a) A student in kindergarten through grade 5 must be provided books through the initiative if the student has a substantial reading deficiency identified under s. 1008.25(5)(a) or scored below a Level 3 on the preceding year's statewide, standardized English Language Arts assessment under s. 1008.22.

(b) Each school district shall notify the parent of a student who meets the criteria under paragraph (a) that the student is eligible to receive books at no cost through the New Worlds Reading Initiative and provide the parent with the application form developed by the administrator, which must allow for the selection of specific book topics or genres for the student.

(c) Once an eligible student is identified, the school district shall coordinate with the administrator to initiate book delivery on a monthly basis during the school year, which must begin no later than October and continue through at least June.

(d) At the beginning of each school year, students must be provided options for specific book topics or genres in order to maximize student interest in reading.

(e) A student's eligibility for the initiative continues until promotion to grade 6 or until the student's parent opts

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out of the initiative.

(6) School districts and partnering nonprofit organizations shall raise awareness of the initiative, including information on eligibility and video training modules under paragraph (3)(e), through, at least, the following:

(a) The student handbook and the read-at-home plan under s. 1008.25(5)(c).

(b) A parent or curriculum night or separate initiative awareness event at each elementary school.

(c) Partnering with the county library to host awareness events, which should coincide with other initiatives such as library card drives and other family engagement programming.

(7) Books must be provided under this section at no cost to families.

(8) If the department contracts with a third-party entity to act as administrator, the entity must be capable of coordinating statewide marketing, dissemination of books, and development of video training modules, as well as completing all other duties of the administrator.

Section 3. Paragraph (c) of subsection (5) of section 1008.25, Florida Statutes, is amended to read:

1008.25 Public school student progression; student support; reporting requirements.—

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading, including a description and

explanation, in terms understandable to the parent, of the exact nature of the student's difficulty in learning and lack of achievement in reading.

2. A description of the current services that are provided to the child.

3. A description of the proposed intensive interventions and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies, including multisensory strategies, through a read-at-home plan the parent can use in helping his or her child succeed in reading.

6. That the statewide, standardized English Language Arts assessment is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8. The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a

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retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

9. Information about the student's eligibility for the New Worlds Reading Initiative under s. 1003.485 and information on parent training modules and other reading engagement resources available through the initiative.

Section 4. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to literacy improvement; providing legislative findings; creating s. 1003.485, F.S.; establishing the New Worlds Reading Initiative under the Department of Education; defining terms; providing duties of the administrator; requiring the administrator, in consultation with a specified entity, to develop a selection of books; requiring the administrator to facilitate distribution of books; requiring the administrator to assist with local implementation of the initiative; requiring the administrator to maintain a clearinghouse for specified information; requiring the administrator to develop and disseminate certain training materials by specified means; establishing reporting requirements; establishing student eligibility requirements; requiring school districts to partner with certain

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entities; requiring school districts to identify eligible students and notify the students' parents; requiring school districts to coordinate with the administrator to initiate book delivery; providing requirements for book delivery; requiring that students be offered certain options relating to books; specifying when student eligibility ends; requiring school districts to raise awareness of the initiative; requiring that books be delivered at no cost to families; authorizing the Department of Education to contract with a third-party entity; providing requirements for such third-party entity; amending s. 1008.25, F.S.; requiring that a certain notification include information about the initiative; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Appropriations (Burgess) recommended the following:

Senate Substitute for Amendment (409158) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Legislature finds that the ability to read is fundamental to a productive, fulfilling, culturally rewarding, and civically engaged life. Furthermore, a literacy-rich home environment helps develop reading and writing skills in young learners to prepare them for future academic and career

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success. Research shows that students who read frequently perform better academically than those who do not. Unfortunately, statistics show students who have fewer books and literacy-based interactions at home than their peers have lower educational attainment and lifetime income-earning potential. Programs that deliver books directly to students' homes and support engagement in reading enable parents to develop their child's reading skills and enjoyment of reading and foster improved outcomes for students.

Section 2. Section 211.0252, Florida Statutes, is created to read:

211.0252 Credit for contributions to the New Worlds Reading Initiative.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to the New Worlds Reading Initiative under s. 1003.485 against any tax due under s. 211.02 or s. 211.025. However, the combined credit allowed under this section and s. 211.0251 may not exceed 50 percent of the tax due on the return on which the credit is taken. If the combined credit allowed under this section and s. 211.0251 exceeds 50 percent of the tax due on the return, the credit must first be taken under s. 211.0251. Any remaining liability must be taken under this section but may not exceed 50 percent of the tax due. For purposes of the distributions of tax revenue under s. 211.06, the department shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund. Section 1003.485 applies to the credit authorized by this section.

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Section 3. Section 212.1833, Florida Statutes, is created to read:

212.1833 Credit for contributions to the New Worlds Reading Initiative.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to the New Worlds Reading Initiative under s. 1003.485 against any tax imposed by the state and due under this chapter from a direct pay permitholder as a result of the direct pay permit held pursuant to s. 212.183. For purposes of the dealer's credit granted for keeping prescribed records, filing timely tax returns, and properly accounting and remitting taxes under s. 212.12, the amount of tax due used to calculate the credit shall include any eligible contribution made to the New Worlds Reading Initiative from a direct pay permitholder. For purposes of the distributions of tax revenue under s. 212.20, the department shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund. Section 1003.485 applies to the credit authorized by this section. A dealer who claims a tax credit under this section must file his or her tax returns and pay his or her taxes by electronic means under s. 213.755.

Section 4. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828,

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those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 220.195, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.1876, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, those enumerated in s. 220.194, and those enumerated in s. 220.196.

Section 5. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1.a. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

b. Notwithstanding sub-subparagraph a., if a credit taken under s. 220.1875 or s. 220.1876 is added to taxable income in a previous taxable year under subparagraph 11. and is taken as a deduction for federal tax purposes in the current taxable year, the amount of the deduction allowed shall not be added to

taxable income in the current year. The exception in this sub-subparagraph is intended to ensure that the credit under s. 220.1875 or s. 220.1876 is added in the applicable taxable year and does not result in a duplicate addition in a subsequent year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount taken as a credit under s. 220.195 which is deductible from gross income in the computation of taxable

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income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. Any ~~The~~ amount taken as a credit for the taxable year under s. 220.1875 or s. 220.1876. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.193.

13. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

14. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

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15. The amount taken as a credit for the taxable year pursuant to s. 220.194.

16. The amount taken as a credit for the taxable year under s. 220.196. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. The addition is not intended to result in adding the same expense back to income more than once.

Section 6. Subsection (2) of section 220.186, Florida Statutes, is amended to read:

220.186 Credit for Florida alternative minimum tax.—

(2) The credit pursuant to this section shall be the amount of the excess, if any, of the tax paid based upon taxable income determined pursuant to s. 220.13(2)(k) over the amount of tax which would have been due based upon taxable income without application of s. 220.13(2)(k), before application of this credit without application of any credit under s. 220.1875 or s. 220.1876.

Section 7. Section 220.1876, Florida Statutes, is created to read:

220.1876 Credit for contributions to the New Worlds Reading Initiative.—

(1) For taxable years beginning on or after January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to the New Worlds Reading Initiative under s. 1003.485 against any tax due for a taxable year under this chapter after the application of any other allowable credits by the taxpayer. An eligible contribution must be made to the New Worlds Reading Initiative on or before the date the taxpayer is

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required to file a return pursuant to s. 220.222. The credit granted by this section shall be reduced by the difference between the amount of federal corporate income tax, taking into account the credit granted by this section, and the amount of federal corporate income tax without application of the credit granted by this section.

(2) A taxpayer who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1) may be allowed the credit on a consolidated return basis; however, the total credit taken by the affiliated group is subject to the limitation established under subsection (1).

(3) Section 1003.485 applies to the credit authorized by this section.

(4) If a taxpayer applies and is approved for a credit under s. 1003.485 after timely requesting an extension to file under s. 220.222(2):

(a) The credit does not reduce the amount of tax due for purposes of the department's determination as to whether the taxpayer was in compliance with the requirement to pay tentative taxes under ss. 220.222 and 220.32.

(b) The taxpayer's noncompliance with the requirement to pay tentative taxes shall result in the revocation and rescindment of any such credit.

(c) The taxpayer shall be assessed for any taxes, penalties, or interest due from the taxpayer's noncompliance with the requirement to pay tentative taxes.

Section 8. Section 561.1212, Florida Statutes, is created to read:

561.1212 Credit for contributions to the New Worlds Reading

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Initiative.—Beginning January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to the New Worlds Reading Initiative under s. 1003.485 against any tax due under s. 563.05, s. 564.06, or s. 565.12, except excise taxes imposed on wine produced by manufacturers in this state from products grown in this state. However, a credit allowed under this section may not exceed 90 percent of the tax due on the return on which the credit is taken. For purposes of the distributions of tax revenue under ss. 561.121 and 564.06(10), the division shall disregard any tax credits allowed under this section to ensure that any reduction in tax revenue received which is attributable to the tax credits results only in a reduction in distributions to the General Revenue Fund. The provisions of s. 1003.485 apply to the credit authorized by this section.

Section 9. Section 624.51056, Florida Statutes, is created to read:

624.51056 Credit for contributions to the New Worlds Reading Initiative.—

(1) For taxable years beginning on or after January 1, 2022, there is allowed a credit of 100 percent of an eligible contribution made to the New Worlds Reading Initiative under s. 1003.485 against any tax due for a taxable year under s. 624.509(1) after deducting from such tax deductions for assessments made pursuant to s. 440.51, credits for taxes paid under ss. 175.101 and 185.08, credits for income taxes paid under chapter 220, and the credit allowed under s. 624.509(5), as such credit is limited by s. 624.509(6). An eligible contribution must be made to the New Worlds Reading Initiative

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on or before the date the taxpayer is required to file a return pursuant to ss. 624.509 and 624.5092. An insurer claiming a credit against premium tax liability under this section is not required to pay any additional retaliatory tax levied under s. 624.5091 as a result of claiming such credit. Section 624.5091 does not limit such credit in any manner.

(2) Section 1003.485 applies to the credit authorized by this section.

Section 10. Section 1003.485, Florida Statutes, is created to read:

1003.485 The New Worlds Reading Initiative.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Administrator" means a state university registered with the department under s. 1002.395(15)(i) and designated to administer the initiative under paragraph (2)(a).

(b) "Annual tax credit amount" means, for any state fiscal year, the sum of the amount of tax credits approved under paragraph (3)(b), including tax credits to be taken under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056, which are approved for taxpayers whose taxable years begin on or after January 1 of the calendar year preceding the start of the applicable state fiscal year.

(c) "Department" means the Department of Education.

(d) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(e) "Eligible contribution" means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to the administrator.

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(f) "Initiative" means the New Worlds Reading Initiative.

(2) NEW WORLDS READING INITIATIVE; ADMINISTRATION.—The New Worlds Reading Initiative is established under the department to improve literacy skills and instill a love of reading by providing high-quality, free books to students in kindergarten through grade 5 who are reading below grade level.

(a) The department shall:

1. Designate an administrator to implement the initiative and to receive funding as provided in this section. The administrator must have an academic innovation institution with extensive experience in:

a. Conducting academic research in early literacy instruction.

b. Implementing online delivery of early learning and literacy training for educators nationally.

c. Developing online support materials that assist parents and caregivers in developing early literacy skills.

d. Conducting fundraising and public awareness campaigns to support the development and growth of evidence-based educational initiatives that support learning at home and in schools.

2. Publish information about the initiative and tax credits under subsection (3) on its website, including the process for a taxpayer to select the administrator as the recipient of funding through a tax credit.

3. Beginning September 30, 2022, and annually thereafter, report on its website the number of students participating in the initiative in each school district, information from the annual financial report under subparagraph (b)6., and the academic achievement and learning gains, as applicable, of

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participating students based on data provided by school districts as permitted under s. 1002.22. The department shall establish a date by which the administrator and each school district must annually provide the data necessary to complete the report.

(b) The administrator shall:

1. Develop, in consultation with the Just Read, Florida! Office under s. 1001.215, a selection of high-quality books encompassing diverse subjects and genres for each grade level to be mailed to students in the initiative.

2. Distribute books at no cost to students as provided in paragraph (4)(c) either directly or through an agreement with a book distribution company.

3. Assist local implementation of the initiative by providing marketing materials to school districts and any partnering nonprofit organizations to assist with public awareness campaigns and other activities designed to increase family engagement and instill a love of reading in students.

4. Maintain a clearinghouse for information on national, state, and local nonprofit organizations that support efforts to improve literacy and provide books to children.

5. Develop training materials for parents of students in the initiative, including brief video training modules, which engage families in reading and assist with improving student literacy skills. The administrator shall periodically send, via text message and e-mail, tips for facilitating reading at home and hyperlinks to the video training modules.

6. Annually submit to the department an annual financial report that includes, at a minimum, the amount of eligible

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contributions received by the administrator; the amount spent on each activity required by this paragraph, including administrative expenses; and the number of students and households served under the initiative.

7. Maintain separate accounts for operating funds and funds for the purchase and delivery of books.

8. Expend eligible contributions received only for the purchase and delivery of books and to implement the requirements of this section, as well as for administrative expenses not to exceed 2 percent of total eligible contributions. Notwithstanding s. 1002.395(6)(j)2., the administrator may carry forward up to 25 percent of eligible contributions to the following state fiscal year for purposes authorized by this subsection. Any eligible contributions in excess of the 25 percent carry forward not used to provide additional books throughout the year to eligible students shall revert to the state treasury.

9. Upon receipt of a contribution, provide the taxpayer that made the contribution with a certificate of contribution. A certificate of contribution must include the taxpayer's name and, if available, its federal employer identification number, the amount contributed, the date of contribution, and the name of the administrator.

(3) NEW WORLDS READING INITIATIVE TAX CREDITS; APPLICATIONS, TRANSFERS, AND LIMITATIONS.—

(a) The tax credit cap amount is $10 million for the 2021-2022 state fiscal year, $30 million for the 2022-2023 state fiscal year, and $50 million in each state fiscal year thereafter.

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(b) Beginning October 1, 2021, a taxpayer may submit an application to the Department of Revenue for a tax credit or credits to be taken under one or more of s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056.

1. The taxpayer shall specify in the application each tax for which the taxpayer requests a credit and the applicable taxable year for a credit under s. 220.1876 or s. 624.51056 or the applicable state fiscal year for a credit under s. 211.0252, s. 212.1833, or s. 561.1212. For purposes of s. 220.1876, a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. 220.222. For purposes of s. 624.51056, a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that prior taxable year pursuant to ss. 624.509 and 624.5092. The Department of Revenue shall approve tax credits on a first-come, first-served basis and must obtain the division’s approval before approving a tax credit under s. 561.1212.

2. Within 10 days after approving or denying an application, the Department of Revenue shall provide a copy of its approval or denial letter to the administrator.

(c) If a tax credit approved under paragraph (b) is not fully used within the specified state fiscal year for credits under s. 211.0252, s. 212.1833, or s. 561.1212 or against taxes due for the specified taxable year for credits under s. 220.1876 or s. 624.51056 because of insufficient tax liability on the part of the taxpayer, the unused amount must be carried forward for a period not to exceed 10 years. For purposes of s.

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220.1876, a credit carried forward may be used in a subsequent year after applying the other credits and unused carryovers in the order provided in s. 220.02(8).

(d) A taxpayer may not convey, transfer, or assign an approved tax credit or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, a tax credit under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 may be conveyed, transferred, or assigned between members of an affiliated group of corporations if the type of tax credit under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 remains the same. A taxpayer shall notify the Department of Revenue of its intent to convey, transfer, or assign a tax credit to another member within an affiliated group of corporations. The amount conveyed, transferred, or assigned is available to another member of the affiliated group of corporations upon approval by the Department of Revenue. The Department of Revenue shall obtain the division's approval before approving a conveyance, transfer, or assignment of a tax credit under s. 561.1212.

(e) Within any state fiscal year, a taxpayer may rescind all or part of a tax credit approved under paragraph (b). The amount rescinded shall become available for that state fiscal year to another eligible taxpayer approved by the Department of Revenue if the taxpayer receives notice from the Department of Revenue that the rescindment has been accepted by the Department of Revenue. The Department of Revenue must obtain the division's approval before accepting the rescindment of a tax credit under s. 561.1212. Any amount rescinded under this paragraph must

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become available to an eligible taxpayer on a first-come, first-served basis based on tax credit applications received after the date the rescindment is accepted by the Department of Revenue.

(f) Within 10 days after approving or denying the conveyance, transfer, or assignment of a tax credit under paragraph (d), or the rescindment of a tax credit under paragraph (e), the Department of Revenue shall provide a copy of its approval or denial letter to the administrator. The Department of Revenue shall also include the administrator on all letters or correspondence of acknowledgment for tax credits under s. 212.1833.

(g) For purposes of calculating the underpayment of estimated corporate income taxes under s. 220.34 and tax installment payments for taxes on insurance premiums or assessments under s. 624.5092, the final amount due is the amount after credits earned under s. 220.1876 or s. 624.51056 for contributions to the administrator are deducted.

1. For purposes of determining if a penalty or interest under s. 220.34(2)(d)1. will be imposed for underpayment of estimated corporate income tax, a taxpayer may, after earning a credit under s. 220.1876, reduce any estimated payment in that taxable year by the amount of the credit.

2. For purposes of determining if a penalty under s. 624.5092 will be imposed, an insurer, after earning a credit under s. 624.51056 for a taxable year, may reduce any installment payment for such taxable year of 27 percent of the amount of the net tax due as reported on the return for the preceding year under s. 624.5092(2)(b) by the amount of the credit.

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(4) ELIGIBILITY; NOTIFICATION; SCHOOL DISTRICT OBLIGATIONS.—

(a) A student in kindergarten through grade 5 must be provided books through the initiative if the student has a substantial reading deficiency identified under s. 1008.25(5)(a) or scored below a Level 3 on the preceding year's statewide, standardized English Language Arts assessment under s. 1008.22.

(b) Each school district shall notify the parent of a student who meets the criteria under paragraph (a) that the student is eligible to receive books at no cost through the New Worlds Reading Initiative and provide the parent with the application form developed by the administrator, which must allow for the selection of specific book topics or genres for the student.

(c) Once an eligible student is identified, the school district shall coordinate with the administrator to initiate book delivery on a monthly basis during the school year, which must begin no later than October and continue through at least June. However, for the 2021-2022 school year only, delivery may begin no later than December 31, 2021, provided that no fewer than 9 books are delivered to each student before book deliveries begin for the 2022-2023 school year.

(d) At the beginning of each school year, students must be provided options for specific book topics or genres in order to maximize student interest in reading.

(e) A student's eligibility for the initiative continues until promotion to grade 6 or until the student's parent opts out of the initiative.

(f) Each school district shall participate in the

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initiative by partnering with local nonprofit organizations, raising awareness of the initiative using marketing materials developed by the administrator, coordinating book delivery, and identifying students and notifying parents pursuant to this subsection.

(g) Each school district shall coordinate with each charter school it sponsors for purposes of identifying eligible students, notifying parents, coordinating book delivery, providing the opportunity to annually select book topics and genres, and raising awareness of the initiative as provided by this section.

(h) School districts and partnering nonprofit organizations shall raise awareness of the initiative, including information on eligibility and video training modules under subparagraph (2)(b)5., through, at least, the following:

1. The student handbook and the read-at-home plan under s. 1008.25(5)(c).

2. A parent or curriculum night or separate initiative awareness event at each elementary school.

3. Partnering with the county library to host awareness events, which should coincide with other initiatives such as library card drives, family library nights, summer access events, and other family engagement programming.

(5) ADMINISTRATION; RULES.—

(a) The Department of Revenue, the division, and the Department of Education may develop a cooperative agreement to assist in the administration of this section, as needed.

(b) The Department of Revenue may adopt rules necessary to administer this section and ss. 211.0252, 212.1833, 220.1876,

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561.1212, and 624.51056, including rules establishing application forms, procedures governing the approval of tax credits and carryforward tax credits under subsection (3), and procedures to be followed by taxpayers when claiming approved tax credits on their returns.

(c) The division may adopt rules necessary to administer its responsibilities under this section and s. 561.1212.

(d) The Department of Education may adopt rules necessary to administer this section.

(e) Notwithstanding any provision of s. 213.053 to the contrary, sharing information with the division related to this tax credit is considered the conduct of the Department of Revenue's official duties as contemplated in s. 213.053(8)(c), and the Department of Revenue and the division are specifically authorized to share information as needed to administer this section.

Section 11. Paragraph (c) of subsection (5) of section 1008.25, Florida Statutes, is amended to read:

1008.25 Public school student progression; student support; reporting requirements.—

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading, including a description and explanation, in terms understandable to the parent, of the exact nature of the student's difficulty in learning and lack of achievement in reading.

2. A description of the current services that are provided to the child.

3. A description of the proposed intensive interventions and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies, including multisensory strategies, through a read-at-home plan the parent can use in helping his or her child succeed in reading.

6. That the statewide, standardized English Language Arts assessment is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8. The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

9. Information about the student's eligibility for the New

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Worlds Reading Initiative under s. 1003.485 and information on parent training modules and other reading engagement resources available through the initiative.

Section 12. The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under s. 120.54(4), Florida Statutes, for the purpose of implementing provisions related to the New Worlds Reading Initiative Tax Credit created by this act. Notwithstanding any other law, emergency rules adopted under this section are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

Section 13. This act shall take effect upon becoming a law.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to home book delivery for elementary students; providing legislative findings; creating ss. 211.0252 and 212.1833, F.S.; providing credits against oil and gas production taxes and sales taxes payable by direct pay permitholders, respectively, under the New Worlds Reading Initiative Tax Credit; specifying requirements and procedures for, and limitations on, the credits; amending s. 220.02, F.S.; revising the order in which tax credits against the corporate income tax credit or the franchise tax are applied;

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amending s. 220.13, F.S.; revising the definition of the term "adjusted federal income"; amending s. 220.186, F.S.; revising the calculation of the corporate income tax credit for the Florida alternative minimum tax; creating s. 220.1876, F.S.; providing a credit against the corporate income tax under the New Worlds Reading Initiative Tax Credit; specifying requirements and procedures for, and limitations on, the credit; creating ss. 561.1212 and 624.51056, F.S.; providing credits against excise taxes on certain alcoholic beverages and the insurance premium tax, respectively, under the New Worlds Initiative Tax Credit; specifying requirements and procedures for, and limitations on, the credits; creating s. 1003.485 F.S.; providing definitions; establishing the New Worlds Reading Initiative under the Department of Education; requiring the department to contract with a state university to administer the initiative; providing duties of the department and administrator; requiring the administrator, in consultation with a specified entity, to develop a selection of books; requiring the administrator to facilitate distribution of books; requiring the administrator to assist with local implementation of the initiative; requiring the administrator to maintain a clearinghouse of specified information; requiring the administrator to develop and disseminate certain training materials by specified means; requiring the administrator to annually submit an

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audit report; requiring the administrator to maintain specified accounts for program funds; providing spending requirements; requiring the administrator to provide a certificate of contribution in certain circumstances; establishing reporting requirements; establishing a tax credit cap amount; authorizing a taxpayer to apply for a tax credit; providing requirements for the application; specifying a limitation on, and application procedures for, the tax credit; specifying requirements and procedures for, and restrictions on, the carryforward, conveyance, transfer, assignment, and rescindment of credits; specifying requirements and procedures for the Department of Revenue; establishing student eligibility requirements; requiring school districts to identify eligible students and notify parents; requiring school districts to coordinate with the administrator to initiate book delivery; providing requirements for book delivery; requiring that students be offered certain options relating to books; specifying when student eligibility ends; requiring school districts raise awareness of the initiative; authorizing the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, and the Department of Education to develop a cooperative agreement and adopt rules; amending s. 1008.25, F.S.; requiring that a certain notification include information about the initiative; authorizing the

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Department of Revenue to adopt emergency rules; providing an effective date.

By Senator Burgess

20-01401B-21 20211372__

A bill to be entitled

An act relating to literacy improvement; creating s. 1003.485, F.S.; establishing the New Worlds Reading Initiative under the Department of Education; providing definitions; providing duties of the administrator; requiring the administrator to develop an application process; requiring the administrator, in consultation with a specified entity, to develop a selection of books; requiring the administrator to coordinate monthly book distribution to certain students; requiring the administrator to assist with local implementation of the initiative; requiring the administrator to maintain a clearinghouse of specified information; requiring the administrator to develop and disseminate certain training materials by specified means; establishing reporting requirements; providing that certain entities may participate in the initiative by completing an application; providing that participating school districts must allow public school students to enroll in the program; establishing student eligibility requirements; requiring participating entities to notify parents of eligible students; requiring participating entities to coordinate with the administrator to initiate book delivery; providing requirements for book delivery; allowing local funds to be used to purchase books during certain months; requiring that students be offered certain options relating to books; specifying when student enrollment ends; requiring participating

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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entities and certain nonprofits to perform certain actions to raise awareness of the initiative; requiring that books be delivered at no cost to families; providing requirements for funding; authorizing the department to contract with a third-party entity; providing requirements for such third-party entity; amending s. 1008.25, F.S.; requiring that a certain notification include information about the initiative; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1003.485, Florida Statutes, is created to read:

1003.485 The New Worlds Reading Initiative.—

(1) The New Worlds Reading Initiative is established under the Department of Education to improve literacy skills and instill a love of reading by providing high-quality free books to students in kindergarten through grade 5 who are reading below grade level.

(2) DEFINITIONS.— As used in this section the term:

(a) "Administrator" means the Department of Education or a third-party entity contracted to administer the initiative.

(b) "Initiative" means the New Worlds Reading Initiative.

(c) "Participating entity" means a school district participating in the initiative or a charter school located in a nonparticipating school district which is participating in the initiative, as specified in subsection (4).

(3) The administrator shall:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(a) Develop an application process for participating entities that identifies:

1. At least one partnership with a nonprofit organization to raise public awareness of the initiative, perform fundraising, and conduct or facilitate family literacy engagement activities.

2. Local funding sources to meet the requirements of subsection (7).

(b) Develop, in consultation with the Just Read, Florida! Office under s. 1001.215, a selection of high-quality books encompassing diverse subjects and genres for each grade level to be mailed to students enrolled in the initiative.

(c) Facilitate the distribution of books as provided in paragraph (5)(c) either directly or through an agreement with a book distribution company.

(d) Assist local implementation of the initiative by:

1. Providing assistance to local communities to raise awareness of the initiative, including through the use of partnerships between public libraries and participating entities to implement events such as family library nights, library card drives, summer access and activities, and other activities designed to increase family engagement and instill a love of reading in students.

2. Developing and providing marketing materials to participating entities and partnering nonprofit organizations to assist with public awareness campaigns.

(e) Maintain a clearinghouse for information on national, state, and local nonprofit organizations that support efforts to provide books to children.

(f) Develop training materials for parents of students enrolled in the initiative, including brief video training modules, which engage families in reading and assist with improving student literacy skills. The administrator shall periodically send, via text message and e-mail, tips for facilitating reading at home and hyperlinks to the video training modules.

(g) Beginning September 30, 2022, and annually thereafter, report to the President of the Senate, the Speaker of the House of Representatives, and the Commissioner of Education the number of students enrolled in the initiative in each participating entity, the academic performance of enrolled students based on data provided by participating entities as permitted under s. 1002.22, and the amount of funds raised by any local nonprofit organization identified by the participating entity in the application.

(4) A school district or a charter school located in a nonparticipating school district may participate in the initiative by completing the application process under paragraph (3)(a). A participating school district must allow a student at any public school, including a charter school, in the district to enroll in the program.

(5)(a) A student in kindergarten through grade 5 who is enrolled in a participating entity is eligible to receive books through the initiative if the student has a substantial reading deficiency identified under s. 1008.25(5)(a) or scored below a level 3 on the preceding year's statewide, standardized English Language Arts assessment under s. 1008.22.

(b) The participating entity shall notify the parent of a

student who meets the criteria under paragraph (a) that the student is eligible to receive books at no cost through the New Worlds Reading Initiative and provide the parent the opportunity to enroll his or her child using an application form developed by the administrator.

(c) Once an eligible student is enrolled in the initiative, the participating entity shall coordinate with the administrator to initiate book delivery on a monthly basis during the school year, which must begin no later than October 31 and continue through at least June 30. The participating entity may use local funds to continue the initiative through the summer months.

(d) At the beginning of each school year, students must be provided options for specific book topics or genres in order to maximize student interest in reading.

(e) A student's enrollment in the initiative continues until promotion to grade 6 or until the student's parent opts out of the initiative.

(6) Participating entities and partnering nonprofit organizations shall raise awareness of the initiative, including information on eligibility and video training modules under paragraph (3)(f), through, at least, the following:

(a) The student handbook and the read-at-home plan under s. 1008.25(5)(c).

(b) A parent or curriculum night or separate initiative awareness event at each elementary school.

(c) Partnering with the county library to host awareness events, which should coincide with other initiatives such as library card drives and other family engagement programming.

(7) Books must be provided under this section at no cost to

families. The administrator shall pay 50 percent of the costs, with the remaining funds coming from the local funding source identified by the participating entity in the application. Funding will be on a pro rata basis for each enrolled student, taking into consideration total student enrollment in the initiative and available funding. The administrator may solicit donations and apply for grants to supplement funds for the purpose of implementing this section.

(8) If the department contracts with a third-party entity to act as administrator, the entity must be capable of coordinating statewide marketing, dissemination of books, and development of video training modules, as well as completing all other duties of the administrator.

Section 2. Paragraph (c) of subsection (5) of section 1008.25, Florida Statutes, is amended to read:

1008.25 Public school student progression; student support; reporting requirements.—

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading, including a description and explanation, in terms understandable to the parent, of the exact nature of the student's difficulty in learning and lack of achievement in reading.

2. A description of the current services that are provided to the child.

3. A description of the proposed intensive interventions

and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies, including multisensory strategies, through a read-at-home plan the parent can use in helping his or her child succeed in reading.

6. That the statewide, standardized English Language Arts assessment is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8. The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

9. If applicable, information about the student's eligibility for the New Worlds Reading Initiative under s. 1003.485 and information on parent training modules and other reading engagement resources available through the initiative.

Section 3. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2021

I respectfully request that **Senate Bill #1372**, relating to Literacy Improvement, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1382
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Perry
SUBJECT:	Building Inspections
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.	Ponder	McVaney	GO	**Fav/CS**
3.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1382 requires local building code enforcement agencies to allow requests for inspections to be submitted electronically. Such requests for inspections may also be submitted in person in a non-electronic format at the building official's discretion.

The bill defines the term "virtual inspection" and provides that any government entity with the authority to enforce the Florida Building Code may perform virtual inspections, except for certain structural inspections, at their own discretion.

The bill requires a local enforcement agency to refund 10 percent of the permit and inspection fees to a permit holder who fails an inspection if the inspector or building official fails to provide a reason based on compliance with code or ordinance for why the work failed inspection within five business days after the inspection. If any permit and inspection fees are refunded, the Department of Business and Professional Regulation surcharges must be recalculated to reflect the refund.

The bill provides that the act fulfills an important state interest.

The bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (building code). The purpose and intent of the building code is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[1]

The Florida Building Commission (commission), housed within the Department of Business and Professional Regulation (DBPR), implements the building code. The commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the building code needs to be updated. The commission adopts an updated building code every three years.

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within the DBPR. A building code administrator, otherwise known as a building official, is a local government employee, or a person contracted by a local government, who supervises building code activities, including plans review, enforcement, and inspection.[2] A building code inspector (inspector) is a local government employee, or a person contracted by a local government, who inspects construction that requires permits to determine compliance with building codes and state accessibility laws.[3]

Building Code Enforcement

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[4] Every local government must enforce the building code and issue building permits.[5] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[6] State agencies may also enforce the building code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.[7]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[8]

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[1] Section 553.72(1), F.S.
[2] Section 468.603(2), F.S.
[3] Section 468.603(4), F.S.
[4] Section 553.72(2), F.S.
[5] Sections 125.01(1)(bb), 125.56(4)(a), and 553.80(1), F.S.
[6] Section 202, Florida Building Code, Seventh Edition.
[7] Section 553.80(1), F.S.
[8] Sections 125.56(4)(a) and 553.79(1), F.S.

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the government entity.[9] A local enforcement agency[10] must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide accepted methods of electronic submission. Accepted methods of electronic submission include, but are not limited to, email, fill-in forms available online, or third-party submission software.[11]

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the building code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the building code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.[12]

Building Inspections

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. Construction work may not be done beyond a certain point until it passes an inspection.

In addition to the inspections required by the building code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the building code and other laws that are enforced by the government entity.[13]

Inspection Fees

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the building code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule on its website.[14]

A local government's permit and inspection fees must be used solely for carrying out that local government entity's responsibilities in enforcing the building code. This includes:[15]

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- Building code enforcement;
- Fire inspections associated with new construction; and

[9] Section 713.135, F.S.
[10] A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the building code. Section 553.71(5), F.S.
[11] Sections 125.56(4)(b) and 553.79(1)(b), F.S.
[12] Section 553.79(1)(a), F.S.
[13] Section 110.3.9, Florida Building Code, Seventh Edition.
[14] Sections 125.56(2), 166.222, 553.79(1)(a), and 553.80(7)(a), F.S.
[15] Section 553.80(7), F.S.

- Training costs associated with the enforcement of the building code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

DBPR Surcharges

All local governments are required to assess and collect a one percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the building code. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission, the DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[16]

Additionally, all local governments are required to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the building code. Local governments collect the assessment and remit the surcharge fees to the DBPR, where it is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.[17]

Local government building departments are authorized to retain 10 percent of the amount of the surcharges they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.[18]

Electronic Requests for Inspections

All local enforcement agencies are required to allow contractors to apply for permits electronically. However, there is no provision requiring local enforcement agencies to allow contractors to request inspections electronically. Multiple building departments in Florida already allow permit holders to electronically request inspections, while others do not. [19] Instead, they require permit holders to call the building department during its business hours, which limits the time when a permit holder can request an inspection, or use an interactive voice response.[20]

[16] Section 553.721, F.S.
[17] Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. Section 489.1401(2), F.S.
[18] Sections 468.631, and 553.721, F.S.
[19] *See* Orange County Government Florida, Division of Building Safety, https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections (last visited Mar. 5, 2021); Brevard County, Brevard County Building Inspection Request, https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest (last visited Mar. 5, 2021); Town of Davie Florida, Online Self Service, https://www.davie-fl.gov/213/Online-Self-Service (last visited Mar. 5, 2021); Fort Myers Community Development, Building, Permitting & Inspections (BPI), https://cityftmyers.com/1293/Building-PermittingInspections (last visited Mar. 5, 2021); Monroe County, Building and Permitting Quick Links, https://www.monroecountyfl.gov/149/Building-and-Permitting (last visited Mar. 5, 2021)
[20] *Id*.

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 pandemic, which allows contractors to keep working.[21]

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, allowing contractors to immediately request an inspection once they finish work, and allowing the contractor to remain on the jobsite.[22]

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Reasons for Failing an Inspection

A building official or plans reviewer, who denies or revokes a building permit, must provide the permit applicant or permit holder a reason for denying or revoking the permit. The reason must be based on compliance with the building code or a local ordinance. If a building official or plans reviewer fails to provide a reason for denying or revoking a building permit based on compliance with the building code or a local ordinance, the building official or plans reviewer's license may be disciplined.[23]

The building code requires an inspector to notify the permit holder or his or her agent if there are any violations that need to be corrected in order to comply with the building code.[24] However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 125.56 and 553.79, F.S., respectively, to require local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to, email, fill-in forms available online, through a third-party submission management software, or application that can be downloaded on a mobile device. Requests for inspections may be submitted in person in nonelectronic form at the discretion of the local building official.

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[21] Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-569485561.html (last visited Apr. 5, 2021).

[22] Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited Apr. 5, 2021); Boca Raton, Virtual Inspections, https://myboca.us/1846/Virtual-Inspections (last visited Apr. 5, 2021).

[23] Section 553.79(1)(a), F.S.

[24] Section 110.3, Florida Building Code, Seventh Edition.

In addition, this section authorizes a state or local enforcement agency to perform virtual inspections to enforce the Florida Building Code at the enforcement agency's discretion. A virtual inspection may not be performed for structural inspections on a threshold building.[25] "Virtual inspection" is defined as a form of visual inspection using visual or electronic aids to allow a building code administrator or inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

Section 2 requires a local enforcement agency to refund 10 percent of the permit and inspection fees to a permit holder if:

- The inspector or building official determines that the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason based on compliance with the building code, the Florida Fire Prevention Code, or local ordinance for why the work failed inspection within five business days after the inspection.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

Sections 3 and 4 amend s. 440.103 and 553.80, F.S., respectively, to correct cross references.

Section 5 provides that the act fulfills an important state interest.

Section 6 provides that the bill will take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a), of the State Constitution provides:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature;…

The bill may implicate this constitutional restriction to the extent that local governments are required to expend funds (i) to update processing systems to allow permit holders to electronically request building inspections; and (ii) to refund permit and inspection fees in certain instances. However, a portion of these expenses may be offset by any

[25] A threshold building is a building that is greater than three stories or 50 feet in height, exceeds 5,000 square feet, has an occupancy of greater than 500 persons, and is for the gathering of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. Section 553.71(12), F.S.

efficiencies gained by allowing electronic requests. As currently drafted, Section 5 includes a legislative finding that the bill fulfills an important state interest.

Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,[26] which for Fiscal Year 2020-2021 is forecast at $2.2 million.[27] If the total cost of this legislation is less than $2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed $2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The ability for permit holders to electronically request building inspections and for government entities to perform virtual inspections, in limited circumstances, may create efficiencies and reduce the time needed to complete construction projects. The provisions in the bill that incentivize local governments to timely provide the reasons for which a permit holder failed an inspection may also lead to greater efficiencies and cost savings for permit holders.

[26] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Apr. 6, 2021).

[27] Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919, *available at* http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited Mar. 10, 2021).

C. Government Sector Impact:

Local governments that do not already allow permit holders to electronically request building inspections may need to expend funds to update their processing systems to accommodate such requests. However, this expense may be offset by any efficiencies gained by allowing electronic requests.

The bill requires permit fee amounts to be refunded by local governments for failing to timely provide the reasons for which a permit holder failed an inspection. To the extent an enforcement agency fails to timely provide reasons for failure of inspection or is required to increase staff to protect against this failure, such entity will experience a negative fiscal impact. Additionally, if the refund provision is triggered and enforcement agencies are required to recalculate the surcharge, there will be a negative indeterminate fiscal impact on the surcharges received by the DBPR.

Government entities may experience cost savings associated with performing certain building inspections virtually, at their discretion.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 553.79, 440.103, and 553.80.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on April 15, 2021:
The committee substitute provides that if any permit and inspection fees are refunded due to an inspector or building code administrator's failure to provide a reason for why work has failed an inspection within five days, surcharges provided in s. 468.631, F.S., for the Building Code Administrators and Inspectors Fund, are recalculated and lowered in addition to surcharges provided in s. 553.721, F.S.

CS/CS by Governmental Oversight and Accountability on March 31, 2021:
The committee substitute adds a statement that the act fulfills an important state interest.

CS by Community Affairs on March 10, 2021:
The committee substitute clarifies that 10 percent of permit and inspection fees must

refunded after both a failed inspection *and* the inspector fails to provide a reason for such failure within three business days. The committee substitute also specifies three *business* days.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

860116

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Perry) recommended the following:

Senate Amendment

Delete line 119
and insert:
paragraph (a), the surcharges provided in s. 468.631 or s. 553.721 must be

248302

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Perry) recommended the following:

Senate Amendment

Delete line 113

and insert:

provide, within 5 business days after the inspection, the

By the Committees on Governmental Oversight and Accountability; and Community Affairs; and Senator Perry

585-03625-21 20211382c2

A bill to be entitled

An act relating to building inspections; amending s. 125.56, F.S.; requiring that certain counties allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; amending s. 553.79, F.S.; requiring that local enforcement agencies allow requests for inspections to be submitted electronically; providing acceptable methods of electronic submission; authorizing enforcement agencies to perform virtual inspections; providing an exception; providing a definition; requiring a refund of certain fees in certain circumstances; requiring that certain surcharges be recalculated under certain conditions; amending ss. 440.103 and 553.80, F.S.; conforming cross-references; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (4) of section 125.56, Florida Statutes, to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(4)

(f) A county that issues building permits must allow requests for inspections to be submitted electronically to the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03625-21 20211382c2

county building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in person in a nonelectronic format, at the discretion of the building official.

Section 2. Present subsections (6) through (22) of section 553.79, Florida Statutes, are redesignated as subsections (8) through (24), respectively, paragraph (d) is added to subsection (1) of that section, new subsections (6) and (7) are added to that section, and subsection (2) of that section is amended, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local enforcement agency must allow requests for inspections to be submitted electronically to the local enforcement agency's appropriate building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in person in a nonelectronic format, at the discretion of the building official.

(2) Except as provided in subsection (8) ~~subsection (6)~~, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and

inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency. However, a state or local enforcement agency may not perform virtual inspections for structural inspections on a threshold building. For purposes of this subsection, the term "virtual inspection" means a form of visual inspection which uses visual or electronic aids to allow a building code administrator or an inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

(7)(a) A local enforcement agency must refund 10 percent of the permit and inspection fees to a permitholder if:

1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection; and

2. The inspector or building code administrator fails to provide, within 3 business days after the inspection, the permitholder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the

inspection.

(b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 553.721 must be recalculated based on the amount of the permit and inspection fees after the refund.

Section 3. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23) ~~s. 553.79(21)~~, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 4. Subsection (1) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(1) Except as provided in paragraphs (a)-(g), each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code required by this part on all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government under s. 553.79(11) ~~pursuant to s. 553.79(9)~~.

(a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.

(b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.

(c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state

agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

(d) Building plans approved under s. 553.77(3) and state-approved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

(e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).

(f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.

(g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph (c).

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for the enforcement of the provisions of this part. Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The authority of state enforcing agencies to set fees for enforcement shall be derived from authority existing on July 1, 1998. However, nothing contained in this subsection shall operate to limit such agencies from adjusting their fee schedule in conformance with existing authority.

Section 5. The Legislature determines and declares that this act fulfills an important state interest.

Section 6. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 2, 2021

I respectfully request that **Senate Bill #1382**, relating to Building Inspections, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1404 (817458)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee Transportation, Tourism, and Economic Development); and Senator Hooper
SUBJECT:	Cultural and Historical Programs
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Favorable**
2.	Wells	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Wells	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1404 designates the Museum of Florida History as the official state history museum and makes several changes to the Division of Cultural Affairs and Division of Historical Resources.

The bill renames the "Division of Cultural Affairs" to the "Division of Arts and Culture" and designates the Secretary of State as "Florida's Chief Arts and Culture Officer."

To better align the duties of the Division of Arts and Culture and the Division of Historical Resources, the bill transfers the:

- Florida Folklife Program from the Division of Historical Resources to the newly named Division of Arts and Culture; and
- The operation of the Museum of Florida History from the Division of Cultural Affairs to the Division of Historical Resources.

The bill requires the Division of Historical Resources to establish professional standards for the preservation of the collections under state ownership and take appropriate action to foster appreciation of Florida history and culture.

The bill transfers and revises provisions relating to property on loan to museums and property abandoned at museums. The bill revises inventory responsibilities of the Division of Historical

Resources for objects of historical or archaeological value by raising the threshold value or cost of objects in custody to $1,000 instead of $500.

The Department of State may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements from the National Endowment for the Arts.

The bill takes effect on July 1, 2021.

II. Present Situation:

Official State Emblems

Chapter 15, F.S., statutorily designates official state emblems. To date, there are designations for an official state seal, motto, tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal and saltwater mammal, butterfly, reptile and saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, horse, and heritage cattle breed.[1]

Department of State

The Department of State (department), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. The head of the department is the Secretary of State (Secretary).[2] The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

The department is authorized to create Community Support Organizations for its Divisions of Cultural Affairs,[3] Historical Resources,[4] and Library and Information Services.[5] Citizen support organizations (CSOs) are statutorily created entities that are generally required to be nonprofit corporations and are authorized to carry out specific tasks in support of public entities or public causes.

The Division of Cultural Affairs

The Division of Cultural Affairs is Florida's designated state arts agency. The division promotes arts and culture as essential to the quality of life for all Floridians. "To promote excellence and encourage access to cultural opportunities, the division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations,

[1] Sections 15.0301 through 15.0527, F.S.
[2] Section 20.10, F.S.
[3] Section 265.703(1), F.S.
[4] Section 267.17(1), F.S.
[5] Section 257.43(1), F.S.

museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects." [6]

The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House. "Opened in 1977, the Museum of Florida History collects, preserves, exhibits, and interprets evidence of past and present cultures in Florida, and promotes knowledge and appreciation of this heritage. As the State's History Museum, it focuses on artifacts and eras unique to Florida's development and on roles that Floridians have played in national and global events. Through exhibits, educational programs, research, and collections, the Museum reflects the ways that people have shaped and reacted to their cultural and natural environments."[7] The Division of Cultural Affairs also oversees the Museum and Capitol gift shops as well as the citizen support organization charged with supporting the Museum.

The Friends of the Museums of Florida, Inc., is the CSO created to support programs, exhibits, collections, and activities of the Museum of Florida History and the Knott House Museum.[8] A citizen support organization is defined as an organization that is:

- A nonprofit corporation approved by the Department of State;
- Organized and operated to conduct programs and activities, raise funds, request and receive grants, and make expenditures to benefit the division;
- Determined by the division to be consistent with the goals of the division and in the best interest of the state; and
- Approved in writing by the division to operate for the benefit of the division.[9]

The identity of donors to the CSO who desire to remain anonymous are confidential and exempt from public records requirements.[10]

Florida Arts and Cultural Act

The Florida Arts and Cultural Act is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.[11] The Act defines the term "division" to mean the Division of Cultural Affairs of the Department of State.[12] The division is charged with directly administering and overseeing all programs authorized by the Act. The division's duties include:

- Accepting and administering state and federal funds appropriated by the Legislature or funds received from other public or private sources;

[6] Department of State, Division of Cultural Affairs, *About Us, Mission*, available at https://dos.myflorida.com/cultural/about-us/mission/ (last visited on March 11, 2021).
[7] Section 265.707, F.S. Department of State, Museum of Florida History, *About*, available at https://museumoffloridahistory.com/ (last visited March 11, 2021).
[8] Department of State, Museum of Florida History, *About the Friends of the Museums of Florida History, Inc.*, available at https://museumoffloridahistory.com/support/membership-program/about-the-friends-of-the-museums-of-florida-history-inc/ (last visited March 11, 2021).
[9] Section 265.703(1), F.S.
[10] Section 265.703(3), F.S.
[11] Section 265.282, F.S.
[12] Section 265.283(4), F.S.

- Consulting and advising on acquisition of fine art works, appropriate use and display of state-owned art treasures for maximum public benefit, and suitability of ornamental or decorative structure or fixtures in public buildings;
- Accepting donations of money, property, art objects, and antiquities on behalf of the state;[13]
- Sponsoring performances and exhibits; promoting and encouraging the study and appreciation of arts and culture; and collecting, publishing, and printing pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state; and
- Conducting and supporting cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations.[14]

Florida Historical Resources Act

The Florida Historical Resources Act[15] was established to preserve archaeological sites and objects of antiquity for the public benefit.[16] The Florida Historical Resources Act recognizes Florida's rich and unique heritage of historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.[17]

Division of Historical Resources

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The division oversees historic preservation programs to identify, evaluate, preserve, and interpret Florida's historic and cultural resources. These activities include administering the historic preservation grants programs, overseeing the National Register of Historic Places, and maintain an inventory of the state's historical resources. The division also is responsible for the state's archaeology program, which includes surveys and excavations, primarily on state-owned lands or underwater locations; and coordinates outreach programs to promote Florida's historic and traditional culture, including the State Historical Markers program and Florida Folklife program. The division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.[18]

Under the Florida Folklife Program, the division must identify, research, interpret, and present Florida folk arts, artists, performers, folklore, traditions, customs, and cultural heritage and make folk cultural resources and folklife projects available throughout the state. The division is assisted by the Florida Folklife Council, a seven member council appointed by the Secretary of

[13] Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities. The donations and cash income are deposited into the Grants and Donations Trust Fund and by statutes are appropriated for use by the division for the purposes authorized in the Act. Section 265.284(3)(e), F.S.
[14] Section 265.284(3), F.S.
[15] Chapter 267, F.S.
[16] Section 267.14, F.S.
[17] Section 267.061(2)(a), F.S.
[18] Department of State, Division of Historical Resources, *About*, available at https://dos.myflorida.com/historical/about/ (last visited on March 19, 2021). *See also* ch. 267, F.S.

State, in carrying out its duties under the program.[19] The program is funded in part by the National Endowment for the Arts.[20]

Secretary of State – Florida's Chief Cultural Officer

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.[21] The Secretary is designated as "Florida's Chief Cultural Officer" and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. As Florida's Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.[22]

Property Abandoned at Museums

The Legislature has declared that the people of Florida benefit from having property of artistic, historic, cultural, or scientific value loaned to Florida museums.[23] However, problems arise in relation to indefinite or long term loans when museums and lenders fail to maintain contact. In response to these problems, the Legislature has established uniform procedures governing the disposition of unclaimed property[24] on loan to museums. The rules are designed to:

- Encourage museums and their lenders to exercise due diligence in monitoring loans;
- Allocate fairly responsibilities between lenders and borrowing museums;
- Establish procedures for lenders to preserve their interests in property loaned to museums for indefinite or long terms; and
- Resolve expeditiously the title to the unclaimed loaned property left in the custody of museums.[25]

Whenever property is loaned to a museum, the museum is required to:

- Make and retain a written record containing the lender's contact information, a description of the property, a description of the property's general condition, and the beginning and ending dates of the loan;
- Provide the lender with a signed receipt or loan agreement;
- Inform the lender of the law; and

[19] Sections 267.16 and 267.161, F.S.
[20] Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee); *see also* Department of State, Division of Historical Resources, *Florida Folklife Program*, available at https://dos.myflorida.com/historical/preservation/florida-folklife-program/ (last visited March 11, 2021).
[21] Section 15.18, F.S.
[22] *Id.*
[23] "Museum" is defined to mean a public or private nonprofit agency or institution located in Florida and organized on a permanent basis for primarily educational, scientific, or aesthetic purposes, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis. Section 265.565(2)(c), F.S.
[24] "Unclaimed property" is defined to mean property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired. Section 265.565(2)(f), F.S.
[25] Section 265.565(1), F.S.

- Provide the lender with a copy of the law upon request.[26]

If there is a change in the lender's contact information, change in the ownership of the loaned property, or a change in the duration of the loan is negotiated, the museum must update its records to reflect the change. Whenever a museum renews or updates the records of an existing loan, the museum must inform the lender of the existence of the law and provide the lender with a copy upon the lender's request.[27] The museum is also required to give the lender prompt notice of any injury to or loss of property on the loan.[28]

The lender is responsible for notifying the museum of any change in the lender's address or change in ownership of the property. Failure to provide the required notification could result in the owner's loss of rights to the property.[29] Additionally, it is the responsibility of a successor of a lender to document the passage of rights of control of the property that is in the custody of a museum.[30]

In order to terminate a loan for unclaimed property, the museum must make a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records that are reasonably available to museum staff.[31] If the museum is able to identify the lender and his or her last known address, the museum must provide notice of termination via certified mail. The notice of termination must include:

- The name of the lender;
- A description of the property sufficient in detail for ready identification;
- The beginning date of the loan, if known;
- The termination date of the loan, if applicable;
- The name and address of the appropriate museum official to contact regarding the loan; and
- A statement that within 90 days the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property.[32]

If the museum is unable to acquire enough information to send a letter by certified mail, or if a signed return receipt is not received within 30 days, the museum must publish a notice of termination containing all the above required information at least twice in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address. The publications must be at least 60 or more days apart.[33]

If the lender fails to respond to the notice of termination sent via certified mail or included in a publication of general circulation within 90 days, the title to the unclaimed property will pass to the museum.[34]

[26] Section 265.565(3)(a), F.S.
[27] Section 265.565(3)(b), F.S.
[28] Section 265.565(3)(c), F.S.
[29] Section 265.565(4)(a), F.S.
[30] Section 265.565(4)(b), F.S.
[31] Section 265.565(5)(a), F.S.
[32] Section 265.565(5)(b), F.S.
[33] Section 265.565(5)(c), F.S.
[34] Section 265.565(6), F.S.

National Endowment for the Arts

The National Endowment for the Arts (NEA) is an independent, federal agency with substantial discretion to award financial grants to support the arts. The NEA awards grants to groups and individuals whose artistic endeavors have substantial artistic and cultural significance or are otherwise worthy of public support and to state agencies established to serve the same purpose.[35] All states have a State Arts Agency recognized by the NEA. The NEA distributes program funding to those State Arts Agencies, with each state devoting its own appropriated funds to support arts programs throughout the state.[36] The Division of Cultural Affairs is recognized by the NEA as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.[37]

III. Effect of Proposed Changes:

Official State History Museum

Section 1 creates s. 15.0455, F.S., to designate the Museum of Florida History, located in Tallahassee, as the official state history museum.

Division of Arts and Culture

Section 2 amends s. 15.18, F.S., to designate the Secretary of State as "Florida's Chief Arts and Cultural Officer" instead of the chief cultural officer.

Section 3 amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

The bill makes several further changes to correct references to the division and to reorganize current duties of the division and the Division of Historical Resources to better align the programs with the proper division.

- **Section 4** amends s. 265.281, F.S., to correct statutory references due to changes made by the bill.
- **Sections 6, 7, and 8** amend ss. 265.286, 265.2865, and 265.701, F.S., respectively, to correct statutory references and update references to the division.
- **Sections 9, 11, 12, 13, and 14** repeal ss. 265.7025, 265.704, 265.705, 265.706, and 265.709, F.S., respectively, relating to the division's powers and duties relating to historic programs.
- **Sections 22 and 23** amend ss. 258.081 and 464.401, F.S., respectively, to make conforming changes.

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[35] 20 U.S.C. § 954 (2018).
[36] Americans for the Arts, *National Endowment for the Arts – Funding for Art Agencies*, available at https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/legislative-issue-center/national-endowment-for-the-arts%E2%80%94funding-for-arts-agencies (last visited March 11, 2021).
[37] Department of State, Division of Cultural Affairs, *National Endowment for the Arts*, available at https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/ (last visited March 11, 2021); National Assembly of State Arts Agencies, *State Arts Agency Directory*, available at https://nasaa-arts.org/state-arts-agencies/saa-directory/ (last visited March 11, 2021).

The bill transfers the Florida Folklife Program, and its associated council, from the Division of Historical Resources to the Division of Arts and Culture.

- **Section 20** renumbers s. 267.16, F.S., as s. 265.802, F.S., to transfer the duties and responsibilities of the Division of Historical Resources regarding the Florida Folklife Program to the Division of Arts and Culture.
- **Section 21** renumbers s. 267.161, F.S., as s. 265.803, F.S., to transfer the Florida Folklife Council from the Division of Historical Resources to the Division of Arts and Culture.[38]
- **Section 5** amends s. 265.283, F.S., to update references to the division and adds the definition of "folklife" to reflect the transfer of this program from the Division of Historical Resources to the Division of Arts and Culture.

Division of Historic Resources

The bill transfers the Museum of Florida History from the Division of Arts and Culture to the Division of Historical Resources. **Section 17** transfers and renumbers s. 265.707, F.S., as s. 267.0721, F.S., effectively transferring administration of the Museum of Florida History and its related citizen support organization (CSO) to the Division of Historical Resources. The CSO, Friends of the Museums of Florida, Inc., will support the Museum of Florida History and other museums operated by the division.

Currently, any revenues from sales in museum stores is deposited into the Grants and Donations Trust Fund, and any funds in excess of the amount required to pay state employees may be deposited into a bank account of the museum's CSO. In **section 17**, the bill allows the proceeds to be used to support both programs of the museums and also museum operations. Additionally, allows the division to deposit grant funding for the Museum of Florida History into the Grants and Donations Trust Fund.

Section 10 amends s. 265.703, F.S., to delete a public record exemption for the Museum of Florida History citizen support organization no longer necessary due to changes made by the bill.

Section **15** amends s. 267.021, F.S., to define the term "historical museum" and remove the definition of "folklife." The term "historical museum" is defined to mean:

> [A] department or a department or an agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

Section 16 amends 267.071, F.S., to require the Division of Historical Resources to encourage, promote, maintain, and operate the Museum of Florida History and other historical museums.

[38] The department indicates that such reassignment of the Florida Folklife Program will bring the program in line with new federal funding program requirements from the National Endowment for the Arts. *See* Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee).

The division must also establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control and to take appropriate action to foster appreciation of Florida history and culture.

Section 18 transfers and renumbers s. 265.565, F.S., relating to property loaned to museums, as s. 267.0723, F.S. Current law requires a museum to inform a lender of the existence of the statute relating to property loaned to a museum and to provide the lender with a copy of such statutory provisions upon the lender's request. Section 18 removes the requirement for a museum to inform but maintains the requirement that upon a lender's request, a museum must provide a copy of the relevant statutory provisions.

This section amends the notice of termination provision to allow for the required information to be provided on the museum's website and specifies that publication may be by physical or online means. It also removes the requirement to publish the information twice, at least 60 days apart.

This section also provides for the disposition of abandoned property by authorizing a museum to keep, transfer, sell, or dispose of abandoned property. This section defines the term "abandoned property" to mean "property left at or delivered to a museum with no loan, deed of gift, or donation paperwork."

Section 19 amends s. 267.115, F.S., to revise the cost or value threshold that triggers a complete inventory of objects of historical or archaeological value from $500 to $1,000. For objects valued or costing less than $1,000, only a sample inventory is required.

Section 24 amends s. 553.902, F.S., and **Section 25** amends ch. 2020-88, Laws of Florida, to make conforming changes.

Effective Date

Section 26 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements of the National Endowment for the Arts.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 265.565, F.S., was created in 1997 by ch. 97-267, Laws of Florida. The act created an undesignated section of Florida law, which was subsequently numbered as s. 265.565, F.S. The bill transfers and renumbers this section as s. 267.0723, F.S. While the current s. 265.565, F.S., references providing a lender of property to a museum with information about a copy "of this act," it is unlikely that "this act" means the entire chapter in which the statute is located,[40] but instead the act in which the statute itself was created. This ambiguity could be amended in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.281, 265.283, 265.286, 265.2865, 265.701, 265.703, 267.021, 267.071, 265.707, 265.565, 267.115, 267.16, 267.161, 258.081, 468.401, and 553.902.

[39] *Id*.

[40] In its current location, the statute is located in the Florida Arts and Culture Act, ss. 265.281 through 265.709, F.S. Under the bill, the statute is transferred to ch. 267, F.S., which is the Florida Historical Resources Act.

This bill creates the following sections of the Florida Statutes: 15.0455, 267.0721, 267.0723, 265.802, and 265.803.

This bill repeals the following sections of the Florida Statutes: 265.7025, 265.704, 265.705, 265.706, and 265.709

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 23, 2021:
The committee substitute returns to current law, which requires proceeds from sales at museum stores as well as grant funding, gifts, and donations for the Museum of Florida History to be deposited into the Grants and Donations Trust Fund.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to cultural and historical programs; creating s. 15.0455, F.S.; designating the Museum of Florida History as the official state history museum; amending s. 15.18, F.S.; providing that the Secretary of State shall be known as "Florida's Chief Arts and Culture Officer"; conforming a provision to changes made by the act; amending s. 20.10, F.S.; renaming the Division of Cultural Affairs as the Division of Arts and Culture; amending s. 265.281, F.S.; conforming provisions to changes made by the act; reordering and amending s. 265.283, F.S.; conforming provisions to changes made by the act; defining the term "folklife"; amending s. 265.286, F.S.; conforming a cross-reference; amending ss. 265.2865 and 265.701, F.S.; conforming provisions to changes made by the act; repealing s. 265.7025, F.S., relating to definitions relating to historic programs; amending s. 265.703, F.S.; conforming provisions to changes made by the act; repealing ss. 265.704, 265.705, 265.706, and 265.709, F.S., relating to historical museums and powers and duties of the Division of Cultural Affairs, state policy relative to historical properties, objects of historical or archaeological value, and publications, respectively; reordering and amending s. 267.021, F.S.; deleting the definition of the term

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"folklife"; defining the term "historical museum"; amending s. 267.071, F.S.; revising the duties of the Division of Historical Resources; transferring, renumbering, and amending s. 265.707, F.S.; transferring certain responsibilities from the Division of Cultural Affairs to the Division of Historical Resources; revising provisions relating to the Museum of Florida History museum store, the establishment and operation of a certain nonprofit organization or association, and the use of certain funds; transferring, renumbering, and amending s. 265.565, F.S.; defining the term "abandoned property"; removing the requirement that a museum inform a lender of certain provisions in certain circumstances; revising publication requirements for a termination of loan notice; providing for the disposition of abandoned property; amending s. 267.115, F.S.; revising the duties of the Division of Historical Resources relating to objects of historical or archaeological value; transferring and renumbering ss. 267.16 and 267.161, F.S., relating to Florida Folklife Programs and the Florida Folklife Council, respectively; amending ss. 258.081, 468.401, and 553.902, F.S.; conforming provisions and cross-references to changes made by the act; amending chapter 2020-88, Laws of Florida; conforming a provision to changes made by the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 15.0455, Florida Statutes, is created to read:

15.0455 Official state history museum.—The Museum of Florida History, located in Tallahassee, is hereby designated as the official state history museum.

Section 2. Section 15.18, Florida Statutes, is amended to read:

15.18 International and cultural relations.—The Divisions of Arts and Culture ~~Cultural Affairs~~, Historical Resources, and Library and Information Services of the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State, as the head administrator of these divisions, shall hereafter be known as "Florida's Chief Arts and Culture ~~Cultural~~ Officer." As this officer, the Secretary of State is encouraged to initiate and develop relationships between the state and foreign cultural officers, their representatives, and other foreign governmental officials in order to promote Florida as the center of American creativity. The Secretary of State shall coordinate international activities pursuant to this section with Enterprise Florida, Inc., and any other organization the secretary deems appropriate. For the accomplishment of this purpose, the Secretary of State shall have the power and authority to:

(1) Disseminate any information pertaining to the State of Florida which promotes the state's cultural assets.

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(2) Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries.

(3) Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups.

(4) Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida.

(5) Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of this section.

(6) Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.

Section 3. Paragraph (e) of subsection (2) of section 20.10, Florida Statutes, is amended to read:

20.10 Department of State.—There is created a Department of State.

(2) The following divisions of the Department of State are established:

(e) Division of Arts and Culture ~~Cultural Affairs~~.

Section 4. Section 265.281, Florida Statutes, is amended to read:

265.281 Florida Arts and Culture Act; short title.—Sections 265.281-265.703 ~~Sections 265.281-265.709~~ may be cited as the "Florida Arts and Culture Act."

Section 5. Section 265.283, Florida Statutes, is reordered and amended to read:

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265.283 Definitions.—The following definitions shall apply to ss. 265.281-265.703 ~~ss. 265.281-265.709~~:

(3)~~(1)~~ "Council" means the Florida Council on Arts and Culture.

(6)~~(2)~~ "Department" means the Department of State.

(7)~~(3)~~ "Director" means the Director of the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State.

(8)~~(4)~~ "Division" means the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State.

(12)~~(5)~~ "Panel" means a grant review panel.

(14)~~(6)~~ "Secretary" means the Secretary of State.

(1)~~(7)~~ "Arts and cultural disciplines" include, but are not limited to, music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

(11)~~(8)~~ "Local arts agency" means a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of strengthening, supporting, and stabilizing the activities of one or more county art and cultural constituencies.

(10)~~(9)~~ "Historical museum" means a department or agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

(13)~~(10)~~ "Science museum" means a public or private nonprofit organization located in Florida and operating on a

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permanent basis for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.

(18)~~(11)~~ "Youth and children's museum" means a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting multidisciplinary and participatory programs for visitors who are 6 months to 15 years old, and their families, teachers, and caregivers.

(15)~~(12)~~ "State service organization" means a public or private nonprofit organization located in Florida operating on a permanent basis for the primary purpose of implementing programs that have cultural significance and that emphasize American creativity and the maintenance and encouragement of professional excellence.

(2)~~(13)~~ "Arts in education grants" means grants used to cultivate the learning and artistic development of all students and teachers by promoting, encouraging, and supporting arts and culture as an integral part of education and lifelong learning for residents and visitors.

(4)~~(14)~~ "Cultural support grants" means grants that provide support for general programs and specific cultural projects.

(16)~~(15)~~ "State touring program grants" means grants used to provide performances, activities, and exhibitions by Florida artists to communities.

(17)~~(16)~~ "Underserved arts community assistance program grants" means grants used by qualified organizations under the Rural Economic Development Initiative, pursuant to ss. 288.0656 and 288.06561, for the purpose of economic and organizational

development for underserved cultural organizations.

(5)~~(17)~~ "Culture Builds Florida grants" means grants used for the purpose of connecting the arts to key areas of the division's long-term strategic plan.

(9) "Folklife" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms, such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.

Section 6. Paragraph (a) of subsection (5) of section 265.286, Florida Statutes, is amended to read:

265.286 Art and cultural grants.—

(5) The division shall fund:

(a) Grants for general program support for science museums, youth and children's museums, historical museums, local arts agencies, state service organizations, and organizations that have cultural program activities in any of the art and cultural disciplines defined in s. 265.283 ~~s. 265.283(7)~~.

Section 7. Subsection (6) of section 265.2865, Florida Statutes, is amended to read:

265.2865 Florida Artists Hall of Fame.—

(6) The Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State shall adopt rules necessary to carry out the purposes of this section, including, but not limited to, procedures for accepting nominations to, making recommendations

for, selecting members of the Florida Artists Hall of Fame, and providing travel expenses for such recipients. Notwithstanding ~~the provisions of~~ s. 112.061, the Secretary of State may approve first-class travel accommodations for recipients of the Florida Artists Hall of Fame award and their representatives for health or security purposes.

Section 8. Subsections (1) and (5) of section 265.701, Florida Statutes, are amended to read:

265.701 Cultural facilities; grants for acquisition, renovation, or construction; funding; approval; allocation.—

(1) The Division of Arts and Culture ~~Cultural Affairs~~ may accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of cultural facilities.

(5) The Division of Arts and Culture ~~Cultural Affairs~~ shall adopt rules prescribing the criteria to be applied by the Florida Council on Arts and Culture in recommending applications for the award of grants and rules providing for the administration of ~~the other provisions of~~ this section.

Section 9. Section 265.7025, Florida Statutes, is repealed.

Section 10. Subsection (3) of section 265.703, Florida Statutes, is amended to read:

265.703 Citizen support organizations; use of state administrative services and property; audit.—

(3) ANNUAL AUDIT.—The citizen support organization shall provide for an annual financial audit in accordance with s. 215.981. ~~Information of the Museum of Florida History citizen support organization which is confidential and exempt pursuant~~

~~to s. 267.17 shall retain its confidential and exempt status.~~

Section 11. Section 265.704, Florida Statutes, is repealed.

Section 12. Section 265.705, Florida Statutes, is repealed.

Section 13. Section 265.706, Florida Statutes, is repealed.

Section 14. Section 265.709, Florida Statutes, is repealed.

Section 15. Section 267.021, Florida Statutes, is reordered and amended to read:

267.021 Definitions.—For the purpose of this act, the term:

(2) ~~(1)~~ "Division" means the Division of Historical Resources of the Department of State.

(1) ~~(2)~~ "Agency" means any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

(5) ~~(3)~~ "Historic property" or "historic resource" means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

(8) ~~(4)~~ "Preservation" or "historic preservation" means the identification, evaluation, recordation, documentation, analysis, recovery, interpretation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of historic properties.

(6) ~~(5)~~ "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.

~~(6) "Folklife" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.~~

(3) ~~(7)~~ "Florida history museum" means a public or private nonprofit institution which is established permanently in this state for the purpose of promoting and encouraging knowledge and appreciation of Florida history through the collection, preservation, exhibition, and interpretation of artifacts and other historical properties related to Florida history and the primary role of which is to collect and care for artifacts and other objects of intrinsic historical or archaeological value and exhibit them regularly through a facility or facilities owned or operated by the institution.

(7) ~~(8)~~ "Official Florida Historical Marker" means any marker, plaque, or similar device awarded, approved, or administered by the Division of Historical Resources for the purpose of recognizing and informing the general public about historic properties, persons, events, and other topics relating

to the history and culture of the state.

(4) "Historical museum" means a department or an agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

Section 16. Subsection (2) of section 267.071, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

267.071 Historical museums.—It is the duty of the division to:

(2) Encourage, promote, maintain, and operate historical museums, including the Museum of Florida History, ~~but not limited to,~~ mobile museums, and other Florida history ~~junior~~ museums.

(4)(a) Establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control.

(b) Take such other actions as are necessary or appropriate to locate, acquire, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historical artifacts and resources to foster an appreciation of Florida history and culture.

Section 17. Section 265.707, Florida Statutes, is transferred, renumbered as section 267.0721, Florida Statutes, and amended to read:

267.0721 ~~265.707~~ Museum of Florida History and programs; other historical museums.—

(1) The division is authorized to operate the Museum of Florida History and other historical museums.

(2) The division shall establish and administer a museum store for ~~in~~ the Museum of Florida History to provide information and materials relating to Florida history, museum exhibits, collections, and programs to the public and may operate additional stores associated with the museum. The stores ~~store~~ may produce, acquire, and sell craft products, clearly marked replicas and reproductions of artifacts, documents, and other merchandise relating to historical and cultural resources and may make a reasonable charge for such merchandise. All proceeds received from sales must be deposited into the Grants and Donations Trust Fund, or funds in excess of the amount required to pay employees involved in the direct management of the museum store may be deposited into a bank account of a ~~the~~ citizen support organization created pursuant to s. 267.17 or created before July 1, 2021, pursuant to s. 265.703 and may be used only to support operations of the museum stores and the programs of the Museum of Florida History or other museums operated by the division. The museum stores ~~store~~ may enter into agreements and accept credit card ~~credit card~~ payments as compensation for goods and products sold. The division may establish accounts in credit card ~~credit card~~ banks for the deposit of credit card ~~credit card~~ sales invoices and to pay discounts and service charges in connection with the use of credit cards.

(3) The division shall support the establishment and operation of a nonprofit organization or association established pursuant to s. 267.17 or established before July 1, 2021,

pursuant to s. 265.703 to promote and encourage knowledge and appreciation of Florida history and the programs of the Museum of Florida History and other museums operated by the division and to cooperate with historical societies and other organizations to provide funding and promotional support for the programs of the museum. Such organization or association may, with the consent of the division, operate the museum store or conduct special events and programs in the museum. All proceeds must be used to support the programs of the Museum of Florida History and other museums operated by the division.

(4) The division may ~~shall~~ deposit grant funding, gifts, and donations for the purpose of assisting the Museum of Florida History and its programs in the Grants and Donations Trust Fund to be used exclusively for the benefit of programs of the museum and in a manner consistent with any terms or conditions agreed to by the division in accepting such grants, gifts, and donations.

Section 18. Section 265.565, Florida Statutes, is transferred and renumbered as section 267.0723, Florida Statutes, present paragraphs (a) through (f) of subsection (2) of that section are redesignated as paragraphs (b) through (g), respectively, a new paragraph (a) is added to that subsection and subsection (13) is added to that section, and paragraphs (a) and (b) of subsection (3), paragraph (c) of subsection (5), and subsections (6) and (12) of that section are amended, to read:

267.0723 ~~265.565~~ Property loaned to or abandoned at museums; obligations to lenders; notice; loan termination; acquisition of title; liens; conservation or disposal.—

(2) DEFINITIONS.—

(a) "Abandoned property" means property left at or delivered to a museum with no loan, deed of gift, or donation paperwork.

(3) OBLIGATIONS OF MUSEUMS TO LENDERS.—

(a) For property loaned to a museum after the effective date of this act, the museum shall:

1. Make and retain a written record containing, at a minimum, the lender's name, address, and telephone number, a description of the property loaned in sufficient detail for clear identification, including a description of the general condition of the property at the time of the loan, the beginning date of the loan, and the expiration date of the loan.

2. Provide the lender with a signed receipt or loan agreement containing, at a minimum, the record set forth in subparagraph 1.

3. ~~Inform the lender of the existence of the provisions of this act and~~ Provide the lender with a copy of ~~the provisions of~~ this act upon the lender's request.

(b) Regardless of the date of a loan of property, the museum shall:

1. Update its records if a lender informs the museum of a change of address or change in ownership of property loaned, or if the lender and museum negotiate a change in the duration of the loan.

2. ~~Inform the lender of the existence of the provisions of this act~~ When renewing or updating the records of an existing loan, ~~and~~ provide the lender with a copy of ~~the provisions of~~ this act upon the lender's request.

(5) TERMINATION OF LOANS.—

(c) If the museum is unable to identify sufficient information to send notice pursuant to paragraph (b), or if a signed return receipt of a notice sent by certified mail pursuant to paragraph (b) is not received by the museum within 30 days after the notice is mailed, the museum shall publish the notice of termination of loan containing all the information available to the museum provided in paragraph (b) on its website and ~~at least twice, 60 or more days apart,~~ in a publication of general physical or online circulation in the county in which the museum is located and the county of the lender's last known address, if known.

(6) MUSEUM GAINING TITLE TO LOANED PROPERTY; CONDITIONS.—As of the effective date of this act, a museum acquires title to unclaimed property under any of the following circumstances:

(a) For property for which a museum provides notice to a lender in accordance with paragraph (5)(b) and a signed receipt is received, if the lender of the property does not contact the museum within 90 days after the date notice was received.

(b) For property for which notice by publication is made pursuant to paragraph (5)(c), if the lender or anyone claiming a legal interest in the property does not contact the museum within 90 days after the date of the ~~second~~ publication.

(12) LIABILITY.—If a museum applies conservation measures to or disposes of a property pursuant to subsection (11), the museum shall have a lien on the property and on the proceeds from any disposition thereof for the costs incurred by the museum, and the museum shall not be liable for injury to or loss of the property if:

(a) The museum had a reasonable belief at the time the

action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff.

(b) The museum exercised reasonable care in the choice and application of conservation measures.

(13) DISPOSITION OF ABANDONED PROPERTY.—A museum may keep, transfer, sell, or dispose of abandoned property.

Section 19. Subsection (1) of section 267.115, Florida Statutes, is amended to read:

267.115 Objects of historical or archaeological value.—The division shall acquire, maintain, preserve, interpret, exhibit, and make available for study objects which have intrinsic historical or archaeological value relating to the history, government, or culture of the state. Such objects may include tangible personal property of historical or archaeological value. Objects acquired under this section belong to the state, and title to such objects is vested in the division.

(1) Notwithstanding s. 273.02, the division shall maintain an adequate record of all objects in its custody which have a historical or archaeological value. Once each year, on July 1 or as soon thereafter as practicable, the division shall take a complete inventory of all such objects in its custody the value or cost of which is $1,000 ~~$500~~ or more and a sample inventory of such objects the value or cost of which is less than $1,000 ~~$500~~. Each inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. Objects of historical or archaeological value are not required to be identified by marking or other physical alteration of the

objects.

Section 20. Section 267.16, Florida Statutes, is transferred and renumbered as section 265.802, Florida Statutes.

Section 21. Section 267.161, Florida Statutes, is transferred and renumbered as section 265.803, Florida Statutes.

Section 22. Section 258.081, Florida Statutes, is amended to read:

258.081 Stephen Foster State Folk Culture Center.—The division shall maintain and operate the Stephen Foster State Folk Culture Center facility in such manner that the performing arts component of the Florida Folklife Programs provided in s. 265.802 ~~s. 267.16~~ shall have priority use of the facility.

Section 23. Subsection (4) of section 468.401, Florida Statutes, is amended to read:

468.401 Regulation of talent agencies; definitions.—As used in this part or any rule adopted pursuant hereto:

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State or has participated in the state touring program of the Division of Arts and Culture ~~Cultural Affairs~~.

Section 24. Paragraph (d) of subsection (2) of section 553.902, Florida Statutes, is amended to read:

553.902 Definitions.—As used in this part, the term:

(2) "Exempted building" means:

(d) A historical building as defined ~~described~~ in s. 267.021 ~~s. 267.021(3)~~.

The Florida Building Commission may recommend to the Legislature additional types of buildings which should be exempted from compliance with the Florida Building Code-Energy Conservation.

Section 25. Subsection (1) of section 2 of chapter 2020-88, Laws of Florida, is amended to read:

Section 2. The Secretary of State is directed to:

(1) In coordination with the Division of Historical Resources ~~Cultural Affairs~~ of the Department of State, determine how the Museum of Florida History and other state museums will promote the history of the 1920 Ocoee Election Day Riots through exhibits and educational programs.

Section 26. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1404
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senator Hooper
SUBJECT:	Cultural and Historical Programs
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Favorable**
2.	Wells	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Wells	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1404 designates the Museum of Florida History as the official state history museum and makes several changes to the Division of Cultural Affairs and Division of Historical Resources.

The bill renames the "Division of Cultural Affairs" to the "Division of Arts and Culture" and designates the Secretary of State as "Florida's Chief Arts and Culture Officer."

To better align the duties of the Division of Arts and Culture and the Division of Historical Resources, the bill transfers the:

- Florida Folklife Program from the Division of Historical Resources to the newly named Division of Arts and Culture; and
- The operation of the Museum of Florida History from the Division of Cultural Affairs to the Division of Historical Resources.

The bill requires the Division of Historical Resources to establish professional standards for the preservation of the collections under state ownership and take appropriate action to foster appreciation of Florida history and culture.

The bill transfers and revises provisions relating to property on loan to museums and property abandoned at museums. The bill revises inventory responsibilities of the Division of Historical

Resources for objects of historical or archaeological value by raising the threshold value or cost of objects in custody to $1,000 instead of $500.

The Department of State may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements from the National Endowment for the Arts.

The bill takes effect on July 1, 2021.

II. Present Situation:

Official State Emblems

Chapter 15, F.S., statutorily designates official state emblems. To date, there are designations for an official state seal, motto, tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal and saltwater mammal, butterfly, reptile and saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, horse, and heritage cattle breed.[1]

Department of State

The Department of State (department), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. The head of the department is the Secretary of State (Secretary).[2] The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

The department is authorized to create Community Support Organizations for its Divisions of Cultural Affairs,[3] Historical Resources,[4] and Library and Information Services.[5] Citizen support organizations (CSOs) are statutorily created entities that are generally required to be nonprofit corporations and are authorized to carry out specific tasks in support of public entities or public causes.

The Division of Cultural Affairs

The Division of Cultural Affairs is Florida's designated state arts agency. The division promotes arts and culture as essential to the quality of life for all Floridians. "To promote excellence and encourage access to cultural opportunities, the division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations,

[1] Sections 15.0301 through 15.0527, F.S.
[2] Section 20.10, F.S.
[3] Section 265.703(1), F.S.
[4] Section 267.17(1), F.S.
[5] Section 257.43(1), F.S.

museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects." [6]

The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House. "Opened in 1977, the Museum of Florida History collects, preserves, exhibits, and interprets evidence of past and present cultures in Florida, and promotes knowledge and appreciation of this heritage. As the State's History Museum, it focuses on artifacts and eras unique to Florida's development and on roles that Floridians have played in national and global events. Through exhibits, educational programs, research, and collections, the Museum reflects the ways that people have shaped and reacted to their cultural and natural environments."[7] The Division of Cultural Affairs also oversees the Museum and Capitol gift shops as well as the citizen support organization charged with supporting the Museum.

The Friends of the Museums of Florida, Inc., is the CSO created to support programs, exhibits, collections, and activities of the Museum of Florida History and the Knott House Museum.[8] A citizen support organization is defined as an organization that is:

- A nonprofit corporation approved by the Department of State;
- Organized and operated to conduct programs and activities, raise funds, request and receive grants, and make expenditures to benefit the division;
- Determined by the division to be consistent with the goals of the division and in the best interest of the state; and
- Approved in writing by the division to operate for the benefit of the division.[9]

The identity of donors to the CSO who desire to remain anonymous are confidential and exempt from public records requirements.[10]

Florida Arts and Cultural Act

The Florida Arts and Cultural Act is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.[11] The Act defines the term "division" to mean the Division of Cultural Affairs of the Department of State.[12] The division is charged with directly administering and overseeing all programs authorized by the Act. The division's duties include:

- Accepting and administering state and federal funds appropriated by the Legislature or funds received from other public or private sources;

[6] Department of State, Division of Cultural Affairs, *About Us, Mission*, available at https://dos.myflorida.com/cultural/about-us/mission/ (last visited on March 11, 2021).
[7] Section 265.707, F.S. Department of State, Museum of Florida History, *About*, available at https://museumoffloridahistory.com/ (last visited March 11, 2021).
[8] Department of State, Museum of Florida History, *About the Friends of the Museums of Florida History, Inc.*, available at https://museumoffloridahistory.com/support/membership-program/about-the-friends-of-the-museums-of-florida-history-inc/ (last visited March 11, 2021).
[9] Section 265.703(1), F.S.
[10] Section 265.703(3), F.S.
[11] Section 265.282, F.S.
[12] Section 265.283(4), F.S.

- Consulting and advising on acquisition of fine art works, appropriate use and display of state-owned art treasures for maximum public benefit, and suitability of ornamental or decorative structure or fixtures in public buildings;
- Accepting donations of money, property, art objects, and antiquities on behalf of the state;[13]
- Sponsoring performances and exhibits; promoting and encouraging the study and appreciation of arts and culture; and collecting, publishing, and printing pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state; and
- Conducting and supporting cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations.[14]

Florida Historical Resources Act

The Florida Historical Resources Act[15] was established to preserve archaeological sites and objects of antiquity for the public benefit.[16] The Florida Historical Resources Act recognizes Florida's rich and unique heritage of historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.[17]

Division of Historical Resources

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The division oversees historic preservation programs to identify, evaluate, preserve, and interpret Florida's historic and cultural resources. These activities include administering the historic preservation grants programs, overseeing the National Register of Historic Places, and maintain an inventory of the state's historical resources. The division also is responsible for the state's archaeology program, which includes surveys and excavations, primarily on state-owned lands or underwater locations; and coordinates outreach programs to promote Florida's historic and traditional culture, including the State Historical Markers program and Florida Folklife program. The division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.[18]

Under the Florida Folklife Program, the division must identify, research, interpret, and present Florida folk arts, artists, performers, folklore, traditions, customs, and cultural heritage and make folk cultural resources and folklife projects available throughout the state. The division is assisted by the Florida Folklife Council, a seven member council appointed by the Secretary of

[13] Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities. The donations and cash income are deposited into the Grants and Donations Trust Fund and by statutes are appropriated for use by the division for the purposes authorized in the Act. Section 265.284(3)(e), F.S.
[14] Section 265.284(3), F.S.
[15] Chapter 267, F.S.
[16] Section 267.14, F.S.
[17] Section 267.061(2)(a), F.S.
[18] Department of State, Division of Historical Resources, *About*, available at https://dos.myflorida.com/historical/about/ (last visited on March 19, 2021). *See also* ch. 267, F.S.

State, in carrying out its duties under the program.[19] The program is funded in part by the National Endowment for the Arts.[20]

Secretary of State – Florida's Chief Cultural Officer

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.[21] The Secretary is designated as "Florida's Chief Cultural Officer" and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. As Florida's Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.[22]

Property Abandoned at Museums

The Legislature has declared that the people of Florida benefit from having property of artistic, historic, cultural, or scientific value loaned to Florida museums.[23] However, problems arise in relation to indefinite or long term loans when museums and lenders fail to maintain contact. In response to these problems, the Legislature has established uniform procedures governing the disposition of unclaimed property[24] on loan to museums. The rules are designed to:

- Encourage museums and their lenders to exercise due diligence in monitoring loans;
- Allocate fairly responsibilities between lenders and borrowing museums;
- Establish procedures for lenders to preserve their interests in property loaned to museums for indefinite or long terms; and
- Resolve expeditiously the title to the unclaimed loaned property left in the custody of museums.[25]

Whenever property is loaned to a museum, the museum is required to:

- Make and retain a written record containing the lender's contact information, a description of the property, a description of the property's general condition, and the beginning and ending dates of the loan;
- Provide the lender with a signed receipt or loan agreement;
- Inform the lender of the law; and

[19] Sections 267.16 and 267.161, F.S.
[20] Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee); *see also* Department of State, Division of Historical Resources, *Florida Folklife Program*, available at https://dos.myflorida.com/historical/preservation/florida-folklife-program/ (last visited March 11, 2021).
[21] Section 15.18, F.S.
[22] *Id.*
[23] "Museum" is defined to mean a public or private nonprofit agency or institution located in Florida and organized on a permanent basis for primarily educational, scientific, or aesthetic purposes, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis. Section 265.565(2)(c), F.S.
[24] "Unclaimed property" is defined to mean property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired. Section 265.565(2)(f), F.S.
[25] Section 265.565(1), F.S.

- Provide the lender with a copy of the law upon request.[26]

If there is a change in the lender's contact information, change in the ownership of the loaned property, or a change in the duration of the loan is negotiated, the museum must update its records to reflect the change. Whenever a museum renews or updates the records of an existing loan, the museum must inform the lender of the existence of the law and provide the lender with a copy upon the lender's request.[27] The museum is also required to give the lender prompt notice of any injury to or loss of property on the loan.[28]

The lender is responsible for notifying the museum of any change in the lender's address or change in ownership of the property. Failure to provide the required notification could result in the owner's loss of rights to the property.[29] Additionally, it is the responsibility of a successor of a lender to document the passage of rights of control of the property that is in the custody of a museum.[30]

In order to terminate a loan for unclaimed property, the museum must make a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records that are reasonably available to museum staff.[31] If the museum is able to identify the lender and his or her last known address, the museum must provide notice of termination via certified mail. The notice of termination must include:

- The name of the lender;
- A description of the property sufficient in detail for ready identification;
- The beginning date of the loan, if known;
- The termination date of the loan, if applicable;
- The name and address of the appropriate museum official to contact regarding the loan; and
- A statement that within 90 days the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property.[32]

If the museum is unable to acquire enough information to send a letter by certified mail, or if a signed return receipt is not received within 30 days, the museum must publish a notice of termination containing all the above required information at least twice in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address. The publications must be at least 60 or more days apart.[33]

If the lender fails to respond to the notice of termination sent via certified mail or included in a publication of general circulation within 90 days, the title to the unclaimed property will pass to the museum.[34]

[26] Section 265.565(3)(a), F.S.
[27] Section 265.565(3)(b), F.S.
[28] Section 265.565(3)(c), F.S.
[29] Section 265.565(4)(a), F.S.
[30] Section 265.565(4)(b), F.S.
[31] Section 265.565(5)(a), F.S.
[32] Section 265.565(5)(b), F.S.
[33] Section 265.565(5)(c), F.S.
[34] Section 265.565(6), F.S.

National Endowment for the Arts

The National Endowment for the Arts (NEA) is an independent, federal agency with substantial discretion to award financial grants to support the arts. The NEA awards grants to groups and individuals whose artistic endeavors have substantial artistic and cultural significance or are otherwise worthy of public support and to state agencies established to serve the same purpose.[35] All states have a State Arts Agency recognized by the NEA. The NEA distributes program funding to those State Arts Agencies, with each state devoting its own appropriated funds to support arts programs throughout the state.[36] The Division of Cultural Affairs is recognized by the NEA as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.[37]

III. Effect of Proposed Changes:

Official State History Museum

Section 1 creates s. 15.0455, F.S., to designate the Museum of Florida History, located in Tallahassee, as the official state history museum.

Division of Arts and Culture

Section 2 amends s. 15.18, F.S., to designate the Secretary of State as "Florida's Chief Arts and Cultural Officer" instead of the chief cultural officer.

Section 3 amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

The bill makes several further changes to correct references to the division and to reorganize current duties of the division and the Division of Historical Resources to better align the programs with the proper division.

- **Section 4** amends s. 265.281, F.S., to correct statutory references due to changes made by the bill.
- **Sections 6, 7, and 8** amend ss. 265.286, 265.2865, and 265.701, F.S., respectively, to correct statutory references and update references to the division.
- **Sections 9, 11, 12, 13, and 14** repeal ss. 265.7025, 265.704, 265.705, 265.706, and 265.709, F.S., respectively, relating to the division's powers and duties relating to historic programs.
- **Sections 22 and 23** amend ss. 258.081 and 464.401, F.S., respectively, to make conforming changes.

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[35] 20 U.S.C. § 954 (2018).
[36] Americans for the Arts, *National Endowment for the Arts – Funding for Art Agencies*, available at https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/legislative-issue-center/national-endowment-for-the-arts%E2%80%94funding-for-arts-agencies (last visited March 11, 2021).
[37] Department of State, Division of Cultural Affairs, *National Endowment for the Arts*, available at https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/ (last visited March 11, 2021); National Assembly of State Arts Agencies, *State Arts Agency Directory*, available at https://nasaa-arts.org/state-arts-agencies/saa-directory/ (last visited March 11, 2021).

The bill transfers the Florida Folklife Program, and its associated council, from the Division of Historical Resources to the Division of Arts and Culture.

- **Section 20** renumbers s. 267.16, F.S., as s. 265.802, F.S., to transfer the duties and responsibilities of the Division of Historical Resources regarding the Florida Folklife Program to the Division of Arts and Culture.
- **Section 21** renumbers s. 267.161, F.S., as s. 265.803, F.S., to transfer the Florida Folklife Council from the Division of Historical Resources to the Division of Arts and Culture.[38]
- **Section 5** amends s. 265.283, F.S., to update references to the division and adds the definition of "folklife" to reflect the transfer of this program from the Division of Historical Resources to the Division of Arts and Culture.

Division of Historic Resources

The bill transfers the Museum of Florida History from the Division of Arts and Culture to the Division of Historical Resources. **Section 17** transfers and renumbers s. 265.707, F.S., as s. 267.0721, F.S., effectively transferring administration of the Museum of Florida History and its related citizen support organization (CSO) to the Division of Historical Resources. The CSO, Friends of the Museums of Florida, Inc., will support the Museum of Florida History and other museums operated by the division.

Currently, any revenues from sales in museum stores is deposited into the Grants and Donations Trust Fund, and any funds in excess of the amount required to pay state employees may be deposited into a bank account of the museum's CSO. In **section 17**, the bill allows the proceeds to be used to support both programs of the museums and also museum operations. Additionally, allows the division to deposit grant funding for the Museum of Florida History into the Grants and Donations Trust Fund.

Section 10 amends s. 265.703, F.S., to delete a public record exemption for the Museum of Florida History citizen support organization no longer necessary due to changes made by the bill.

Section **15** amends s. 267.021, F.S., to define the term "historical museum" and remove the definition of "folklife." The term "historical museum" is defined to mean:

> [A] department or a department or an agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

Section 16 amends 267.071, F.S., to require the Division of Historical Resources to encourage, promote, maintain, and operate the Museum of Florida History and other historical museums.

[38] The department indicates that such reassignment of the Florida Folklife Program will bring the program in line with new federal funding program requirements from the National Endowment for the Arts. *See* Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee).

The division must also establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control and to take appropriate action to foster appreciation of Florida history and culture.

Section 18 transfers and renumbers s. 265.565, F.S., relating to property loaned to museums, as s. 267.0723, F.S. Current law requires a museum to inform a lender of the existence of the statute relating to property loaned to a museum and to provide the lender with a copy of such statutory provisions upon the lender's request. Section 18 removes the requirement for a museum to inform but maintains the requirement that upon a lender's request, a museum must provide a copy of the relevant statutory provisions.

This section amends the notice of termination provision to allow for the required information to be provided on the museum's website and specifies that publication may be by physical or online means. It also removes the requirement to publish the information twice, at least 60 days apart.

This section also provides for the disposition of abandoned property by authorizing a museum to keep, transfer, sell, or dispose of abandoned property. This section defines the term "abandoned property" to mean "property left at or delivered to a museum with no loan, deed of gift, or donation paperwork."

Section 19 amends s. 267.115, F.S., to revise the cost or value threshold that triggers a complete inventory of objects of historical or archaeological value from $500 to $1,000. For objects valued or costing less than $1,000, only a sample inventory is required.

Section 24 amends s. 553.902, F.S., and **Section 25** amends ch. 2020-88, Laws of Florida, to make conforming changes.

Effective Date

Section 26 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements of the National Endowment for the Arts.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 265.565, F.S., was created in 1997 by ch. 97-267, Laws of Florida. The act created an undesignated section of Florida law, which was subsequently numbered as s. 265.565, F.S. The bill transfers and renumbers this section as s. 267.0723, F.S. While the current s. 265.565, F.S., references providing a lender of property to a museum with information about a copy "of this act," it is unlikely that "this act" means the entire chapter in which the statute is located,[40] but instead the act in which the statute itself was created. This ambiguity could be amended in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.281, 265.283, 265.286, 265.2865, 265.701, 265.703, 267.021, 267.071, 265.707, 265.565, 267.115, 267.16, 267.161, 258.081, 468.401, and 553.902.

[39] *Id*.

[40] In its current location, the statute is located in the Florida Arts and Culture Act, ss. 265.281 through 265.709, F.S. Under the bill, the statute is transferred to ch. 267, F.S., which is the Florida Historical Resources Act.

This bill creates the following sections of the Florida Statutes: 15.0455, 267.0721, 267.0723, 265.802, and 265.803.

This bill repeals the following sections of the Florida Statutes: 265.7025, 265.704, 265.705, 265.706, and 265.709

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute returns to current law, which requires proceeds from sales at museum stores as well as grant funding, gifts, and donations for the Museum of Florida History to be deposited into the Grants and Donations Trust Fund.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hooper

16-01306A-21 20211404__

A bill to be entitled

An act relating to cultural and historical programs; creating s. 15.0455, F.S.; designating the Museum of Florida History as the official state history museum; amending s. 15.18, F.S.; providing that the Secretary of State shall be known as "Florida's Chief Arts and Culture Officer"; conforming a provision to changes made by the act; amending s. 20.10, F.S.; renaming the Division of Cultural Affairs as the Division of Arts and Culture; amending s. 265.281, F.S.; conforming provisions to changes made by the act; reordering and amending s. 265.283, F.S.; conforming provisions to changes made by the act; defining the term "folklife"; amending s. 265.286, F.S.; conforming a cross-reference; amending ss. 265.2865 and 265.701, F.S.; conforming provisions to changes made by the act; repealing s. 265.7025, F.S., relating to definitions relating to historic programs; amending s. 265.703, F.S.; conforming provisions to changes made by the act; repealing ss. 265.704, 265.705, 265.706, and 265.709, F.S., relating to historical museums and powers and duties of the Division of Cultural Affairs, state policy relative to historical properties, objects of historical or archaeological value, and publications, respectively; reordering and amending s. 267.021, F.S.; deleting the definition of the term "folklife"; defining the term "historical museum"; amending s. 267.071, F.S.; revising the duties of the Division of Historical Resources; transferring,

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16-01306A-21 20211404__

renumbering, and amending s. 265.707, F.S.; transferring certain responsibilities from the Division of Cultural Affairs to the Division of Historical Resources; revising provisions relating to the Museum of Florida History museum store, the establishment and operation of a certain nonprofit organization or association, and the deposit of certain funds; transferring, renumbering, and amending s. 265.565, F.S.; defining the term "abandoned property"; removing the requirement that a museum inform a lender of certain provisions in certain circumstances; revising publication requirements for a termination of loan notice; providing for the disposition of abandoned property; amending s. 267.115, F.S.; revising the duties of the Division of Historical Resources relating to objects of historical or archaeological value; transferring and renumbering ss. 267.16 and 267.161, F.S., relating to Florida Folklife Programs and the Florida Folklife Council, respectively; amending ss. 258.081, 468.401, and 553.902, F.S.; conforming provisions and cross-references to changes made by the act; amending chapter 2020-88, Laws of Florida; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 15.0455, Florida Statutes, is created to

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read:

15.0455 Official state history museum.—The Museum of Florida History, located in Tallahassee, is hereby designated as the official state history museum.

Section 2. Section 15.18, Florida Statutes, is amended to read:

15.18 International and cultural relations.—The Divisions of Arts and Culture ~~Cultural Affairs~~, Historical Resources, and Library and Information Services of the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State, as the head administrator of these divisions, shall hereafter be known as "Florida's Chief Arts and Culture ~~Cultural~~ Officer." As this officer, the Secretary of State is encouraged to initiate and develop relationships between the state and foreign cultural officers, their representatives, and other foreign governmental officials in order to promote Florida as the center of American creativity. The Secretary of State shall coordinate international activities pursuant to this section with Enterprise Florida, Inc., and any other organization the secretary deems appropriate. For the accomplishment of this purpose, the Secretary of State shall have the power and authority to:

(1) Disseminate any information pertaining to the State of Florida which promotes the state's cultural assets.

(2) Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries.

(3) Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups.

(4) Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida.

(5) Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of this section.

(6) Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.

Section 3. Paragraph (e) of subsection (2) of section 20.10, Florida Statutes, is amended to read:

20.10 Department of State.—There is created a Department of State.

(2) The following divisions of the Department of State are established:

(e) Division of Arts and Culture ~~Cultural Affairs~~.

Section 4. Section 265.281, Florida Statutes, is amended to read:

265.281 Florida Arts and Culture Act; short title.—Sections 265.281-265.703 ~~Sections 265.281-265.709~~ may be cited as the "Florida Arts and Culture Act."

Section 5. Section 265.283, Florida Statutes, is reordered and amended to read:

265.283 Definitions.—The following definitions shall apply to ss. 265.281-265.703 ~~ss. 265.281-265.709~~:

(3) ~~(1)~~ "Council" means the Florida Council on Arts and

Culture.

(6)~~(2)~~ "Department" means the Department of State.

(7)~~(3)~~ "Director" means the Director of the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State.

(8)~~(4)~~ "Division" means the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State.

(12)~~(5)~~ "Panel" means a grant review panel.

(14)~~(6)~~ "Secretary" means the Secretary of State.

(1)~~(7)~~ "Arts and cultural disciplines" include, but are not limited to, music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

(11)~~(8)~~ "Local arts agency" means a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of strengthening, supporting, and stabilizing the activities of one or more county art and cultural constituencies.

(10)~~(9)~~ "Historical museum" means a department or agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

(13)~~(10)~~ "Science museum" means a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.

(18)~~(11)~~ "Youth and children's museum" means a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting multidisciplinary and participatory programs for visitors who are 6 months to 15 years old, and their families, teachers, and caregivers.

(15)~~(12)~~ "State service organization" means a public or private nonprofit organization located in Florida operating on a permanent basis for the primary purpose of implementing programs that have cultural significance and that emphasize American creativity and the maintenance and encouragement of professional excellence.

(2)~~(13)~~ "Arts in education grants" means grants used to cultivate the learning and artistic development of all students and teachers by promoting, encouraging, and supporting arts and culture as an integral part of education and lifelong learning for residents and visitors.

(4)~~(14)~~ "Cultural support grants" means grants that provide support for general programs and specific cultural projects.

(16)~~(15)~~ "State touring program grants" means grants used to provide performances, activities, and exhibitions by Florida artists to communities.

(17)~~(16)~~ "Underserved arts community assistance program grants" means grants used by qualified organizations under the Rural Economic Development Initiative, pursuant to ss. 288.0656 and 288.06561, for the purpose of economic and organizational development for underserved cultural organizations.

(5)~~(17)~~ "Culture Builds Florida grants" means grants used for the purpose of connecting the arts to key areas of the

division's long-term strategic plan.

(9) "Folklife" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms, such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.

Section 6. Paragraph (a) of subsection (5) of section 265.286, Florida Statutes, is amended to read:

265.286 Art and cultural grants.—

(5) The division shall fund:

(a) Grants for general program support for science museums, youth and children's museums, historical museums, local arts agencies, state service organizations, and organizations that have cultural program activities in any of the art and cultural disciplines defined in s. 265.283 ~~s. 265.283(7)~~.

Section 7. Subsection (6) of section 265.2865, Florida Statutes, is amended to read:

265.2865 Florida Artists Hall of Fame.—

(6) The Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State shall adopt rules necessary to carry out the purposes of this section, including, but not limited to, procedures for accepting nominations to, making recommendations for, selecting members of the Florida Artists Hall of Fame, and providing travel expenses for such recipients. Notwithstanding ~~the provisions of~~ s. 112.061, the Secretary of State may approve

first-class travel accommodations for recipients of the Florida Artists Hall of Fame award and their representatives for health or security purposes.

Section 8. Subsections (1) and (5) of section 265.701, Florida Statutes, are amended to read:

265.701 Cultural facilities; grants for acquisition, renovation, or construction; funding; approval; allocation.—

(1) The Division of Arts and Culture ~~Cultural Affairs~~ may accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of cultural facilities.

(5) The Division of Arts and Culture ~~Cultural Affairs~~ shall adopt rules prescribing the criteria to be applied by the Florida Council on Arts and Culture in recommending applications for the award of grants and rules providing for the administration of ~~the other provisions of~~ this section.

Section 9. Section 265.7025, Florida Statutes, is repealed.

Section 10. Subsection (3) of section 265.703, Florida Statutes, is amended to read:

265.703 Citizen support organizations; use of state administrative services and property; audit.—

(3) ANNUAL AUDIT.—The citizen support organization shall provide for an annual financial audit in accordance with s. 215.981. ~~Information of the Museum of Florida History citizen support organization which is confidential and exempt pursuant to s. 267.17 shall retain its confidential and exempt status.~~

Section 11. Section 265.704, Florida Statutes, is repealed.

Section 12. Section 265.705, Florida Statutes, is repealed.

Section 13. Section 265.706, Florida Statutes, is repealed.

Section 14. Section 265.709, Florida Statutes, is repealed.

Section 15. Section 267.021, Florida Statutes, is reordered and amended to read:

267.021 Definitions.—For the purpose of this act, the term:

(2)~~(1)~~ "Division" means the Division of Historical Resources of the Department of State.

(1)~~(2)~~ "Agency" means any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

(5)~~(3)~~ "Historic property" or "historic resource" means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

(8)~~(4)~~ "Preservation" or "historic preservation" means the identification, evaluation, recordation, documentation, analysis, recovery, interpretation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of historic properties.

(6)~~(5)~~ "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained

by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.

~~(6) "Folklife" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.~~

(3)~~(7)~~ "Florida history museum" means a public or private nonprofit institution which is established permanently in this state for the purpose of promoting and encouraging knowledge and appreciation of Florida history through the collection, preservation, exhibition, and interpretation of artifacts and other historical properties related to Florida history and the primary role of which is to collect and care for artifacts and other objects of intrinsic historical or archaeological value and exhibit them regularly through a facility or facilities owned or operated by the institution.

(7)~~(8)~~ "Official Florida Historical Marker" means any marker, plaque, or similar device awarded, approved, or administered by the Division of Historical Resources for the purpose of recognizing and informing the general public about historic properties, persons, events, and other topics relating to the history and culture of the state.

(4) "Historical museum" means a department or an agency of state or local government or a public or private nonprofit

organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

Section 16. Subsection (2) of section 267.071, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

267.071 Historical museums.—It is the duty of the division to:

(2) Encourage, promote, maintain, and operate historical museums, including the Museum of Florida History, ~~but not limited to,~~ mobile museums, and other Florida history ~~junior~~ museums.

(4)(a) Establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control.

(b) Take such other actions as are necessary or appropriate to locate, acquire, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historical artifacts and resources to foster an appreciation of Florida history and culture.

Section 17. Section 265.707, Florida Statutes, is transferred, renumbered as section 267.0721, Florida Statutes, and amended to read:

267.0721 ~~265.707~~ Museum of Florida History and programs; other historical museums.—

(1) The division is authorized to operate the Museum of Florida History and other historical museums.

(2) The division shall establish and administer a museum

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store for ~~in~~ the Museum of Florida History to provide information and materials relating to Florida history, museum exhibits, collections, and programs to the public and may operate additional stores associated with the museum. The stores ~~store~~ may produce, acquire, and sell craft products, clearly marked replicas and reproductions of artifacts, documents, and other merchandise relating to historical and cultural resources and may make a reasonable charge for such merchandise. All proceeds received from sales must be deposited into ~~the Grants and Donations Trust Fund, or funds in excess of the amount required to pay employees involved in the direct management of the museum store may be deposited into~~ a bank account of a ~~the~~ citizen support organization created pursuant to s. 267.17 or created before July 1, 2021, pursuant to s. 265.703 and may be used only to support operations of the museum stores and the programs of the Museum of Florida History or other museums operated by the division. The museum stores ~~store~~ may enter into agreements and accept credit card ~~credit-card~~ payments as compensation for goods and products sold. The division may establish accounts in credit card ~~credit-card~~ banks for the deposit of credit card ~~credit-card~~ sales invoices and to pay discounts and service charges in connection with the use of credit cards.

(3) The division shall support the establishment and operation of a nonprofit organization or association established pursuant to s. 267.17 or established before July 1, 2021, pursuant to s. 265.703 to promote and encourage knowledge and appreciation of Florida history and the programs of the Museum of Florida History and other museums operated by the division

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and to cooperate with historical societies and other organizations to provide funding and promotional support for the programs of the museum. Such organization or association may, with the consent of the division, operate the museum store or conduct special events and programs in the museum. All proceeds must be used to support the programs of the Museum of Florida History and other museums operated by the division.

(4) The division may ~~shall~~ deposit grant funding, gifts, and donations for the purpose of assisting the Museum of Florida History and its programs and other museums operated by the division in an appropriate ~~in the Grants and Donations~~ trust fund to be used exclusively for the benefit of programs of the museum and in a manner consistent with any terms or conditions agreed to by the division in accepting such grants, gifts, and donations.

Section 18. Section 265.565, Florida Statutes, is transferred and renumbered as section 267.0723, Florida Statutes, and present paragraphs (a) through (f) of subsection (2) of that section are redesignated as paragraphs (b) through (g), respectively, a new paragraph (a) is added to that subsection and subsection (13) is added to that section, and paragraphs (a) and (b) of subsection (3), paragraph (c) of subsection (5), and subsections (6) and (12) of that section are amended, to read:

267.0723 ~~265.565~~ Property loaned to or abandoned at museums; obligations to lenders; notice; loan termination; acquisition of title; liens; conservation or disposal.—

(2) DEFINITIONS.—

(a) "Abandoned property" means property left at or

delivered to a museum with no loan, deed of gift, or donation paperwork.

(3) OBLIGATIONS OF MUSEUMS TO LENDERS.—

(a) For property loaned to a museum after the effective date of this act, the museum shall:

1. Make and retain a written record containing, at a minimum, the lender's name, address, and telephone number, a description of the property loaned in sufficient detail for clear identification, including a description of the general condition of the property at the time of the loan, the beginning date of the loan, and the expiration date of the loan.

2. Provide the lender with a signed receipt or loan agreement containing, at a minimum, the record set forth in subparagraph 1.

3. ~~Inform the lender of the existence of the provisions of this act and~~ Provide the lender with a copy of ~~the provisions of~~ this act upon the lender's request.

(b) Regardless of the date of a loan of property, the museum shall:

1. Update its records if a lender informs the museum of a change of address or change in ownership of property loaned, or if the lender and museum negotiate a change in the duration of the loan.

2. ~~Inform the lender of the existence of the provisions of this act~~ When renewing or updating the records of an existing loan, ~~and~~ provide the lender with a copy of ~~the provisions of~~ this act upon the lender's request.

(5) TERMINATION OF LOANS.—

(c) If the museum is unable to identify sufficient

information to send notice pursuant to paragraph (b), or if a signed return receipt of a notice sent by certified mail pursuant to paragraph (b) is not received by the museum within 30 days after the notice is mailed, the museum shall publish the notice of termination of loan containing all the information available to the museum provided in paragraph (b) on its website and ~~at least twice, 60 or more days apart,~~ in a publication of general physical or online circulation in the county in which the museum is located and the county of the lender's last known address, if known.

(6) MUSEUM GAINING TITLE TO LOANED PROPERTY; CONDITIONS.—As of the effective date of this act, a museum acquires title to unclaimed property under any of the following circumstances:

(a) For property for which a museum provides notice to a lender in accordance with paragraph (5)(b) and a signed receipt is received, if the lender of the property does not contact the museum within 90 days after the date notice was received.

(b) For property for which notice by publication is made pursuant to paragraph (5)(c), if the lender or anyone claiming a legal interest in the property does not contact the museum within 90 days after the date of the ~~second~~ publication.

(12) LIABILITY.—If a museum applies conservation measures to or disposes of a property pursuant to subsection (11), the museum shall have a lien on the property and on the proceeds from any disposition thereof for the costs incurred by the museum, and the museum shall not be liable for injury to or loss of the property if:

(a) The museum had a reasonable belief at the time the action was taken that the action was necessary to protect the

property on loan or other property in the custody of the museum, or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff.

(b) The museum exercised reasonable care in the choice and application of conservation measures.

(13) DISPOSITION OF ABANDONED PROPERTY.—A museum may keep, transfer, sell, or dispose of abandoned property.

Section 19. Subsection (1) of section 267.115, Florida Statutes, is amended to read:

267.115 Objects of historical or archaeological value.—The division shall acquire, maintain, preserve, interpret, exhibit, and make available for study objects which have intrinsic historical or archaeological value relating to the history, government, or culture of the state. Such objects may include tangible personal property of historical or archaeological value. Objects acquired under this section belong to the state, and title to such objects is vested in the division.

(1) Notwithstanding s. 273.02, the division shall maintain an adequate record of all objects in its custody which have a historical or archaeological value. Once each year, on July 1 or as soon thereafter as practicable, the division shall take a complete inventory of all such objects in its custody the value or cost of which is $1,000 ~~$500~~ or more and a sample inventory of such objects the value or cost of which is less than $1,000 ~~$500~~. Each inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. Objects of historical or archaeological value are not required to be identified by marking or other physical alteration of the objects.

Section 20. Section 267.16, Florida Statutes, is transferred and renumbered as section 265.802, Florida Statutes.

Section 21. Section 267.161, Florida Statutes, is transferred and renumbered as section 265.803, Florida Statutes.

Section 22. Section 258.081, Florida Statutes, is amended to read:

258.081 Stephen Foster State Folk Culture Center.—The division shall maintain and operate the Stephen Foster State Folk Culture Center facility in such manner that the performing arts component of the Florida Folklife Programs provided in s. 265.802 ~~s. 267.16~~ shall have priority use of the facility.

Section 23. Subsection (4) of section 468.401, Florida Statutes, is amended to read:

468.401 Regulation of talent agencies; definitions.—As used in this part or any rule adopted pursuant hereto:

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State or has participated in the state touring program of the Division of Arts and Culture ~~Cultural Affairs~~.

Section 24. Paragraph (d) of subsection (2) of section 553.902, Florida Statutes, is amended to read:

553.902 Definitions.—As used in this part, the term:

(2) "Exempted building" means:

(d) A historical building as defined ~~described~~ in s. 267.021 ~~s. 267.021(3)~~.

The Florida Building Commission may recommend to the Legislature additional types of buildings which should be exempted from compliance with the Florida Building Code-Energy Conservation.

Section 25. Subsection (1) of section 2 of chapter 2020-88, Laws of Florida, is amended to read:

Section 2. The Secretary of State is directed to:

(1) In coordination with the Division of Historical Resources ~~Cultural Affairs~~ of the Department of State, determine how the Museum of Florida History and other state museums will promote the history of the 1920 Ocoee Election Day Riots through exhibits and educational programs.

Section 26. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

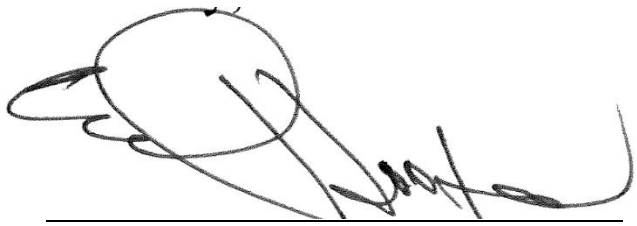
Subject: Committee Agenda Request

Date: March 23, 2021

I respectfully request that **Senate Bill # 1404**, relating to Cultural and Historical Programs, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1408
INTRODUCER:	Banking and Insurance Committee and Senator Burgess
SUBJECT:	Department of Financial Services
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Sanders	Sadberry	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1408 amends sections of Florida Statutes governing the following Department of Financial Services (DFS) Divisions: Investigative and Forensic Services; Public Assistance Fraud; Funeral, Cemetery, and Consumer Services; and State Fire Marshal. The bill:

- Designates the Division of Public Assistance Fraud a criminal justice agency;
- Adds firefighter cancer into the self-insurance coverages provided by Risk Management and requires the Department of Management Services to verify and approve such payments prior to distribution from the State Risk Management Trust Fund;
- Prohibits employees who fall under the State Risk Management Trust Fund from engaging in retaliatory conduct against a sexual harassment victim;
- Provides that willful and knowing dissemination of the identifying information of a sexual harassment victim is a misdemeanor of the first degree;
- Amends the composition requirements of the Board of Funeral, Cemetery, and Consumer Services; clarifies member requirements; amends the definition of "quorum" to enable ease of business; removes term staggering requirements; and clarifies rulemaking responsibilities;
- Clarifies and provides grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants based on criminal history;
- Amends provisions for criminal background checks for Funeral, Cemetery, and Consumer Services licensure applicants;
- Prohibits specific unlicensed funeral activity and increases the penalty to a third-degree felony;

- Increases criminal penalties associated with unlicensed Funeral, Cemetery, and Consumer Services activity;
- Updates the definition of "two-component explosive" to reflect changes in the marketplace;
- Allows contractors to begin repairs on a previously permitted fire alarm prior to receiving a permit to do so, yet maintains that such repair will not be compliant until permitted and approved;
- Amends continuing education requirements for individuals licensed to solicit, sell, or adjust insurance in the state;
- Amends provisions regarding appointments to transact insurance or adjust claims on behalf of an insurer or employer to apply certain deadlines to renewal appointments and to revise procedures and requirements when an individual was not properly appointed by inadvertent error;
- Increases the maximum license suspension time for title insurance agents and agencies;
- Removes a requirement for personal residential property agents to notify an insured regarding coverage from Citizens Property Insurance Corporation before exporting a policy to the surplus lines marketplace;
- Prohibits an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information as a condition precedent to extending credit secured by real estate and prohibiting an insurance agent or agency from providing such information without authorization;
- Allows flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Amends the Fire and Emergency Incident Information Reporting Program by replacing "fire protection agencies" with "fire service providers" and defines the term "fire service provider";
- Revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel;
- Extends assessment and compliance deadlines by three years with regards to minimum radio signal strength for fire department communications and two-way radio systems;
- Prohibits influencing a firesafety inspector to violate applicable law through threats, coercion, trickery, or compensation, and prohibits a firesafety inspector knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe;
- Revises the composition of the Firefighters Employment, Standards, and Training Council;
- Allows fire service providers to hire volunteer firefighters, and allows them to continue to function in a volunteer firefighter capacity for the first year of employment while they obtain career firefighter certifications;
- Creates a criminal penalty for aiding and abetting a person engaged in unlicensed bail bond agent activity; and
- Expands the applicability of criminal penalties for impersonation of investigators and personnel of the DFS.

The DFS has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling or disabling the ability of a party to appoint licensees. The DFS indicates these changes can be addressed during ongoing system updates and within existing resources.

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than $100,000 annually.

The Criminal Justice Impact Conference has not yet adopted a prison bed impact for this legislation and the fiscal impact relating to those penalties is positive/negative indeterminate.

The bill, except as otherwise expressly provided, has an effective date of July 1, 2021.

II. Present Situation:

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures.
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use.
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities.
- Managing the state Treasury and directing safekeeping and the investment of all state funds.
- Managing the deferred compensation program for state employees.
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state.
- Regulating cemeteries and funeral homes.
- Licensing and oversight of insurance agents and agencies.
- Ensuring that Florida employers provide workers' compensation coverage for their employees in a cost effective manner.
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services.
- Collecting and returning unclaimed property belonging to Florida residents.[1]

The DFS is composed of the following divisions:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;

[1] Florida Department of Financial Services, *Statement of Agency Organization and Operation*, https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx (last visited March 4, 2021).

- Unclaimed Property; and
- Workers' Compensation.[2]

Division of Public Assistance Fraud

The Division of Public Assistance Fraud (DPAF) is responsible for enforcing state laws regarding program eligibility and proper use of public assistance benefits. The DPAF is responsible for investigating allegations of fraud related to the Cash Assistance/Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutritional Assistance Program (SNAP), Medicaid recipients, disaster assistance/emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.[3]

According to the DFS, the DPAF has operated as a criminal justice agency since its inception in 1972.[4] However, when the Division of Investigative and Forensic Services (DIFS) was created in 2016, under ch. 20, F.S., the DPAF was not designated as a criminal justice agency, thereby limiting the DPAF's access to information within criminal records systems. Under Florida law, a criminal justice agency is defined, in part, as any governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.[5] The DPAF currently operates, in part, as a criminal justice agency. However, current law does not definitively reflect this designation.

State Risk Management

The State Risk Management Trust Fund (trust fund) is administered by the DFS and is a self-insurance fund.[6] The trust fund provides various types of insurance to all departments of the State of Florida, including their employees, agents, and volunteers.[7] The trust fund provides the following insurance coverage:

- Property claims for all buildings, whether financed in whole or in part by revenue bonds or certificates, and the contents thereof of any other buildings leased or rented by the state, to include manufactured homes and contents. This coverage includes:[8]

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[2] Florida Department of Financial Services, *Divisions and Offices* https://www.myfloridacfo.com/ (last visited March 4, 2021)
[3] Division of Public Assistance, https://myfloridacfo.com/Division/PAF/ (last visited March 6, 2021).
[4] Department of Financial Services, *Legislative Bill Analysis of SB 1408* (March 4, 2021) (on file with Senate Banking and Insurance Committee).
[5] Section 943.045(11)(e), F.S. *See also*: s. 943.045(2), F.S.; the term "administration of criminal justice" means "performing functions of detection, apprehension, detention, pretrial release, post trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies." Section 943.045(11)(a)-(e), F.S., defines a criminal justice agency as a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, which investigates the crime of crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule court and that allocates a substantial part of its annual budget to the administration of criminal justice.
[6] Section 284.30, F.S.
[7] Section 284.31, F.S.
[8] Section 284.01, F.S.

  - Loss from fire, lightning, sinkholes, and hazards customarily insured by extended coverage;
  - Loss from removal of personal property from such properties when endangered by covered perils;
  - Flood insurance to the extent necessary to meet self-insurance requirements under the National Flood Insurance Program;
  - Rental value insurance is provided to indemnify the state or its agencies for loss of income when such rental income insurance is required to be carried by bonding or revenue certificates or resolutions; and
  - Rental value insurance is also provided to indemnify the state or its agencies for loss of income from those buildings operated and maintained by the Department of Management Services from the Supervision Trust Fund.
- Casualty claims, to include:[9]
  - Workers' compensation;
  - General liability:
    - Premises and operations;
    - Personal injury; and
    - Professional malpractice liability;[10]
  - Fleet automotive liability;
  - Federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes; and
  - Court-awarded fees in other proceedings against the state, except for such awards in eminent domain or for inverse condemnation or awards by the Public Employees Relations Commission.

Separate accounts must be kept for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees barring certain exceptions.[11]

Each entity covered by the trust fund must develop and implement a loss prevention program, provide for regular and periodic facility and equipment inspections, investigate job-related employee accidents, and establish a program to promote increased safety awareness among employees.[12] The Division of Risk Management, within the DFS, provides loss prevention services and technical assistance to state agencies and universities for managing risk.[13]

Premiums, as calculated on all coverages, are billed and charged to each state agency according to coverages obtained from the trust fund.[14, 15] All premiums paid into the trust fund and all moneys received from the trust fund from investment or any other source, are held by the DFS

[9] Section 284.30, F.S.
[10] Department of Financial Services, Division of Risk Management, *Insurance Coverage Provided*, https://www.myfloridacfo.com/Division/Risk/liability/LiabilityInsuranceCoverage.htm (last visited March 4, 2021).
[11] Section 284.31, F.S.
[12] Section 284.501(1), F.S.
[13] Department of Financial Services, Division of Risk Management, *Welcome to the Division of Risk Management*, https://www.myfloridacfo.com/Division/Risk/ (last visited March 6, 2021).
[14] Section 284.02(1), F.S.
[15] Section 284.36, F.S.

for the purpose of paying losses, expenses incurred in adjustment of losses, premiums for reinsurance, risk and claims management, and operating expenses.[16, 17]

Firefighters

A "firefighter" is defined as a person who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.[18]

Benefits in Lieu of Workers Compensation Benefits

Upon a diagnosis of cancer as defined in s. 112.1816, F.S., a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under ch. 440, F.S., if the firefighter has been employed by his or her employer for at least five continuous years, has not used tobacco products for at least the preceding five years, and has not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.[19]

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.[20]

Confidentiality of the Personal Identifying Information of Sexual Harassment Victims

Under s. 119.071(2)(n), F.S., the personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, the information may be disclosed to a governmental entity when such disclosure is in the furtherance of such entity's official duties and responsibilities.

[16] Section 284.02(2), F.S.
[17] Section 284.37, F.S.
[18] *See* ss. 112.81, 112.191, 112.1816, and 633.102(9), F.S.
[19] Section 112.1816(2)
[20] *Id.*

Funeral, Cemetery, and Consumer Services

Composition and Business of the Board of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The board acts as the licensing and rulemaking authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.[21]

Currently, the board must have 10 members; one member must be the State Health Officer, or their designee, and the remaining nine members must be nominated by the Chief Financial Officer (CFO), appointed by the Governor, and confirmed by the Senate.[22] The composition of the board must be as follows:

- The State Health Officer;
- Two funeral directors who are:
  - Licensed under part III of ch. 497, F.S., as funeral directors, and
  - Associated with a funeral establishment;
- One funeral director who is:
  - Licensed under part III of ch. 497, F.S.,
  - Associated with a funeral establishment licensed under part III of ch. 497, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S., and
  - Operates an incinerator facility that is approved under ch. 403, F.S., and licensed under part IV of ch. 497, F.S.;
- Two persons whose primary occupation is associated with a licensed cemetery;
- Three consumers who:
  - Are residents of Florida;
  - Have never been licensed funeral directors or embalmers;
  - Are not connected with a cemetery or licensed cemetery company;
  - Are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition;
  - At least one of which is at least 60 years of age; and
  - At least one of which is a licensed certified public accountant; and
- One principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.

Two or more members must not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.[23] The DFS reports that the CFO often does not receive a sufficient amount of applications to fill member positions.[24] For

[21] *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S.

[22] Section 497.101(1), F.S.

[23] Section 497.101(2), F.S.

[24] *See supra* note 4.

example, the position that must be filled by a certified public accountant has remained vacant since September 2017.[25]

Board members are appointed for four-year terms, except for the State Health Officer, who serves as long as they hold office.[26] The CFO was directed to stagger the terms of members after the terms of the initial members expired[27] and this has already occurred at the initiation of the board.[28]

A quorum is necessary to conduct the business of the board. A quorum consists of six members of the board.[29] The DFS indicates that it can be difficult to obtain this number due to board vacancies, absenteeism, and necessary recusal.[30]

The DFS is required to adopt rules regarding application forms and procedures for appointment to the board.[31]

Disqualification of Licensure Applicants Licensing Background Checks

Currently, Florida law does not specifically disqualify applicants for licensure relating to funeral, cemetery, and consumer services under ch. 497, F.S., if said applicants have been found guilty of certain crimes. However, such applicants must provide certified true copies of any crime committed in any jurisdiction, within the 10 years preceding their application, in order to deem the application complete.[32] Currently, regardless of whether adjudication is entered or withheld by a court, disclosure of the following crimes is required:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;[33]
- Any other felony that was committed within the 20 years immediately preceding the application under this chapter;[34] and
- Any other misdemeanor that was committed within the five years preceding the application under this chapter.[35]

Unlicensed Practice

Chapter 497, F.S., requires individuals to maintain a license for specified death care industry practices. The DFS is authorized to issue administrative complaints against entities believed to be in violation of licensure requirements.[36] Section 497.159, F.S., additionally provides for

[25] *Id.*
[26] Section 497.101(3), F.S.
[27] *Id.*
[28] *See supra* note 4.
[29] Section 497.101(6), F.S.
[30] *See supra* note 4.
[31] *Id.*, s. 497.103(2)(c), F.S.
[32] Section 497.142(9), F.S.
[33] Section 497.142(10)(c)1., F.S.
[34] Section 97.142(10)(c)2., F.S.
[35] Section 497.142(10)(c)3., F.S.
[36] Section 497.157(2), F.S.

criminal penalties for unlicensed activities, with such activities being a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.[37]

Continuing Education Requirements

Pursuant to s. 626.2815, F.S., individuals licensed to engage in the sale of insurance or adjustment of insurance claims in Florida are required to fulfill certain continuing education requirements. Currently, licensees, except title insurance agents, are required to complete a five-hour update course every two years, specific to the license they hold.[38] Unless otherwise provided, licensees must also complete 19 hours of elective continuing education courses every two years.[39] If a licensee has been licensed for six years or more, this requirement drops to 15 hours.[40] For licensees licensed 25 years or more, and is a chartered life underwriter, is a chartered property and casualty underwriter, or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses, the elective continuing education course requirement is five hours every two years. For those individuals holding a license as a customer representative, and not a licensed life or health agent, the elective continuing education course requirement is also five hours every two years. An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a five-hour update course and a minimum of nine hours of elective continuing education courses every two years.[41]

If continuing education requirements are not met, the DFS has the authority to immediately terminate or refuse to renew the appointment of an agent or adjuster, following notification from the DFS, unless an extension or waiver has been granted.[42]

State Fire Marshal

Explosives

Chapter 552, F.S., sets forth the requirements to lawfully engage in the business of a manufacturer-distributor, or to acquire, sell, possess, store, or engage in the use of explosives in this state. The chapter's current definition of a two-component explosive requires the use of a "No. 6 blasting cap" for detonation.[43] According to the DFS, No. 6 blasting caps are now out of production and current blasting caps no longer use the same rating system.[44]

Uniform Fire Alarm Permit Application for Previously Permitted Fire Alarm Systems

Contractors are required to file a Uniform Fire Alarm Permit Application with a local law enforcement agency, and must receive the permit before installing, replacing, or repairing an

[37] Section 497.159(6), F.S.
[38] Section 626.2815(3), F.S.
[39] Section 626.2815(3)(a), F.S.
[40] Section 626.2815(3)(b), F.S.
[41] Section 626.2815(3)(e), F.S.
[42] Section 626.2815(9), F.S.
[43] Section 552.081(13), F.S.
[44] *See supra* note 4.

existing fire alarm that was previously permitted by the local enforcement agency, if the local enforcement agency requires a permit for the repair.[45]

Fire and Emergency Incident Information Reporting Program

The Florida Fire Incident Reporting System (FFIRS) is located within the Division of State Fire Marshal. The FFIRS was created by rule and is a means for fire protection agencies to report and maintain computerized records of fires and other fire department incidents in a uniform manner.[46] Annual reports are furnished to the Governor, Legislature and fire protection agencies, and upon request, the public.[47]

Established in 2005 by s. 633.115, F.S., the Fire and Emergency Incident Reporting Program included the creation of the Fire and Emergency Incident Information Technical Advisory Panel (panel) and codified FFIRS language. The FFIRS is the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).[48] The NFIRS provides system resources and an overview of the standard national reporting system used by the United States fire departments to report fires and other incidents to which they respond and to maintain records of such incidents in a uniform manner.[49] The NFIRS provides software and training at no cost to fire departments.[50]

The panel was created to advise, review and make recommendations to the State Fire Marshal. Currently, membership in the panel comprises 15 members: [51]

- Thirteen members of the Firefighters Employment, Standards, and Training Council;[52]
- One member from the Florida Forest Service, Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (fire code), which contains all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such firesafety laws and rules.[53] The State Fire Marshal adopts a new edition of the fire code every three years.[54] The 7th edition of the fire code took effect on December 31, 2020.[55] State law requires all municipalities, counties, and special districts with firesafety

[45] Section 553.7921(1)(b), F.S.
[46] Department of Financial Services, Division of State Fire Marshal, *Florida Fire and Incident Reporting System*, https://www.myfloridacfo.com/Division/SFM/FFIRS/ (last visited March 5, 2021).
[47] Section 633.136, F.S.
[48] *See supra* note 46.
[49] *Id.*
[50] *Id*.
[51] Section 633.136(2), F.S.
[52] *See* s. 633.402, F.S., for the composition of this Council.
[53] Chapter 69A-60.002(1), F.A.C.
[54] Section 633.202, F.S.
[55] State Fire Marshal of Florida, *Florida Fire Prevention Code*, available online at: https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited March 5, 2021).

responsibilities to enforce the fire code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[56]

Firesafety Inspectors

Section 633.216, F.S., requires each county, municipality, and special district that has firesafety enforcement responsibilities to employ or contract with a firesafety inspector. Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.[57] These firesafety inspections include the inspection of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with firesafety responsibilities.[58]

The CFO is designated as the "State Fire Marshal."[59] In any county, municipality, or special district that does not employ or appoint a firesafety inspector, the State Fire Marshal assumes the duties of the local county, municipality, or independent special fire control district with respect to firesafety inspections of educational property.[60]

A person who violates any provision of ch. 633, F.S., Fire Prevention and Control, any order or rules of the State Fire Marshal, or any order to cease and desist or to correct conditions, commits a misdemeanor of the second degree.[61]

It is unlawful to impersonate the State Fire Marshal or a firesafety inspector. A person who impersonates either official commits a felony of the third degree, and if the impersonation occurs during the commission of a separate felony, a person commits a felony of the first degree.[62] Section 468.629, F.S., makes it illegal for a person to influence a building code enforcement official by coercion or compensation.[63] Any person who commits such acts commits a misdemeanor of the first degree, and, if the person was previously convicted of such act, a felony of the third degree.[64]

Firefighters Employment, Standards, and Training Council (Council)

The council comprises 14 members and the members are appointed as follows:

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;

[56] Sections 633.108 and 633.208, F.S.
[57] Section 633.216(1), F.S.
[58] Section 633.102(12), F.S.
[59] Section 633.104(1), F.S.
[60] Section 633.104(7), F.S.
[61] Section 633.124(1), F.S.
[62] Section 633.122, F.S.
[63] Section 468.629(1)(f) and (g), F.S.
[64] Section 468.629(2), F.S.

- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.[65]

There are certain eligibility requirements set forth for membership. Members shall serve only as long as they continue to meet the criteria under which they were appointed or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.[66] Members are appointed for four year terms, are not eligible to serve more than two consecutive terms,[67] and serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.[68]

The council has special powers in connection with the employment and training of firefighters to recommend for adoption by the Division of State Fire Marshal: [69]

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters;
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters; and
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.

In addition, the council may make or support studies on any aspect of firefighting employment, education, and training or recruitment or may make recommendations concerning any matter within its purview.[70]

Volunteer Firefighter Employment

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018; of this total, 370,000 (33 percent) were career firefighters and 745,000 (67 percent) were volunteer firefighters.[71] At least 315 Florida fire departments utilize volunteers to sustain operations and, according to the Division of State Fire

[65] Section 633.402(1)(a), F.S.
[66] Section 633.402(1)(b), F.S.
[67] Section 633.402(2), F.S.
[68] Section 633.402(7), F.S.
[69] Section 633.402(9), F.S.
[70] Section 633.402(9)(d)-(e), F.S
[71] National Fire Prevention Association, *U.S. Fire Department Profile – 2018 Supporting Tables*, (Feb. 2020) https://www.nfpa.org//-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osFDProfileTables.pdf (last visited March 17, 2021).

Marshal, approximately 12 million Florida residents depend on volunteer firefighters to protect their communities.[72] The Firefighter Assistance Grant Program (FAGP), created in 2016 to improve the emergency response capability of fire departments reliant on volunteer firefighters, provides grant money to such fire departments to provide volunteer firefighter training and procure firefighter personal protective equipment.[73] The FAGP funds of one million dollars is only available for instructor reimbursement for skills sign-offs, personal protection equipment (PPE), supplied air respirators (SCBA), and cost share subsidy for Federal Emergency Management Agency's Assistance to Firefighters Grants Program (AFG) apparatus awards.[74] Since its inception, the FAGP has awarded 84 grants.[75, 76, 77]

Florida fire service providers are currently prohibited from employing an individual to extinguish fires, or to supervise those who do, unless the individual holds a current and valid Firefighter Certificate of Compliance.[78] Thus, fire service providers are currently prohibited from employing volunteer firefighters, who hold a Volunteer Firefighter Certificate of Completion. Volunteer firefighters can enter immediately dangerous to life and health (IDLH) environments. However, if employed by the same department prior to achieving a Firefighter Certificate of Compliance they would not be allowed to enter the IDLH environments they were authorized to enter the day before beginning career employment.[79]

False Personation

Pursuant to s. 843.08, F.S., any person who falsely assumes or pretends to be an officer of a specified type commits a felony of the third degree, a felony of the second degree when committed with another felony, and a felony in the first degree if the felony is the cause of death or personal injury of another individual.[80] A person who impersonates an officer of the DFS is subject to these criminal penalties.[81] However, there is no criminal penalty for impersonating an investigator or personnel of the DFS. According to the DFS, it employs personnel who are not officers but have access to active criminal cases and conduct criminal investigations.[82]

[72] *Id*.
[73] Section 633.135 F.S.
[74] Department of Financial Services, Division of State Fire Marshal, *FY 2019 – 2020 Florida Firefighter Assistance Grant Program*, https://www.myfloridacfo.com/division/sfm/volff/ff-grant.htm (last visited March 17, 2021).
[75] Department of Financial Services, Division of State Fire Marshal, *FY2017 Florida Firefighter Assistance Grant Award Outcomes*, https://www.myfloridacfo.com/division/sfm/VOLFF/FY2017_GrantOutcomes.pdf, (last visited March 17, 2021).
[76] Department of Financial Services, Division of State Fire Marshal, *FY2018 Florida Firefighter Assistance Grant Award Outcomes*, https://myfloridacfo.com/Division/SFM/VOLFF/FY2018_GrantOutcomes.pdf, (last visited March 17, 2021).
[77] Department of Financial Services, Division of State Fire Marshal, *FY2019 Florida Firefighter Assistance Grant Award Outcomes*, https://www.myfloridacfo.com/division/sfm/VOLFF/FY2019_GrantOutcomes.pdf (last visited March 17, 2021).
[78] Section 633.416(1)(a), F.S.
[79] *See supra* note 4; and s. 633.416(1)(a), F.S.
[80] Section 843.08, F.S., contains a list specifying which types of officers it is unlawful to impersonate. This list includes, but is not limited to, firefighters, sheriffs, officers of agencies, and school guardians.
[81] Section 843.08, F.S.
[82] *See supra* note 4.

Insurance Field Representatives and Operations

Appointment Requirements

Section 626.112(1)(a), F.S., states that a person may not be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the DFS and appointed by an appropriate appointing entity or person to represent an insurer. Section 626.371(1), F.S., requires all initial appointments be submitted to the DFS no later than 45 days after the date of appointment. Where it appears to the DFS that a formerly or currently licensed person has been, or is, actively engaged as an appointee without being appointed as required, the DFS still may issue an appointment submitted upon finding that such failure was an inadvertent error on the part of the insurer. The DFS may condition such approval on the payment of all fees and taxes that would have been due, had the person been properly appointed.

Duration of Suspension or Revocation for Title Insurance Agents

Section 626.844, F.S., authorizes the DFS to suspend or revoke the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency, upon certain specified grounds. However, an order may not suspend such license or appointment for more than one year.[83]

Eligibility for Export of Insurance Coverage and Export of Flood Insurance Policies

In general, insurance policies written in Florida must be done so by Florida authorized insurers. However, standard insurance companies authorized to do business in Florida may not be able to, or unwilling to, take on certain unusual or high risks. These types of risks could include older homes near the coast, yachts, home day-care liability, medical malpractice, and professional athletes insuring certain body parts.[84] These policies are instead written in the surplus lines market and are sold through surplus lines agents.[85] To "export" an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.[86] Section 626.916(1), F.S., requires that insurance coverage is not eligible for export unless all of certain conditions are met. These conditions include:

- The full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in Florida, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.
- The premium rate at which the coverage is exported may not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.
- The policy or contract form under which the insurance is exported may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in

[83] Section 626.8443(1), F.S.
[84] Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida's Excess and Surplus Market,* https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf (last visited March 17, 2021).
[85] *Id.*
[86] *Id;* s. 626.914(3), F.S.

actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks, subject to certain exceptions.
- Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported may provide not for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts actually and currently used by a Florida authorized insurer.
- For personal residential property risks, the retail or producing agent must provide specified notice to the insured that coverage may be available, and may be less expensive, from Citizens Property Insurance Corporation.

There is no clear language in the Florida Insurance Code that allows a surplus lines agent to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage. A provision in s. 627.715, F.S., which allowed surplus lines agents to do so, expired on July 1, 2019.

Currently, the private residential flood insurance market is a small but growing percentage of total policies written in the state. The vast majority of residential flood insurance policies are written by the National Flood Insurance Program—a federal insurance program. While Florida has the largest private residential market in the United States, only three percent of residential flood insurance policies are written by private insurers.[87]

Provision of Replacement Cost Estimator and Other Underwriting Information Relating to Real Estate Loans

According to the DFS, many lenders require consumers or their insurance agent or broker to provide, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, the replacement cost estimator or other underwriting information that is the proprietary business information of the insurer underwriting the insurance policy covering such property.[88] In some situations, lenders have used this proprietary business information of the insurers for reasons that are outside the scope of the insurance policy.

Unlicensed Bail Bond Agent Activity

Section 648.30, F.S., addresses the unlicensed activity relating to bail bond agents and temporary bail bond agents. Specifically, the section states that one may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed as provided in ch. 648, F.S. The section also prohibits one from representing himself or herself to be a bail enforcement agent, bounty hunter, or other similar title and also provides restrictions on whom may apprehend, detain, or arrest a principal on a bond. The section, however, does not provide a specific penalty for persons aiding and abetting another person violating the section.[89]

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[87] Brett Lingle and Carolyn Kousky, *Issue Brief: Florida's Private Residential Insurance Market,* Wharton School of Business at the University of Pennsylvania: Risk Management and Decision Processes Center (Sep. 2018), *available at:* https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/09/Florida-Private-Flood-Issue-Brief.pdf. (last visited March 17, 2021)
[88] *See supra* note 4.
[89] *Id.*

Public Records Law

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[90] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[91]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2) and (3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.[92] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[93] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[94]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[95] The Florida Supreme Court has interpreted the statutory definition of "public record" to include, "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[96]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

[90] FLA. CONST. art. I, s. 24(a).
[91] *Id*.
[92] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[93] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[94] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[95] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[96] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.[97] A violation of the Public Records Act may result in civil or criminal liability.[98]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[99] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[100]

General exemptions from the public records requirements are contained in the Public Records Act.[101] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[102]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[103] Custodians of records designated as "confidential and exempt" may not disclose the record, except under circumstances specifically defined by the Legislature.[104]

Open Government Sunset Review Act

The Open Government Sunset Review Act[105] (the Sunset Review Act) prescribes a legislative review process for newly created or substantially amended[106] public records or open meetings exemptions, with specified exceptions.[107] It requires the automatic repeal of each such exemption on October 2nd of the fifth year after it is created or substantially amended, unless the Legislature reenacts the exemption.[108] However, an exemption may be reviewed under the Sunset Review Act prior to the fifth year since enactment.

The Sunset Review Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is

[97] Section 119.07(1)(a), F.S.
[98] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[99] FLA. CONST. art. I, s. 24(c).
[100] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[101] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[102] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[103] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[104] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[105] Section 119.15, F.S.
[106] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[107] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[108] Section 119.15(3), F.S.

necessary.[109] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[110]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[111] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[112]

The Sunset Review Act also requires specified questions to be considered during the review process.[113] In examining an exemption, the Sunset Review of Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[114] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[115]

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's social security number, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.[116]

[109] Section 119.15(6)(b), F.S.
[110] Section 119.15(6)(b)1., F.S.
[111] Section 119.15(6)(b)2., F.S.
[112] Section 119.15(6)(b)3., F.S.
[113] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[114] *See generally* s. 119.15, F.S.
[115] Section 119.15(7), F.S.
[116] Section 119.071(4)(a) and (b), F.S.

Social Security Numbers

Social security numbers of all current and former agency personnel, which are held by an employing agency, are confidential and exempt.[117] An employing agency may only release social security numbers for the following reasons:

- It is required by state or federal law, or court order.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.[118]

In addition, there is a general exemption for social security numbers that applies to the public that makes social security numbers confidential and exempt.[119] This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.[120]

Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.[121]

Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.[122]

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency that holds the employee's information.[123] Additionally, all of these exemptions have retroactive application.[124] In order to have such exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.[125] Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.[126]

[117] Section 119.071(4)(a)1., F.S
[118] Section 119.071(4)(a), F.S.
[119] Section 119.071(5)(a)5., F.S.
[120] Section 119.071(5)(a)6.f. and g., F.S.
[121] Section 119.071(4)(b)1., F.S
[122] Section 119.071(4)(b)2., F.S.
[123] Section 119.071(4)(d)3., F.S.
[124] Section 119.071(4)(d)5., F.S.
[125] Section 119.0714(2)(f) and (3)(f), F.S.
[126] Section 119.071(4)(d)4., F.S.

Confidential and Exempt – Alleged Sexual Harassment Victim

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt.[127] Such information may be disclosed to another governmental entity in the furtherance of its official duties.[128]

Section 119.10(2)(a), F.S., provides that any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor punishable by imprisonment up to one year or a fine up to $1,000.

III. Effect of Proposed Changes:

Division of Public Assistance Fraud (Sections 1 and 27)

Section 1 amends s. 20.121(2)(f), F.S., to designate the Department of Financial Services (DFS), Division of Public Assistance Fraud (DPAF) as a criminal justice agency for the purposes of ss. 943.045-943.08, F.S. The DFS asserts that the designation allows the DPAF to continue having access to criminal justice information contained in Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) systems of criminal records when conducting criminal investigations and other law enforcement support functions.[129]

Section 26 amends s. 943.045, F.S., to include the DPAF in the definition of "criminal justice agency."

State Risk Management

Benefits in Lieu of Workers Compensation Benefits – Florida Firefighters

Section 2 amends s. 284.30, F.S., to add benefits payable to firefighters diagnosed with cancer pursuant to s. 112.1816(2), F.S., to the self-insurance coverage provided through the State Risk Management Trust Fund (trust fund).

Section 3 amends s. 284.31, F.S., to require separate accounting in the trust fund for benefits payable to firefighters who are employees of a state agency and diagnosed with cancer.

Section 4 amends s. 284.385, F.S., to require the Department of Management Services to validate and approve firefighter cancer benefits before such benefits may be disbursed from the trust fund.

Workplace Sexual Harassment

Section 5 creates s. 284.45, F.S., to define a sexual harassment victim as an individual employed with, or being considered for, employment with an entity participating in the trust fund, who becomes a victim of workplace sexual harassment within the entity. The bill prohibits individuals

[127] Section 119(2)n, F.S., and s. 24(a), Art. 1 of the State Constitution
[128] Subject to the Open Government Sunset Review Act and stands repeal on October 2, 2022 unless reviewed and saved from repeal through reenactment by the Legislature.
[129] *See supra* note 4.

working for an entity covered by the trust fund from engaging in retaliatory conduct, of any kind, toward a sexual harassment victim.

The section also prohibits the willful and knowing distribution of personal identifying information of a sexual harassment victim. Personal identifying information of a victim may not be distributed to any party other than a government entity, in furtherance of its official duties, or pursuant to a court order. Any violation results in a first degree misdemeanor, punishable as provided in s. 775.082, F.S.

Funeral, Cemetery, and Consumer Services

Composition and Business of Board of Funeral, Cemetery, and Consumer Services (Board)

Section 6 amends s. 497.101, F.S., to reduce the minimum number of nominations the Chief Financial Officer (CFO) must make for nine board member positions from three nominations to one, though the CFO may still nominate up to three persons to fill one or more vacancies. The bill also reduces from three to two the number of positions on the board that must be filled by consumers who are residents of Florida; have never been licensed funeral directors or embalmers; are not connected with a cemetery or licensed cemetery company; and are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition. The board must also now have a consumer member who is: a resident; a licensed certified public accountant (CPS) who has never been licensed as a funeral director or embalmer; is not a principal or employee of any ch. 497, F.S., licensee; and is not otherwise in control (as defined in s. 497.005, F.S.) over any ch. 497, F.S., licensee. This change essentially requires the appointment of a licensed CPA who has some knowledge of and association with, but not a controlling interest in, licensees in the death care industry.

Necessary conforming changes have also been made to properly implement the above changes. This includes revising the definition of a "quorum" for the purposes of conducting board business to constitute a simple majority of eligible members instead of six members. The bill also allows members to appear electronically and still be counted in regards to a determination of quorum.

The section also eliminates outdated statutory provisions regarding the implementation of staggered terms of board members upon the expiration of the initial terms of the board members. This staggering of terms has already been established and is no longer needed. The bill eliminates the DFS' rulemaking responsibilities concerning the application process, which the DFS asserts is unnecessary, as the Governor makes the appointments.[130]

Disqualification of Funeral, Cemetery, and Consumer Services Licensure Applicants

Section 7 of the bill creates s. 497.1411, F.S., to provide and clarify grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants under ch. 497, F.S., based on such applicant's criminal history.

[130] *Id.*

Subsection (1) defines "applicant," "felony of the first degree," "capital felony," and "financial services business."

Subsection (2) enumerates crimes that, if an applicant is found guilty of or pleads nolo contendere to, regardless of adjudication, permanently bar the applicant from licensure under ch. 497, F.S. These crimes are a first degree felony, a capital felony, a felony money laundering offense, or a felony embezzlement.

Subsection (3) provides the following disqualifying periods for other specified crimes:

- A 10-year disqualifying period for all felonies involving moral turpitude not subject to a permanent bar on licensure as specified in subsection (2); and
- A five-year disqualifying period for all other felonies, and for all misdemeanors directly related to the financial services business. The section defines "financial services business" as any financial activity regulated by the DFS, the Office of Insurance Regulation, or the Office of Financial Regulation.

These specifications are intended to provide clarity beyond the current statutory scheme, which provides no guidelines to determine whether a specific crime is considered "directly or indirectly related to or involving any aspect of the practice or business" of death care industry functions. The DFS suggests that the lack of clarity and guidance in current law has led to inconsistencies in recommendations and board rulings on applications.[131]

Subsection (4) requires the DFS to adopt rules to administer the section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules must also provide mitigating and aggravating factors, except that mitigation may not result in a disqualification period of less than five years.

Subsection (5) specifies that a disqualifying period begins upon an applicant's final release from supervision or upon completion of the applicant's criminal sentence. The subsection further prohibits the DFS from issuing a license unless all related fines, court costs and fees, and court-ordered restitutions have been paid.

Subsection (6) places the burden of proof for rehabilitation on the applicant.

Subsection (7) allows the DFS to award a license, despite a conviction, upon a grant of a pardon or restoration of civil rights.

Subsection (8) authorizes the board to grant an exemption from a criminal record related disqualification, and provides standards for mitigating factors. The subsection also clarifies that ch. 120, F.S., provides administrative remedies available to applicants for whom the board has granted or denied an exemption.

Subsection (9) clarifies that the disqualification periods provided in this section do not apply to the renewal of a license or to a new licensure application if the applicant has an active license as

[131] *Id.*

of July 1, 2021, and the applicable criminal history was considered by the board on the prior active license approval.

Licensing Background Checks

Section 8 amends s. 497.142, F.S., to require certified true copies of any crime committed in any jurisdiction in order to deem an application under ch. 497, F.S., complete, regardless of how many years have passed. The bill requires disclosure of all felonies, regardless of when committed and regardless of adjudication. It also requires disclosure of any misdemeanor directly or indirectly related to the financial services business,[132] no matter when committed.

Unlicensed Practice

Section 9 of the bill amends s. 497.157, F.S., to increase penalties for unlicensed activity under ch. 497, F.S., from a misdemeanor of the second degree (as provided in s. 497.159(6), F.S.) to a felony of the third degree. Section 9 also expands unlicensed activity to include acting, advertising, or otherwise holding oneself out to be a funeral director, embalmer, direct disposer, or preneed sales agent, unless currently licensed and appointed (as necessary) as such.

Section 10 of the bill amends s. 497.159, F.S., by making a conforming change to remove the second-degree misdemeanor penalty for unlicensed activity under ch. 497, F.S.

Explosives

Section 11 updates the definition of "two-component explosives" in s. 552.081, F.S., by removing the requirement of a "No. 6 blasting cap," and replacing it with a "detonator." According to the DFS, the No. 6 blasting cap is no longer manufactured and the statutory revision brings the section in line with current practices.[133]

Fire Alarm Permits

Section 12 amends s. 553.7921, F.S., to authorize contractors to begin repairs on existing, permitted fire alarms upon filing a Uniform Fire Alarm Permit Application but prior to receiving the permit for the repair. However, fire alarms repaired under such circumstances are not compliant until the permit is issued and the local law enforcement agency approves the repair.

Continuing Education Requirements

Section 13 amends s. 626.2815, F.S., by lowering the update course requirement to four hours for individuals licensed to solicit, sell, or adjust insurance in the state, barring title insurance agents. The update course is raised to six hours for an individual who holds a license as a customer representative, and who is not a licensed life or health agent. Licensees must complete 20 hours of elective continuing education every two years, and if a licensee has been licensed for six years or more, he or she must complete 16 hours of continuing education every two years. Lastly, individuals subject to chapter 648, F.S., relating to bail bond agents, are required to

[132] The bill defines financial services business as "any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation."
[133] *Supra* note 4.

complete a four-hour update course and a minimum of 10 hours of continuing education every two years.

The effective date of this section is January 1, 2022.

Appointments to Transact Insurance or Adjust Claims on Behalf of an Insurer or Employer

Section 14 amends s. 626.371, F.S., to indicate that all appointments, including renewal appointments, must be submitted no later than 45 days from the effective date of the appointment. The section also specifies that if the DFS determines an individual was not properly appointed and that said appointment was an inadvertent error, the appointing entity will be informed of its obligation by the DFS and must pay all associated fees and taxes within 21 days. Upon payment of said fees, the DFS may issue or authorize issuance of appointment and consider the inadvertent failure to no longer be a violation. If said fees and taxes are not paid on time, the DFS must suspend the appointing entity's authority to appoint licensees until all outstanding fees have been paid.

Title Insurance License and Appointment Suspension Period for Violations of the Florida Insurance Code

Section 15 amends s. 626.8443, F.S., to increase the maximum license suspension time for title insurance agents and agencies from one year to two years. This change is consistent with similar language related to other agent and agency types, including insurance representatives,[134] viatical settlement providers,[135] and Patient Protection and Affordable Care Act health exchange navigators.[136]

Insurance Coverage Eligibility for Export

Section 16 amends s. 626.916, F.S., to remove the requirement for personal residential property agents to notify an insured in writing, prior to exporting coverage to the surplus lines marketplace, that less expensive coverage may be available from Citizens Property Insurance Corporation.

Coercion to Provide Proprietary Underwriting Information

Section 17 amends s. 626.9551, F.S., to prohibit an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information—including the replacement cost estimator—as a condition precedent to lending money or extending credit which is to be secured by real property. The section also prohibits an insurance agent or agency from providing such information without authorization from the insurer.

[134] Section 626.641(1), F.S.
[135] Section 626.9914(2), F.S.
[136] Section 626.9957(9), F.S.

Exporting of Flood Insurance Coverage

Section 18 amends s. 627.715, F.S., to allow flood insurance coverage to be exported to an eligible surplus lines insurer without the agent complying with the requirement of s. 626.916(1)(a), F.S., to make a diligent effort to seek coverage with at least three authorized insurers.

Florida Fire Marshal – Florida Fire Prevention and Control

Fire and Emergency Incident Information Reporting Program

Section 19 amends s. 633.136, F.S., by replacing "fire protection agencies" with "fire service providers," specifies that "fire service provider" is defined as in s. 633.102, F.S., and removes a requirement that Division of State Fire Marshal define by rule the term "fire protection agency." Section 633.102(13), F.S., defines "fire services provider" as a municipality or county, the state, the Division of State Fire Marshall, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

This section also revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel (panel) to retain 15 members on the panel as currently provided in statute, but to remove requirements that the panel have one member from the Florida Forest Service and the Department of Health.

Florida Fire Prevention Code

Section 20 amends s. 633.202(18), F.S., to extend by one year to January 1, 2023, the deadline for existing high-rise buildings to comply with requirements for minimum radio strength for fire department communications. The section eliminates a requirement that existing high-rise buildings not in compliance with the requirements for minimum radio strength for fire department communications apply for appropriate permitting by December 31, 2019. The section does, however, require that such buildings complete a minimum radio strength assessment by January 1, 2022, with compliance by January 1, 2023.

The bill eliminates the requirement that existing apartment buildings apply for a permit for the required communications installation by December 31, 2022, and instead requires completion of a minimum radio strength assessment by that date.

Influencing a Firesafety Inspector

Section 21 creates s. 633.217, F.S., to prohibit influencing or attempting to influence a firesafety inspector by threatening, coercing, tricking, or offering compensation for the purpose of inducing the firesafety inspector to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Subsection (2) prohibits a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe. Section 633.124(1), F.S., provides that any person who violates any

provision of ch. 633, F.S., commits a misdemeanor of the second degree. Thus, a violation of s. 633.217, F.S., would carry such a penalty.

Firefighters Employment, Standards and Training Council

Section 22 amends s. 633.402, F.S., to revise the composition of the Firefighters Employment, Standards, and Training Council to include one individual from the Department of Health, appointed by the Surgeon General. This increases the size of the board from 14 to 15 members.

Volunteer Firefighter Employment

Section 23 amends s. 633.416, F.S., to authorize fire service providers to employ volunteer firefighters and allow them to act in volunteer firefighter capacity for up to one year under the direct supervision of an individual holding a valid firefighter certificate of compliance while they obtain career firefighter certifications. This will increase the availability of firefighters capable of entering immediately dangerous to life and health environments and protecting their communities. The DFS anticipates that this change will improve rural and small agency recruitment and retention efforts by facilitating the hiring of local candidates who are more inclined to remain in the area instead of hiring candidates from other parts of the state who are inclined to return to their home communities once gaining some experience.[137]

Aiding and Abetting Unlicensed Bail Bond Agent

Section 24 amends s. 648.30, F.S., to make it a felony of the third degree for a licensee to knowingly aid or abet a person in violating the section. Section 648.30, F.S., prohibits: acting as a bond agent or temporary bail bond agent without being qualified, licensed, and appointed as provided in ch. 648; representing oneself as a bail enforcement agent, bounty hunter, or other similar title; and apprehending, detaining, or arresting a principal on a bond unless said person is a law enforcement officer or is qualified, licensed, and appointed as provided in ch. 648 or licensed as a bail bond agent or bail bond enforcement agent (or holds an equivalent license from where the bond in question was written).

Presently, s. 777.011, F.S., includes as a "principal in the first degree" a person who aids, abets, counsels, hires, or otherwise procures a criminal office to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, appears to merely clarify or restate existing law.

False Personation

Section 25 of the bill amends s. 843.08, F.S., to expand the applicability of criminal penalties associated with false personation of an officer to apply to the impersonation of any personnel or representative of the Division of Investigative and Forensic Services.

[137] *See supra* note 4.

Reenactment

Section 27 reenacts s. 497.141, F.S., to incorporate changes made to s. 497.142, F.S., in Section 8 of the bill.

Effective Date

Section 28 provides, except as otherwise expressly provided and except for Section 28, which shall take effect upon the act becoming law, the bill has an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an indeterminate negative impact to state revenues and expenditures.

The Department of Financial Services (DFS) has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling of disabling the ability of a party to appoint licensees. The DFS

indicates these changes can be addressed during ongoing system updates and within existing resources.[138]

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than $100,000 annually.[139]

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

Section 9 of the bill amends and increases the penalty related to unlicensed activity pursuant to ch. 497, F.S., from a second degree misdemeanor to a third degree felony, and extends this penalty to impersonating a funeral director, embalmer, direct disposer, or a preneed sales agent. Section 21 of the bill creates a new criminal violation, a second degree misdemeanor, for improperly influencing a firesafety inspector or a firesafety inspector accepting an attempt at such influence. Section 25 expands false personation, which carries first, second and third degree felony penalties, to include all personnel or representatives of the Division of Investigative and Forensic Services. These changes could increase an indeterminate number of people who are subject to misdemeanor or felony penalties. The bill has a positive/negative indeterminate prison bed impact.

VI. Technical Deficiencies:

Section 5 of the bill, creating s. 284.45, F.S., prohibits individuals working for an entity covered by the State Risk Management Trust Fund from engaging in retaliatory conduct of any kind against a sexual harassment victim in subsection (1). While the provision specifies the prohibited behavior, it does not provide any punishment or other consequences for violation. Also, in proposed s. 284.45(2), F.S., a prohibition of the willful and knowing dissemination of personal identifying information of a sexual harassment victim is provided. Based on the placement of this provision in ch. 284, F.S., and the context provided by subsection (1), this provision appears to only apply to individuals working for entities covered by the State Risk Management Trust Fund, however, the subsection does not state this explicitly. Given that this provision provides for a criminal penalty, and that such provisions are strictly construed,[140] the Legislature should consider specifically defining to whom the provisions of subsection (2) apply.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.121, 284.30, 284.31, 284.385, 497.101, 497.142, 497.157, 497.159, 552.081, 553.7921, 626.2815, 626.371,

[138] *See supra* note 4.
[139] *Id.*
[140] Section 775.021(1), F.S., provides that "offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."

626.8443, 626.916, 626.9551, 627.715, 633.136, 633.202, 633.402, 633.416, 648.30, 843.08, and 943.045.

This bill creates the following sections of the Florida Statutes: 284.45, 497.1411, and 633.217.

This bill reenacts section 497.141 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 10, 2021:
The committee substitute:

- Clarifies that payments for firefighter cancer benefits are to be made to employees of state agencies;
- In regards to the disclosure of the personal identifying information of sexual harassment victims, a definition of "personal identifying information" is deleted. This deletion addresses a potential issue where this definition could have been construed as expanding an existing public record exception, thereby necessitating a separate bill;
- Clarifies that when the Department of Financial Services (DFS) determines an individual was not properly appointed and that said appointment was an inadvertent error by the insurer or employer, both back taxes and fees must be paid to have the DFS make the appointment and for the appointing entity to avoid suspension of their authority to appoint licensees;
- Clarifies and simplifies language prohibiting an insurance agent from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information as a condition precedent to extending credit secured by real estate;
- Clarifies language allowing flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Deletes a provision revising the scope of fire protection system work for persons certified as a contractors by the Division of State Fire Marshal; and
- Clarifies a provision prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Burgess

597-02693-21 20211408c1

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; amending s. 284.30, F.S.; requiring the State Risk Management Trust Fund to provide insurance for certain firefighter cancer-related benefits; making technical changes; amending s. 284.31, F.S.; requiring the Insurance Risk Management Trust Fund to provide a separate account for certain firefighter cancer-related benefits; making technical changes; amending s. 284.385, F.S.; specifying a condition that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; making technical changes; creating s. 284.45, F.S.; prohibiting individuals working for entities covered by the State Risk Management Trust Fund from engaging in retaliatory conduct against sexual harassment victims; defining the term "sexual harassment victim"; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; amending s. 497.101, F.S.; revising provisions relating to membership of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services; authorizing use of communications media technology for board member participation and determination of a quorum of the board; defining the term "communications media

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technology"; deleting a requirement for the department to adopt certain rules; making technical changes; creating s. 497.1411, F.S.; defining terms; providing for permanent disqualification of applicants for licensure under ch. 497, F.S., for certain offenses; providing for disqualifying periods for applicants for certain offenses; requiring the board to adopt rules; providing for calculation of disqualifying periods; providing conditions for licensure after completion of a disqualifying period; specifying the effect of a pardon or restoration of civil rights; providing for exemptions from disqualification if certain conditions are met; requiring an applicant for an exemption to provide certain evidence that he or she will not present a danger if licensed; granting the board the discretion to approve or deny an exemption; providing applicability; providing construction; amending s. 497.142, F.S.; revising criminal history disclosure requirements for applicants seeking licensure under ch. 497, F.S.; amending s. 497.157, F.S.; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; revising the criminal penalty for unlicensed activity; making technical changes; amending s. 497.159, F.S.; conforming a provision to changes made by the act; amending s. 552.081, F.S.;

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revising the definition of the term "two-component explosives" for the purpose of regulation by the Division of State Fire Marshal; amending s. 553.7921, F.S.; authorizing a contractor repairing certain existing fire alarm systems to begin work after filing an application for a required permit but before receiving the permit; providing construction; amending s. 626.2815, F.S.; revising continuing education requirements for certain persons licensed to solicit, sell, or adjust insurance; amending s. 626.371, F.S.; requiring submission of renewal appointments of certain insurance representatives within a certain timeframe; requiring the department to notify certain insurers or employers regarding inadvertent failures to appoint; requiring insurers and employers to pay certain fees and taxes within a certain timeframe; authorizing the department to issue appointments under certain circumstances; prohibiting the department from considering inadvertent failures to appoint to be violations under certain circumstances; requiring the department to suspend an insurer's or employer's authority to appoint licensees under certain circumstances; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; making technical changes; amending s. 626.916, F.S.; deleting a requirement for agents to advise insureds that certain coverage may be available for personal residential property risks to be eligible for export under the Surplus Lines Law;

amending s. 626.9551, F.S.; prohibiting a person from requiring an insurance agent or agency to provide replacement cost estimators or certain other proprietary business information under certain circumstances; prohibiting an insurance agent or agency from providing replacement cost estimators or certain other proprietary business information without written authorization; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 633.136, F.S.; replacing fire protection agencies in the Fire and Emergency Incident Information Reporting Program with fire service providers; revising the composition of the Fire and Emergency Incident Information System Technical Advisory Panel; defining the term "fire service provider"; amending s. 633.202, F.S.; extending a deadline for certain buildings to comply with a minimum radio signal strength requirement under the Florida Fire Prevention Code; requiring such buildings to meet certain conditions by a specified date; revising a condition that existing apartment buildings must meet by a specified date; making technical changes; creating s. 633.217, F.S.; prohibiting certain acts to influence a firesafety inspector to violate certain laws; prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept certain compensation; amending s. 633.402,

F.S.; revising the composition of the Firefighters Employment, Standards, and Training Council; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as a regular or permanent firefighter for a limited period, subject to certain restrictions; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; providing criminal penalties; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; amending s. 943.045, F.S.; revising the definition of the term "criminal justice agency" to include the investigations component of the department which investigates certain crimes; reenacting s. 497.141(5)(a), F.S., relating to licensing and general application procedures, to incorporate the amendment made to s. 497.142, F.S., in a reference thereto; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records supporting such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Section 284.30, Florida Statutes, is amended to read:

284.30 State Risk Management Trust Fund; coverages to be provided.—A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services and administered with a program of risk management, which fund is to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney ~~attorney's~~ fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency

in the defense of the suit and any appeal thereof with respect to such fees.

Section 3. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund must ~~shall~~, unless specifically excluded by the Department of Financial Services, cover all departments of the State of Florida and their employees, agents, and volunteers and must ~~shall~~ provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable to an employee of a state agency under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services, the Insurance Risk Management Trust Fund must ~~shall~~ provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter 427. Such fleet automotive liability coverage is ~~shall be~~ primary and is ~~shall be~~ subject to ~~the provisions of~~ s. 768.28 and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services.

Section 4. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—

(1) All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services for handling, except employment complaints that ~~which~~ have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services. ~~No~~ Such claims may not ~~claim shall~~ be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services in its handling of claims. The Department of Financial Services and the Department of Management Services, with the cooperation of the state attorneys and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department is responsible ~~shall have the responsibility~~ for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a settlement or judgment for any claim covered and reported under

this part may ~~shall~~ be made only from the State Risk Management Trust Fund.

(2) Benefits provided under s. 112.1816(2) may not be paid from the fund until each request for any out-of-pocket deductible, copayment, or coinsurance costs and one-time cash payout has been validated and approved by the Department of Management Services.

Section 5. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) An individual working for an entity covered by the State Risk Management Trust Fund may not engage in retaliatory conduct of any kind against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed, or being considered for employment, with an entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim, which is confidential and exempt pursuant to s. 119.071(2)(n), to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of the first degree, punishable as provided in s. 775.082.

Section 6. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must ~~shall~~ be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must ~~shall~~ be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter which ~~that~~ has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must ~~shall~~ be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board must ~~shall~~ be consumers who are residents of this ~~the~~ state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery

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company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must ~~shall~~ be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must ~~shall~~ be a principal of a monument establishment licensed under this chapter as a monument builder. One member must ~~shall~~ be the State Health Officer or her or his designee. There may ~~shall~~ not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The board shall maintain its headquarters and records

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~~of the board shall be~~ in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. The participation by a board member in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. Board members appearing at a board meeting in person as well as board members appearing through the use of communications media technology shall be counted for the determination of a quorum. As used in this subsection, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. Unless otherwise provided by law, a majority of the board members eligible to vote constitutes a quorum for the purpose of conducting its business ~~six board members shall constitute a quorum for the conduct of the board's business~~.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or~~

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~~indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 7. Section 497.1411, Florida Statutes, is created to read:

497.1411 Disqualification of applicants and licensees; penalties against licensees; rulemaking.—

(1) For purposes of this section, the term:

(a) "Applicant" means an individual applying for licensure or relicensure under this chapter, or an officer, a director, a majority owner, a partner, a manager, or another person who manages or controls an entity applying for licensure or relicensure under this chapter.

(b) "Felony of the first degree" or "capital felony" includes all felonies designated as such in this state at the time of the commission of the offense, as well as any offense in another jurisdiction which is substantially similar to an offense so designated in this state.

(c) "Financial services business" means any financial activity regulated by the department, the Office of Insurance Regulation, or the Office of Financial Regulation.

(2) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to any of the following crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

(a) A felony of the first degree.

(b) A capital felony.

(c) A felony money laundering offense.

(d) A felony embezzlement.

(3) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(a) A 10-year disqualifying period for all felonies involving moral turpitude which are not specifically included in the permanent bar from licensure contained in subsection (2).

(b) A 5-year disqualifying period for all felonies to which neither the permanent bar from licensure in subsection (2) nor the 10-year disqualifying period in paragraph (a) applies.

(c) A 5-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The board shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules must provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 5 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, a disqualifying period begins upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden

is on the applicant to demonstrate that he or she has been rehabilitated, does not pose a risk to the public, is fit and trustworthy to engage in business regulated by this chapter, and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), an applicant who has been found guilty of, or has pleaded guilty or nolo contendere to, a crime in subsection (2) or subsection (3) and who has subsequently been granted a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution, or a pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction, is not barred or disqualified from licensure under this chapter. However, such a pardon or restoration of civil rights does not require the department to award such license.

(8)(a) The board may grant an exemption from disqualification to any person disqualified from licensure under subsection (3) if:

1. The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

2. At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court for a disqualifying offense.

(b) For the board to grant an exemption under this subsection, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or

property if licensed under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

(c) The board has discretion whether to grant or deny an exemption under this subsection. The board's decision is subject to chapter 120.

(9) The disqualification periods provided in this section do not apply to the renewal of a license or to a new application for licensure if the applicant has an active license as of July 1, 2021, and the applicable criminal history was considered by the board on the prior approval of any active license held by the applicant. This subsection does not affect any criminal history disclosure requirements of this chapter.

Section 8. Subsection (9) and paragraph (c) of subsection (10) of section 497.142, Florida Statutes, are amended to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(9) If any applicant under this chapter has been~~, within the 10 years preceding the application under this chapter,~~ convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction, the application shall not be deemed complete until such time as the applicant provides such certified true copies of the court records evidencing the conviction, finding, or plea

as required by this section or~~,~~ as the licensing authority may by rule require.

(10)(c) Crimes to be disclosed are:

1. Any felony ~~or misdemeanor~~, no matter when committed~~,~~ ~~that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation~~.

2. Any misdemeanor, no matter when committed, which was directly or indirectly related to the financial services business as defined in s. 497.1411 ~~Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter~~.

3. Any other misdemeanor not already disclosed under subparagraph 2. which ~~subparagraph 1. that~~ was committed within the 5 years immediately preceding the application under this chapter.

Section 9. Present subsections (2) through (5) of section 497.157, Florida Statutes, are redesignated as subsections (4) through (7), respectively, new subsections (2) and (3) and subsection (8) are added to that section, and present subsection (3) of that section is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, an embalmer, or a direct disposer unless he or she is currently licensed by the

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department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which he or she is executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and is ~~shall be~~ effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph must ~~shall~~ be, at the election of the department, in the courts of Leon County~~,~~ or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an

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administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order will ~~shall~~ be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 11. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert components that ~~which~~, when mixed, become capable of detonation by a detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 12. Present subsection (2) of section 553.7921, Florida Statutes, is redesignated as subsection (3), a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit

Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm, if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection may not be considered compliant until the required permit is issued and the local enforcement agency approves the repair.

Section 13. Effective January 1, 2022, subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining

suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 ~~5~~ hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public

adjusters must be specifically designed for public adjusters and approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which must ~~shall~~ include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per calendar year may be approved by the department, if properly reported by the association.

Section 14. Subsections (1) and (2) of section 626.371, Florida Statutes, are amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(1) All initial and renewal appointments shall be submitted to the department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.

(2)(a) If, upon application and qualification for an initial or renewal appointment and such investigation as the department may make, ~~it appears to~~ the department determines that an individual has not been properly appointed to represent an insurer or employer, that such individual ~~who~~ was formerly licensed or is currently licensed~~, but not properly appointed to represent an insurer or employer~~ and that such individual ~~who~~ has been actively engaged or is currently actively engaged as such an appointee, ~~but without being appointed as required,~~ the department shall ~~may~~, if it finds that such failure to be appointed was an inadvertent error on the part of the insurer or employer so represented, notify the insurer or employer of its finding and of the requirement to pay all fees and taxes due pursuant to paragraph (b) within 21 days.

(b) The department may ~~nevertheless~~ issue or authorize the issuance of the appointment upon the insurer's or employer's timely payment to the department of ~~as applied for but subject~~

~~to the condition that, before the appointment is issued,~~ all fees and taxes that ~~which~~ would have been due had the applicant been properly ~~so~~ appointed during such current and prior periods, including ~~with applicable~~ fees and taxes that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 15. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension

period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 16. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 17. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require an insurance agent or agency to directly or indirectly provide the replacement cost estimator or other

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underwriting information of an insurer underwriting an insurance policy covering real property as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property when such information is the proprietary business information of an insurer as defined in s. 624.4212(1). An insurance agent or agency may not provide such information to any person without authorization from the insurer.

Section 18. Present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 19. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting

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Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a fire service provider ~~protection agency~~ from implementing its own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its

records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment, Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 20. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023 ~~2022~~. However, by January 1, 2022 ~~December 31, 2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment ~~apply for an appropriate permit~~ for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2023 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings must have completed a minimum radio strength assessment ~~are required to apply for the appropriate permit~~ for the required communications installation by December 31, 2022.

Section 21. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this

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chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and intentionally request, solicit, accept, or agree to accept compensation offered as described in paragraph (1)(b).

Section 22. Subsection (1) of section 633.402, Florida Statutes, is amended to read:

633.402 Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.—

(1) There is created within the department a Firefighters Employment, Standards, and Training Council of 15 ~~14~~ members.

(a) The members shall be appointed as follows:

1. Two fire chiefs appointed by the Florida Fire Chiefs Association.

2. Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association.

3. Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal.

4. One individual appointed by the Florida League of Cities.

5. One individual appointed by the Florida Association of Counties.

6. One individual appointed by the Florida Association of Special Districts.

7. One individual appointed by the Florida Fire Marshals'

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and Inspectors' Association.

8. One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service.

9. One individual appointed by the State Fire Marshal.

10. One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal.

11. One individual ~~The remaining member~~, ~~who shall be~~ appointed by the State Fire Marshal, who may not be a member or representative of the firefighting profession or of any local government.

12. One individual from the Department of Health, appointed by the Surgeon General.

(b) To be eligible for appointment as a member under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., subparagraph (a)8., or subparagraph (a)10., a person must have had at least 4 years' experience in the firefighting profession. Members shall serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

Section 23. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property

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or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid Firefighter Certificate of Compliance, in the same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 24. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

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(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide

prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents

of this state or provided to others by the state.

Section 27. For the purpose of incorporating the amendment made by this act to section 497.142, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section 497.141, Florida Statutes, is reenacted to read:

497.141 Licensing; general application procedures.—

(5)(a) The licensing authority may not issue, and effective July 1, 2011, may not renew, a license under this chapter to an applicant that has a criminal record required to be disclosed under s. 497.142(10) unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public. A licensee who previously disclosed her or his criminal record upon initial application or renewal of her or his license must disclose only a criminal offense for which the licensee was convicted or entered a plea of guilty or nolo contendere since the most recent renewal of her or his license or, if the license has not been renewed, since the licensee's initial application.

Section 28. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #1408**, relating to Department of Financial Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

1408
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Department of Financial Services

Name Wayne "Bernie" Bernoska

Job Title President

Address 343 W. Madison Street
Street

Phone 321-231-9116

Tallahassee — *City* | Florida — *State* | 32301 — *Zip*

Email bernie@fpfp.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1448
INTRODUCER:	Appropriation Committee; Governmental Oversight and Accountability Committee; and Senator Jones
SUBJECT:	Information Technology Procurement
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1448 expands the powers, duties, and functions of the Florida Digital Service (FDS).

The bill requires the FDS to establish technical standards to ensure that state agencies information technology (IT) projects comply with the enterprise architecture.

The bill decreases the cost threshold that triggers the FDS oversight of cabinet agency IT projects from $25 million to $20 million. It also removes the requirement that a cabinet agency IT project impact one or more other agencies before triggering the FDS project oversight.

The bill requires the FDS to include in its IT-related policies a requirement that IT commodities and services purchased by the state meet the National Institute of Standards and Technology Cybersecurity Framework.

For an IT project where project oversight is required, the FDS must include in its IT related policies a requirement that independent verification and validation (IV&V) be employed throughout the project lifecycle with the primary objective of IV&V being to provide an objective assessment of products and processes. Entities providing IV&V may not have technical, managerial, or financial interest and may not have responsibility for, or participate in, any other aspect of the project.

For IT state term contracts, the bill requires the Secretary of Management Services and the state chief information officer to certify in writing when a contract for IT commodities, consultant services, or staff augmentation contractual services should exceed 48 months because it is in the best interest of the state.

For state agency IT projects totaling $10 million or more, a state agency must provide written notice to the FDS of any planned procurements. For these IT projects, the FDS must participate in the development of specifications and recommend modification of any planned procurements to ensure it complies with the enterprise architecture, and must participate in post-award contract monitoring.

The bill requires an agency to issue a request for quote to all vendors approved to provide IT commodities, consultant services, or staff augmentation contractual services for a state term contract with 25 approved vendors or fewer. For any state term contract with more than 25 vendors, an agency must issue a request for quote to at least 25 of the vendors approved to provide such commodity or contractual service.

Beginning October 1, 2021, and annually thereafter, the Department of Management Services (DMS) must prequalify firms and individuals to provide IT staff augmentation contractual services on a state term contract.

The bill will have an indeterminate fiscal impact on state government expenditures. The FDS may incur additional workload increases and associated costs as it undertakes new contract monitoring responsibilities for state agency IT projects in excess of $10 million. The DMS may experience additional workload and associated costs in prequalifying firms and individuals to provide staff augmentation contractual services on a state term contract.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida Digital Service

Section 282.0051, F.S., creates the Florida Digital Service (FDS) within the Department of Management Services (DMS) to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy[1]. The FDS partners with all state agencies to deliver government services through design and technology.

The FDS is responsible for developing an enterprise architecture, project management and oversight standards, and technology policy for the management of the state's information technology (IT) [2] resources. The enterprise architecture must acknowledge the unique needs of

[1] Section 282.0051(1), F.S.

[2] Section 282.0041(1), F.S., defines "information technology" to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

entities within the enterprise through development, support the cloud-first policy, and address how IT infrastructure may be modernized.[3] The project management and oversight standards established by the FDS must be observed by state agencies implementing IT projects.[4]

The DMS, through the FDS, has the authority to perform project oversight on all state agency IT projects that have a total project cost of $10 million or more and funded in the General Appropriations Act or any other law.[5] The FDS is also responsible for providing project oversight on any IT project of the Department of Financial Services (DFS), the Department of Legal Affairs (DLA), and the Department of Agriculture and Consumer Services (DACS), which has a total project cost of $25 million or more and which impacts other state agencies. The DMS must report to, on a quarterly basis, the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives if it identifies any IT projects as high-risk.[6]

The Secretary of Management Services must designate a state chief information officer, who is responsible for administering the FDS. The chief information officer, prior to being appointed, must have at least five years of experience in the development of IT strategic planning and development or information technology policy, and, preferably, have leadership-level experience in the design, development, and deployment of interoperable software and data solutions.[7] The state chief information officer, in consultation with the Secretary of Management Services, is responsible for designating a state chief data officer. The state chief data officer must be a proven and effective administrator who must have significant and substantive experience in data management, data governance, interoperability, and security.[8]

Cloud-First Policy in State Agencies

The Legislature finds that each state agency should adopt a cloud-first policy that first considers cloud-computing solutions in its technology sourcing strategy for technology initiatives or upgrades. In the procurement process, state agencies should show a preference for cloud-computing solutions that minimize or do not use state data center infrastructure. Further, each state agency should adopt formal procedures for the evaluation of cloud-computing options for existing applications, and develop a strategic plan to address its inventory of applications located at the state data center.[9]

State Term Contracts and Agreements

The Division of State Purchasing within the DMS procures state contracts and agreements for commodities and services that are frequently bought together.[10] A state term contract is a term

[3] Section 282.0051(1)(b)1-3., F.S.
[4] Section 282.0051(1)(c), F.S.
[5] Section 282.0051(1)(d), F.S.
[6] *Id.*
[7] Sections 282.0051(2)(a), F.S.
[8] Sections 282.0051(2)(b), F.S.
[9] Section 282.206(1), F.S.
[10] The Department of Management Services, *State Contracts and Agreements, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements, (last visited Apr. 7, 2021)

contract that is competitively procured and is used by agencies and eligible users.[11] Each agency agreement is required to specify the scope of work that establishes all tasks that the contractor is required to perform, and to divide the contract into quantifiable, measureable, and verifiable units of deliverables. Agencies and eligible users[12] may issue a request for quote (RFQ) to obtain written pricing or services information from a state term contract vendor for commodities or contractual services.[13] The purpose of a RFQ is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available.[14]

If the DMS issues a competitive solicitation for a state term contract for IT commodities, consultant services, or staff augmentation contractual services, the FDS must participate in such competitive solicitations. The state term contract may not exceed 48 months, unless the Secretary of Management Services, and the state chief information officer certify to the Executive Office of the Governor that a longer contract term is in the best interest of the state.[15]

Disqualified Vendors List

The DMS maintains a vendor list based on the vendor registration process in s. 287.042, F.S., and Rule 60A-1.006, F.A.C. The DMS is authorized to remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract.[16] The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;[17]
- Convicted Vendor List;[18]
- Discriminatory Vendor List;[19]
- Scrutinized List of Prohibited Companies;[20] and
- Vendor Complaint List.[21]

National Institute of Standards and Technology

The National Institute of Standards and Technology (NIST) was founded in 1901 and is part of the U.S. Department of Commerce.[22] The NIST's cybersecurity programs seek to enable greater development and application of practical, innovative security technologies and methodologies in

[11] Section 287.012(28), F.S., defines a "state term contract" to mean a term contract that is competitively procured by the department pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.
[12] Section 287.012(11), F.S. defines an "eligible user" as any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system.
[13] Section 287.056, F.S.
[14] *Id.*
[15] Section 287.0591, F.S.
[16] Section 287.042(1)(b), F.S.
[17] Fla. Admin. Code R. 60A-1.006(2), (vendors that have been removed for failing to fulfill any of its duties specified in a State contract).
[18] Section 287.133, F.S.
[19] Section 287.134(1)(b), F.S.
[20] Section 287.135, F.S.
[21] Department of Management Services, *Vendor Complaint List, available at* https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list, (last visited Mar. 18, 2021)
[22] Nist.gov, *About NIST*, available at https://www.nist.gov/about-nist (last visited Apr. 7, 2021).

an attempt to enhance the country's ability to address current and future computer and information security challenges.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 282.0051, F.S., to expand the powers, duties, and functions of the Florida Digital Service. In some instances, these expanded powers shift the FDS from providing enterprise-wide IT governance to providing additional daily operational input and oversight over agency IT projects. This section requires the FDS to establish technical standards to ensure that state agencies IT projects comply with the enterprise architecture.

This section decreases the total project costs threshold for which the FDS must perform project oversight from $25 million or more to $20 million or more for cabinet agency IT projects. The bill removes the requirement that the IT project must impact one or more agencies in order for FDS project oversight to be triggered on cabinet agency IT projects. Consequently, the FDS will have increased oversight over cabinet agency IT projects which meet this new threshold.

The bill provides that the IT related policies established by the FDS for all IT contracts must include two additional requirements. First, the FDS must include in its IT related policies a requirement that IT commodities and services purchased by the state meet the National Institute of Standards and Technology Cybersecurity Framework. Second, for an IT project where project oversight is required, the FDS must include in its IT related policies a requirement that IV&V be employed throughout the project lifecycle with the primary objective of IV&V being to provide an objective assessment of products and processes throughout the project lifecycle. An entity providing IV&V may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

This section requires a state agency to provide the FDS with written notice of any planned procurement relating to an IT project having a total project cost of $10 million or more. The FDS must participate in the development of specifications and recommend modifications to any planned procurement by state agencies so that the procurement complies with the enterprise architecture. Further, the FDS is required to participate in the post-award contract monitoring for IT projects.

Section 2 amends s. 287.0591, F.S. to delete obsolete language relating to information technology.

This section clarifies that for state term contracts, the Secretary of Management Services and the state chief information officer must certify in writing to the Executive Office of the Governor that a contract longer than 48 months for IT commodities, consultant services, or staff augmentation contractual services is in the best interest of this state.

This section requires an agency issuing a RFQ to purchase IT commodities, consultant services, or staff augmentation contractual services, to issue a RFQ to all vendors approved to provide such commodities or services for any state term contract with 25 approved vendors or fewer. For

[23] *Id.*

any contract with more than 25 approved vendors, the agency must issue a RFQ to at least 25 of the approved vendors. Use of a RFQ does not constitute a decision or intended decision that is subject to protest under s. 120.57(3), F.S.

This section provides that beginning October 1, 2021, and annually thereafter, the DMS must prequalify firms and individuals to provide staff augmentation contractual services on a state term contract. To prequalify a firm or an individual, the DMS must consider the capability, experience, and past performance record of the firm or individual for staff augmentation contractual services. Once a firm or individual has been prequalified, it may respond to RFQs from an agency to provide contractual services. Individuals or firms placed on the convicted vendors list, discriminatory vendor list, or removed from the source of supply are not eligible for a state term contract.

Section 3 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have an indeterminate negative fiscal impact on state government expenditures related to additional workload for:

- A potential increase in the number of vendors responding to RFQs for IT commodities, consultant services, or staff augmentation contractual services;
- An increase in project oversight over cabinet agencies' IT projects meeting the decreased cost threshold; and
- Requiring post-award contract monitoring of IT projects that have a total project cost of $10 million or more.

The DMS may experience an insignificant fiscal impact in prequalifying firms and individuals to provide staff augmentation contractual services on a state term contract.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 282.0051 and 287.0591.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriation on April 15, 2021:
The committee substitute revises the requirements related to RFQs for IT commodities and contractual services available on a state term contract. The CS reduces the number of RFQs an agency must issue from 100 approved vendors to all approved vendors for any contract with 25 or fewer approved vendors. If there are more than 25 approved vendors, the CS requires agencies to issue a RFQ to at least 25 approved vendors on the state term contract.

CS by Governmental Oversight and Accountability on March 24, 2021:
The CS makes the following revisions to the underlying bill:

- The total number of vendors that an agency must issue a request for quotes on a contract for IT commodities or contractual services changes from all approved vendors to at least 100 approved vendors.
- The total project cost for the Florida Digital Service to be involved in the procurement, development, and post-award contract monitoring of IT projects is increased from $5 million to $10 million.

The CS adds the following issues that were not addressed in the underlying bill:

- Requires the FDS to establish an IT policy that requires any contract for IT commodities or services to meet the National Institute of Standards and Technology Cybersecurity Framework.
- Requires the FDS to establish an IT policy that requires certain IT projects employ an independent verification and validation throughout an IT project's lifecycle.

The CS removed the following provisions that were included in the underlying bill:

- The Florida Digital Service must participate in the formation and negotiation of a contract for an IT project having a total cost of more than $5 million.
- The total project cost threshold that triggers Florida Digital Service oversight for all state agency IT project is reduced from $10 million to $5 million.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

567488

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2021	.	
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	.	
	.	

The Committee on Appropriations (Jones) recommended the following:

Senate Amendment

Delete lines 173 - 177
and insert:
contract, for any contract with 25 approved vendors or fewer, the agency must issue a request for quote to all vendors approved to provide such commodity or service. For any contract with more than 25 approved vendors, the agency must issue a request for quote to at least 25 of the vendors approved to provide such commodity

By the Committee on Governmental Oversight and Accountability; and Senator Jones

585-03335-21 20211448c1

A bill to be entitled

An act relating to information technology procurement; amending s. 282.0051, F.S.; requiring the Department of Management Services, through the Florida Digital Service, to establish certain project management and oversight standards for state agency compliance; requiring the department to perform project oversight on information technology projects that have total project costs of a certain amount or more; requiring the information technology policy for certain state contracts established by the Florida Digital Service to include certain requirements for certain contracts and information technology projects; providing requirements for information technology projects that have a total project cost over a certain amount; amending s. 287.0591, F.S.; removing obsolete language; authorizing the department to execute certain contracts if the Secretary of Management Services and the state chief information officer certify certain information in writing; requiring an agency to issue a request for quote to certain vendors approved to provide certain commodities or services in certain circumstances; requiring the department to prequalify firms and individuals to provide certain services on a state term contract by a certain date; requiring the department to consider certain information in order to prequalify a firm or an individual; providing for the disqualification of a firm or an individual from state term contract

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03335-21 20211448c1

eligibility; authorizing a prequalified firm or individual to respond to certain requests for quotes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (c), (n), and (q) of subsection (1) and subsection (4) of section 282.0051, Florida Statutes, are amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service has been created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(c) Establish project management and oversight standards with which state agencies must comply when implementing information technology projects. The department, acting through the Florida Digital Service, shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. Performance measurements and metrics that objectively reflect the status of an information technology project based on

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a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an information technology project.

3. Reporting requirements, including requirements designed to alert all defined stakeholders that an information technology project has exceeded acceptable variances defined and documented in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology project complies with the enterprise architecture.

(n)1. Notwithstanding any other law, provide project oversight on any information technology project of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $20 ~~$25~~ million or more ~~and which impacts one or more other agencies~~. Such information technology projects must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the department, acting through the Florida Digital Service.

2. When performing the project oversight function specified in subparagraph 1., report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department, acting through the Florida Digital Service, identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk

assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(q)1. Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. Identification of the information technology product and service categories to be included in state term contracts.

b. Requirements to be included in solicitations for state term contracts.

c. Evaluation criteria for the award of information technology-related state term contracts.

d. The term of each information technology-related state term contract.

e. The maximum number of vendors authorized on each state term contract.

f. At a minimum, a requirement that any contract for information technology commodities or services meet the National Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project with oversight required pursuant to paragraph (d) or paragraph (n), a requirement that independent verification and validation be employed throughout the project lifecycle with the primary objective of independent verification and validation to provide an objective assessment of products and processes. An entity providing independent verification and validation may not have a

technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

2. Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. Answer vendor questions on information technology-related state term contract solicitations.

4. Ensure that the information technology policy established pursuant to subparagraph 1. is included in all solicitations and contracts that are administratively executed by the department.

(4) For information technology projects that have a total project cost of over $10 million ~~Upon the adoption of the enterprise architecture standards in rule, the department, acting through the Florida Digital Service, may develop a process to~~:

(a) State agencies must provide the Florida Digital Service with ~~Receive~~ written notice ~~from the entities within the enterprise~~ of any planned procurement of an information technology project ~~that is subject to enterprise architecture standards~~.

(b) The Florida Digital Service must participate in the development of specifications and recommend modifications to any planned procurement of an information technology project by state agencies so that the procurement complies with the enterprise architecture.

(c) The Florida Digital Service must participate in post-award contract monitoring.

Section 2. Section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(1) ~~Beginning July 1, 2014,~~ Any competitive solicitation issued by the department for a state term contract for information technology commodities must include a term that does not exceed 48 months.

(2) ~~Beginning September 1, 2015,~~ Any competitive solicitation issued by the department for a state term contract for information technology consultant services or information technology staff augmentation contractual services must include a term that does not exceed 48 months.

(3) The department may execute a state term contract for information technology commodities, consultant services, or staff augmentation contractual services that exceeds the 48-month requirement if the Secretary of Management Services and the state chief information officer certify in writing to the Executive Office of the Governor that a longer contract term is in the best interest of the state.

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service within the department shall participate in such solicitations.

(5) If an agency issues a request for quote to purchase information technology commodities, consultant services, or staff augmentation contractual services from the state term contract, for any contract with less than 100 vendors, the agency must issue a request for quote to all vendors approved to

provide such commodities or services. For any contract with more than 100 vendors, the agency must issue a request for quote to at least 100 of the vendors approved to provide such commodity or contractual service. Use of a request for quote does not constitute a decision or intended decision that is subject to protest under s. 120.57(3).

(6) Beginning October 1, 2021, and each October 1 thereafter, the department shall prequalify firms and individuals to provide information technology staff augmentation contractual services on a state term contract. In order to prequalify a firm or an individual for participation on the state term contract, the department must consider, at a minimum, the capability, experience, and past performance record of the firm or individual. A firm or an individual removed from the source of supply pursuant to s. 287.042(1)(b) or placed on a disqualified vendor list pursuant to s. 287.133 or s. 287.134 is immediately disqualified from state term contract eligibility. Once a firm or an individual has been prequalified to provide information technology staff augmentation contractual services on a state term contract, the firm or individual may respond to requests for quotes from an agency to provide such services.

Section 3. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

Senator Shevrin D. “Shev” Jones
214 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

To: Chair Kelli Stargel
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill 1448**, relating to information technology procurement, be placed on the:

☐ Committee agenda at your earliest possible convenience.

☒ Next committee agenda.

Senator Shevrin Jones
Florida Senate, District 35

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1450
INTRODUCER:	Senator Rodriguez
SUBJECT:	Civic Education Curriculum
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 1450 requires the Florida Department of Education (DOE) to develop or approve an integrated civic education curriculum for public school students in kindergarten through grade 12. The bill provides requirements for the civic education curriculum to aid in students' development of civic responsibility and knowledge.

The bill also establishes the "Portraits in Patriotism Act," which integrates into the civics education curriculum personal stories of diverse individuals who demonstrate civic-minded qualities, including first-person accounts of victims of other nations' governing philosophies who can compare those philosophies with the philosophies of the United States.

The bill provides that the United States Government course that is required to earn a standard high school diploma include a comparative discussion of political ideologies that conflict with the principles of freedom and democracy in the nation's founding principles.

The DOE may incur minimal costs associated with developing the civic education curriculum and the curation of oral history resources.

The bill has an effective date of July 1, 2021.

II. Present Situation:

The priorities of Florida's K-20 education system include civic literacy and to prepare students to become civically engaged and knowledgeable adults who positively contribute to their communities.[1]

[1] Section 1000.03(5)(c), F.S.

Instruction in Patriotism

Florida law requires each district school board to provide instruction on the history, significance, and principles of the Declaration of Independence and the Constitution of the United States, flag education, and civil government.[2] District school boards must also provide instruction on the contributions of African Americans, Hispanics, and women to the United States.[3]

District school boards are required to provide a character-development program for students in kindergarten through grade 12. Each district school board must develop or adopt a curriculum for its K-12 character-development program and submit it to the Florida Department of Education (DOE) for approval. The character development curriculum must "stress the qualities of patriotism; responsibility; citizenship; kindness; respect for authority, life, liberty, and personal property; honesty; charity; self-control; racial, ethnic, and religious tolerance; and cooperation."[4]

To encourage patriotism, district school boards are required to provide instruction on the sacrifices made by veterans and Medal of Honor recipients while serving the country and protecting democratic values worldwide.[5] A district school board may also adopt rules requiring patriotic programs in schools that encourage respect for the government of the United States and its national anthem and flag.[6] Teachers or administrators in the schools may read or post historic material such as the Constitution of the United States, the Bill of Rights, and other foundational materials.[7] Public schools are encouraged to coordinate instruction relating to the nation's founding fathers with "American Founders' Month" in September.[8]

Instruction in Civics

Currently, Florida's Next Generation Sunshine State Standards for social studies include civics and government content in kindergarten through grade 12.[9] A student must successfully complete three middle school or higher courses in social studies in order to be promoted to high school. One of the three courses must be a civics education course that includes the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches; and the meaning and significance of documents such as the Articles of Confederation, Declaration of Independence, and the Constitution of the United States.[10]

At the high school level, 24 credits are required for a standard high school diploma.[11] Three credits must be in social studies, including one credit each in United States History and World

[2] Section 1003.42(2)(a)-(e), F.S.
[3] Section 1003.42(2)(h) and (p)-(q), F.S.
[4] Section 1003.42(2)(s), F.S.
[5] Section 1003.42(2)(t), F.S.
[6] Section 1003.44(1), F.S.
[7] Section 1003.44(2), F.S.
[8] Sections 1003.44(3), F.S. and 683.1455, F.S.
[9] *See* CPALMS, *Browse and Search Standards*, http://www.cpalms.org/Public/search/Standard (last visited Mar. 4, 2021) (providing the Next Generation Sunshine State Standards for each subject area, by grade level).
[10] Section 1003.4156(1)(c), F.S.
[11] Section 1003.4282(1)(a), F.S.

History; one-half credit in economics; and one-half credit in United States Government.[12] Course standards for United States Government include evaluating and defending positions on the founding ideals and principles of American government, explaining how nations are governed differently, and comparing indicators of democratization in other countries.[13]

Students in the middle grades civics course and the high school United States History course must take an end-of-course assessment[14] that constitutes 30 percent of the student's final course grade.[15]

Review of Civic Education

To further address civic education in Florida, Governor DeSantis issued Executive Order 19-32 in January 2019, directing the Commissioner of Education (commissioner) to review Florida's K-12 academic standards and identify opportunities to prepare high school graduates to be knowledgeable citizens, particularly in the principles of the United States Constitution.[16]

Additionally, in 2019, the Legislature established a requirement for the commissioner, in consultation with specified organizations and stakeholders, to review the state-approved middle grades civics education course instructional materials and the test specifications for the statewide, standardized civics end-of-course assessment.[17] Recommendations for improvements to the materials and test specifications were provided to the Governor and Legislature on December 31, 2019.[18]

The DOE began a review of the statewide civic education course standards on January 1, 2020. The State Board of Education is expected to adopt revisions to standards by the summer of 2021, and the approval of new course descriptions, with revised standards, is expected by the fall.[19]

III. Effect of Proposed Changes:

The bill modifies s. 1003.4282, F.S., to revise the Next Generation Sunshine State Standards social studies credit requirement for high school graduation. The bill requires instruction in United States Government to include a comparative discussion of political ideologies, such as communism and totalitarianism, that conflict with the principles of freedom and democracy essential to the founding principles of the United States.

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[12] Section 1003.4282(3)(d), F.S.
[13] *See* CPALMS, *United States Government Course Standards*, https://www.cpalms.org/Public/PreviewCourse/Preview/633 (last visited Mar. 4, 2021).
[14] Section 1008.22(3)(b)1., F.S.
[15] Sections 1003.4156(1)(c), F.S. and 1003.4282(3)(d), F.S.
[16] Office of the Governor, Executive Order Number 19-32, Jan. 31, 2019 (Commitment to Eliminating Common Core, Ensuring High-Quality Academic Standards and Raising the Bar for Civic Literacy).
[17] Chapter 19-150, L.O.F.; Section 1003.4156(1)(c), F.S. *See also* Florida Department of Education, *Civics Review*, http://www.fldoe.org/civicsreview/ (last visited Mar. 4, 2021).
[18] Memorandum re Committee Substitute for (CS/HB) 807- Civics Education Report (Dec. 31, 2019), *available at* https://www.fldoe.org/core/fileparse.php/7749/urlt/HB807Report.pdf (last visited Mar. 4, 2021).
[19] *Id. See also* Florida Department of Education, Civics Review, http://www.fldoe.org/civicsreview/ (last visited Mar. 4, 2021).

To assist in preparing students to be civically responsible and knowledgeable adults, the bill adds to s. 1003.44, F.S., to require the Department of Education (DOE) to develop or approve an integrated civic education curriculum for students in kindergarten through grade 12. District school boards and charter schools must incorporate the curriculum as part of students' regular school work. The DOE must approve integrated civic education curricula submitted by district school boards and charter schools that assist students in developing:

- An understanding of their rights and responsibilities as residents of Florida and of the founding principles of the United States as described in ss. 1003.42(2)(a)-(c), F.S.[20]
- A sense of civic pride and desire to participate regularly in government.
- An understanding of the process for effectively advocating before government bodies and officials.
- An understanding of the civic-minded expectations, developed by the State Board of Education, of an upright and desirable citizenry that recognizes and accepts responsibility for preserving and defending the blessings of liberty inherited from prior generations and secured by the United States Constitution.

The bill also requires the DOE to curate oral history resources for use with the civic education curriculum. Designated as the "Portraits in Patriotism Act," the bill provides that these resources will be based on the personal stories of diverse individuals who demonstrate civic-minded qualities. The stories may include first-person accounts of victims of other nations' governing philosophies who can compare those philosophies with the philosophies of the United States.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[20] Sections 1003.42(a)-(c), F.S. require district school boards to provide instruction on the history and content of the Declaration of Independence, the meaning and significance of the United States Constitution and its amendments, and the arguments supporting a republican form of government as advocated in the Federalist Papers.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOE may incur minimal costs associated with developing the civic education curriculum and the curation of oral history resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.4282 and 1003.44.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Rodriguez

39-01366A-21 20211450__

A bill to be entitled

An act relating to civic education curriculum; amending s. 1003.4282, F.S.; revising the social studies high school graduation credit requirement; amending s. 1003.44, F.S.; requiring the Department of Education to develop or approve an integrated civic education curriculum that meets certain requirements; requiring the department to curate oral history resources to be used along with such curriculum; providing a short title; requiring the department to approve the civic education curricula submitted by school districts and charter schools; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (3) of section 1003.4282, Florida Statutes, is amended to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(d) *Three credits in social studies.*—A student must earn one credit in United States History; one credit in World History; one-half credit in economics; and one-half credit in United States Government, which must include a comparative discussion of political ideologies, such as communism and totalitarianism, that conflict with the principles of freedom and democracy essential to the founding principles of the United States. The United States History EOC assessment constitutes 30

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percent of the student's final course grade.

Section 2. Subsection (6) is added to section 1003.44, Florida Statutes, to read:

1003.44 Patriotic programs; rules.—

(6) To help families, civic institutions, local communities, district school boards, and charter schools prepare students to be civically responsible and knowledgeable adults, the Department of Education shall:

(a) Develop or approve an integrated civic education curriculum that school districts and charter schools must incorporate as part of regular school work in kindergarten through grade 12. The civic education curriculum must assist students in developing:

1. An understanding of their shared rights and responsibilities as residents of the state and of the founding principles of the United States as described in s. 1003.42(2)(a)-(c).

2. A sense of civic pride and desire to participate regularly with government at the local, state, and federal levels.

3. An understanding of the process for effectively advocating before government bodies and officials.

4. An understanding of the civic-minded expectations, developed by the State Board of Education, of an upright and desirable citizenry that recognizes and accepts responsibility for preserving and defending the blessings of liberty inherited from prior generations and secured by the United States Constitution.

(b) Curate oral history resources to be used along with the

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civic education curriculum which provide portraits in patriotism based on the personal stories of diverse individuals who demonstrate civic-minded qualities, including first-person accounts of victims of other nations' governing philosophies who can compare those philosophies with those of the United States. This paragraph may be cited as the "Portraits in Patriotism Act."

(c) Approve integrated civic education curricula submitted by school districts and charter schools that meet the requirements of this subsection.

Section 3. This act shall take effect July 1, 2021.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 22, 2021

I respectfully request that **Senate Bill #1450**, relating to Civic Education Curriculum, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1470
INTRODUCER:	Senator Boyd
SUBJECT:	Florida Life and Health Insurance Guaranty Association
DATE:	April 13, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Favorable**
2.	Sanders	Betta	AEG	**Recommend: Favorable**
3.	Sanders	Sadberry	AP	**Favorable**

I. Summary:

SB 1470 makes changes to conform to the Life and Health Insurance Guaranty Association Model Act. An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida.

The bill:

- Adds a definition for the term "Moody's Corporate Bond Yield Average."
- Amends the definition of "person" to include "limited liability company" and "governmental body or entity."
- Clarifies that in dealing with an impaired domestic insurer, the FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that for purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.
- Provides that the FLAHIGA may recover payment of improper claims.
- Authorizes the FLAHIGA to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA's general administrative expenses, removes the cap of $250, permits the assessments to be made on a pro rata basis, and allows the FLAHIGA's board to credit the assessments against future assessments related to insurer insolvencies.

- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Requires the FLAHIGA to establish a procedure for removing a member insurer board member if that member insurer becomes impaired or insolvent and establish policies and procedures to address conflicts of interest.

The bill does not impact state revenues or state expenditures.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.[1] The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Federal law provides that insurance companies may not file for bankruptcy.[2] Instead, the state through the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating an insurer.[3] If an insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Generally, once an insurance company is liquidated, an insurance guaranty association becomes liable for the policy or contract obligations of the liquidated insurance company. Insurance guaranty funds are designed to protect policyholders of liquidated insurers from financial losses and delays in claim payments, up to limits provided by law. The Florida Legislature has created five guaranty funds.[4]

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).[5] The association services covered policies and contracts,

[1] Section 20.121(3), F.S.
[2] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.
[3] Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.
[4] See parts II-V of ch. 631, F.S. and s. 440.385, F.S. (The Florida Insurance Guaranty Association, Florida Life and Health Insurance Guaranty Association, Florida Health Maintenance Organization Consumer Assistance Plan, Florida Workers' Compensation Insurance Guaranty Association, and the Florida Self-Insurers Guaranty Association, respectively.)
[5] In 1979, the Florida Legislature enacted provisions of the National Association of Insurance Commissioners' *Life and Health Insurance Guaranty Association Model Act*,[5] which created FLAHIGA. Ch. 79-189, L.O.F. The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC

collects premiums, and pays valid claims.[6] All insurers authorized to write life insurance policies, health insurance policies, supplemental contracts, and annuity contracts (with exceptions) in Florida are required, as a condition of doing business in this state, to be member insurers of the association.[7] Currently, the association does not provide coverage for or assess health maintenance organizations.[8]

A policy must meet coverage requirements, and association payments are limited for any one person as follows:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $500,000 per insured life; before that date $300,000 per insured life (took effect January 1, 2020).
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.[9]

Additionally, the association will only cover a policy or contract to the extent that:

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield (averaged for that same four-year period) minus two percentage points; and
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.[10]

The Florida Life and Health Insurance Act does not currently define Moody's Corporate Bond Yield Average and long-term care insurers are not subject to the interest rate cap.[11]

Section 631.713(3), F.S., excludes all of the following from coverage by the association:

- Any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer.
- Any portion or part of any policy or contract under which the risk is borne by the policyholder.
- Any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued.
- Fraternal benefit society products.
- Health maintenance insurance.
- Dental service plan insurance.
- Pharmaceutical service plan insurance.

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coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.

[6] See the association's website available at https://www.flahiga.org/About (last viewed Mar. 17, 2021).

[7] Sections 631.713 and 631.715, F.S.

[8] Section 631.713(3)(e), F.S.

[9] Section 631.717(12), F.S., and FLAHIGA, *Frequently Asked Questions*, available at https://www.flahiga.org/FAQ (last viewed Mar. 17, 2021).

[10] Section 631.713(2)(n), F.S.

[11] *Id*.

- Optometric service plan insurance.
- Ambulance service association insurance.
- Preneed funeral merchandise or service contract insurance.
- Prepaid health clinic insurance.
- Certain federal employees group policies.
- Any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

Board of Directors

The board of directors of the association must be composed of not fewer than nine but not more than eleven member insurers.[12] At least one member of the board must be a domestic insurer.[13] The member insurers elect the members of the board, and the members of the board are subject to the approval of the DFS. In approving or appointing members to the board the DFS must consider whether all member insurers are represented fairly.[14] The members of board have the authority to fill a board vacancy; however, there is no process in law for removing a member of the board when the insurer becomes impaired or insolvent.

Assessments

The association has three operating accounts for purposes of administration and assessments: health insurance, life insurance, and annuity.

The association may impose two classes of assessments: Class A for administrative costs and general expenses and Class B to carry out the powers and duties of the association with regard to an impaired or insolvent domestic insurer.[15] Class A assessments are determined by the board, are made on a non-pro rata basis, and may not exceed $250 per year per member insurer.[16] Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the three most recent years.

Florida law limits assessments on a member insurer to a maximum of one percent of the insurer's premiums written in the state regarding business covered by the account received during the three calendar years preceding the year in which the assessment is made, divided by three.[17] For long-term care insurer impairments and insolvencies, the total assessment is limited to 0.5 percent of the insurer's premiums written during any one calendar year, and also imposed upon members of the Florida Health Maintenance Organization Consumer Assistance Plan.[18]

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company that issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or

[12] Section 631.716(1), F.S.
[13] *See* Section 624.06, F.S.
[14] Section 631.716(2). F.S.
[15] Section 631.718(2), F.S.
[16] Section 631.718(2)(a), F.S.
[17] Section 631.718(5)(a), F.S.
[18] *Id.*

for the benefit of employees of Florida educational institutions. Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply; or
- 0.1 percent of written premium on such business in this state.[19]

Member insurers of the association may offset the amount of an assessment against the insurance premium tax or corporate income tax.[20] The credit may be taken in an amount of five percent of the assessments for each of the 20 years following the year in which the assessment was paid.[21]

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.[22]

Legal Standing and Right of Intervention

The FLAHIGA has standing to appear before any court in this state that has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.[23] Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

The National Organization of Life and Health Insurance Guaranty Associations

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association comprised of the life and health insurance guaranty associations of all 50 states and the District of Columbia. The NOLHGA assembles a task force of guaranty association officials to address situations where insurers licensed in multiple states are facing insolvency or are declared insolvent. This task force analyzes the companies' policies, ensures that covered claims are paid, and arranges for the transfer of covered policies to another insurer (when possible). This allows the receiver and potential assuming carriers to deal with a single point of contact and contracting instead of having to engage in multiple discussions, negotiations, and contracts with a variety of different associations.[24] The NOLGHA allocates these expenses[25] to affected guaranty associations for payment.[26]

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[19] Section 631.718(9), F.S.
[20] Section 631.72, F.S.
[21] Section 631.72(1)(b), F.S.
[22] Section 631.718(4), F.S.
[23] Section 631.717(7), F.S.
[24] National Organization of Life & Health, Insurance Guaranty Associations, *About Us*, https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last viewed Mar. 17, 2021).
[25] *Id*.
[26] Section 631.721, F.S.

The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is an association of insurance regulators that coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. In 2017, the NAIC released and updated the Life and Health Insurance Guaranty Association Act.[27] The model act is designed to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees against losses (both in terms of payment of claims and continuation of coverage), which might otherwise occur due to an impairment or insolvency of an insurer.

III. Effect of Proposed Changes:

Section 1 amends s. 631.714, F.S., relating to definitions, by defining "Moody's Corporate Bond Yield Average" to mean the monthly average corporates as published by Moody's Investors Service, Inc., or similar successor organization. Currently the term is used in s. 631.713(3)(n), F.S., which specifies the types of insurance and portions of insurance contracts to which the chapter does not apply.

The bill expands the current definition of "person" to include any limited liability company or governmental body entity, in addition to any individual, corporation, partnership, association, or voluntary organization.

Section 2 amends s. 631.717, F.S. relating to the powers and duties of the association, to provide FLAHIGA with the right to appear or intervene before a court or agency in another state which has jurisdiction over an impaired or insolvent insurer for which FLAHIGA is or may become obligated, or with jurisdiction over any person or property against whom FLAHIGA may have rights through subrogation or otherwise. This essentially authorizes FLAHIGA to attempt to intervene in and appear before courts and agencies in other states, but Florida law does not govern the courts of agencies of other states and thus this statutory change will not ensure FLAHIGA is able to appear or intervene before such entities.

For purposes of the FLAHIGA's standing to appear before any court in Florida, the bill expands standing to FLAHIGA's powers and duties to include reissuing or modifying covered policies.

The bill provides FLAHIGA with the authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.

The bill further provides FLAHIGA with authority to join an organization of state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.

Section 3 amends s. 631.718, F.S., relating to assessments, to provide that Class A assessments may be made on a pro rata basis. Class A assessments made on a pro rata basis may be credited against future Class B assessments, as determined by the board of directors. The bill removes the $250 cap on Class A assessments.

[27] NAIC, *Life and Health Insurance Guaranty Association Model Act 520-1* (1st Quarter 2018) available at: https://content.naic.org/sites/default/files/inline-files/MDL-520.pdf (last viewed Mar. 17, 2021).

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company that issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Currently, assessments may not exceed the greater of insurer's premium tax and corporate tax payments on insurance subject to ch. 631, F.S., or 0.1 percent of the insurer's written premium on such business in this state. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insurer at risk of becoming impaired or insolvent.

The bill provides that a member insurer must pay all deferred assessments once the conditions that caused a deferral have been removed or rectified.

Section 4 amends s. 631.721, F.S., relating to FLAHIGA's plan of operation, to provide FLAHIGA with the authority to establish a procedure for removing a member of the board in the event the member insurer becomes impaired or insolvent.

The bill requires FLAHIGA's board of directors to establish policies and procedures for addressing conflicts of interest.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes the $250 per year limit on Class A assessments against a member insurer, which are used to meet FLAHIGA's administrative costs, general expenses, and expenses related to certain examinations of member insurer that are not impaired or insolvent.

The bill also removes the limit on assessment of any member insurer that is a nonprofit insurance company that issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.714, 631.717, 631.718, and 631.721.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Boyd

21-01280A-21 20211470__

A bill to be entitled

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.714, F.S.; defining the term "Moody's Corporate Bond Yield Average"; revising the definition of the term "person"; amending s. 631.717, F.S.; authorizing the association to assume or reissue covered policies of impaired insurers; granting the association the right to appear or intervene before a court or an agency in certain proceedings; authorizing the association to take legal action to recover payment of improper claims; authorizing the association to join an organization of other state guaranty associations for certain purposes; amending s. 631.718, F.S.; revising the calculation of Class A assessments; specifying requirements for repayment of deferred assessments upon removal or rectification of the conditions causing a deferral; deleting a prohibition on certain nonprofit insurance companies being assessed more than a certain amount in a calendar year; amending s. 631.721, F.S.; revising the requirements of the association's plan of operation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (8), (9), and (10) of section 631.714, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, a new subsection

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(8) is added to that section, and present subsection (9) of that section is amended, to read:

631.714 Definitions.—As used in this part, the term:

(8) "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or a similar successor organization.

(10)~~(9)~~ "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2. Subsections (1) and (7) and paragraph (f) of subsection (13) of section 631.717, Florida Statutes, are amended, and paragraph (h) is added to subsection (13) of that section, to read:

631.717 Powers and duties of the association.—

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the covered policies of the impaired insurer;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and

(c) Loan money to the impaired insurer.

(7) The association has ~~shall have~~ standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing extends ~~shall~~

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~~extend~~ to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association has the right to appear or intervene before a court or an agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(13) The association may:

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims.

(h) Join an organization of other state guaranty associations to further the purposes and administer the powers and duties of the association.

Section 3. Paragraph (a) of subsection (3) and subsections (4) and (9) of section 631.718, Florida Statutes, are amended to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If the assessment is made on a pro rata basis, the board may provide that it be credited against future Class B assessments ~~The assessment may not be credited against future insolvency assessments and may not exceed $250 per member insurer in any one calendar year~~.

(4) The association may abate or defer, in whole or in

part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.~~

Section 4. Paragraphs (h) and (i) are added to subsection (3) of section 631.721, Florida Statutes, to read:

631.721 Plan of operation.—

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(h) Establish a procedure for removing a member insurer director when that member insurer becomes an impaired or insolvent insurer.

(i) Require the board of directors to establish policies and procedures for addressing conflicts of interest.

Section 5. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1526
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Garcia
SUBJECT:	Medicaid Coverage for Former Foster Youth
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	**Fav/CS**
2.	Sneed	Kidd	AHS	**Recommend: Favorable**
3.	Sneed	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1526 makes a number of changes to the law relating to Medicaid coverage for young adults who have aged out of foster care. The bill requires the Department of Children and Families (DCF) to develop a program to facilitate enrollment of young adults formerly in out-of-home care in Medicaid.

The bill authorizes the DCF to coordinate with a community-based care lead agency in implementing the program and requires specified outreach services that must be included in the program.

The bill revises eligibility for Medicaid coverage for specified young adults formerly eligible for foster care to provide that a young adult who as a child was eligible under Title IV-E of the Social Security Act for foster care or state-provided foster care and was living in out-of-home care in Florida on his or her 18th birthday remains eligible until the young adult reaches 26 years of age. There is no income, resource, or categorical limit for eligibility that is otherwise required to be in compliance with federal law.

The bill may have an indeterminate negative fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Medicaid

Medicaid, authorized in Title XIX of the Social Security Act (SSA), is a state administered federal program that jointly finances medical and related services to a diverse low-income population.[1] To be eligible for Medicaid, individuals must meet both categorical[2] and financial[3] criteria in addition to requirements regarding residency, immigration status, and U.S. citizenship.[4] For some eligibility groups or pathways, state coverage is mandatory, while for others it is optional. States and territories must submit a state plan to the federal government to describe how they will carry out their Medicaid programs within the federal statute's framework.[5]

As the Medicaid agency for the state, as provided under federal law, Medicaid services in Florida are administered by the Agency for Health Care Administration (AHCA). Medicaid eligibility in Florida is determined by either the Department of Children and Families (DCF) or the Social Security Administration for Supplemental Security Income (SSI)[6] recipients. The DCF determines Medicaid eligibility for:

- Parents and caretaker relatives of children;
- Children;
- Pregnant women;
- Former Foster Care Individuals;
- Non-citizens with medical emergencies; and
- Aged or disabled individuals not currently receiving SSI.[7]

Children in Out-of-Home Care

The Foster Care, Prevention, and Permanency program, authorized in Title IV-E of the SSA, is a federal-state program that, among other things, jointly finances foster care for children who a state determines cannot safely remain in their homes and who meet federal eligibility rules related to being removed from a low-income household and other factors. The program also provides some support for services to assist older children in foster care and those who age out of foster care in making a successful transition to adulthood. The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) administers the Title IV-E program.[8]

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[1] Medicaid.gov, *Medicaid*, available at https://www.medicaid.gov/medicaid/index.html (last visited March 6, 2021).
[2] Categories include the elderly, children, or pregnant women.
[3] These include income and assets.
[4] Medicaid.gov, *Eligibility*, available at https://www.medicaid.gov/medicaid/eligibility/index.html (last visited March 6, 2021).
[5] Congressional Research Service, *Medicaid Coverage for Former Foster Youth Up to Age 26*, October 26, 2018, available at https://fas.org/sgp/crs/misc/IF11010.pdf (last visited March 5, 2021) (hereinafter cited as "CRS Medicaid for Foster Youth").
[6] Supplemental Security Income (SSI) is a federal income supplement program funded by general tax revenues (not Social Security taxes). The program is designed to help aged, blind, and disabled people, who have little or no income and it provides cash to meet basic needs for food, clothing, and shelter.
[7] The DCF, ACCESS Program, Medicaid, available at https://www.myflfamilies.com/service-programs/access/medicaid.shtml (last visited March 5, 2021).
[8] CRS Medicaid for Foster Youth.

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the Title IV-E foster care program, are disabled, or meet other eligibility criteria. Under the Title IV-E program, states are required to inform foster youth within 90 days prior to emancipation about their future options for health care. Title IV-E also directs states to provide these youth with health information and official documentation that they were previously in care. Such documentation may be necessary to determine eligibility for some former foster youth who later apply for Medicaid.[9]

Current law requires the AHCA to make payments for medical assistance and related services on behalf of individuals who the department, or the Social Security Administration by contract with the DCF, determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or ch. 216, F.S.[10] These individuals include a child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. This category includes:

- A young adult who is eligible to receive services under s. 409.1451, F.S., until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.
- A person who as a child was eligible under Title IV-E of the Social Security Act for foster care or the state-provided foster care and who is a participant in the Road-to-Independence Program.
- A child who is eligible for the Guardianship Assistance Program as provided in s. 39.6225, F.S.[11]

Young Adults Formerly in Out-of-Home Care

The Medicaid pathway for former foster youth is intended to provide necessary health supports in the years immediately after leaving foster care.[12] The Patient Protection and Affordable Care Act (ACA)[13] authorizes Medicaid for an individual up to age 26 if they were in foster care and receiving Medicaid when they aged out of foster care at the age of 18 or older. It parallels another ACA requirement that health insurance companies provide coverage of children up to age 26 under their parents' private health care plans. There is no income limit for eligibility and the young adult must not be eligible for another Medicaid coverage type. However, the individual must apply for this coverage through the DCF's ACCESS Florida.[14]

[9] *Id*.
[10] Section 409.903, F.S.
[11] Section 409.903(4), F.S.
[12] CRS Medicaid for Foster Youth.
[13] *See* Pub. L. 111-148.
[14] The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-9.a., available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-

Prior to reaching age 21, if the young adult has an open supervision case or upon request of a young adult, child welfare staff must:[15]

- Assist the young adult in applying for Medicaid under this coverage group.
- Ensure that the young adult retains continuity of medical care and has a Medicaid card.

A review of continued Medicaid eligibility must be completed at least once every 12 months, or sooner if the child's circumstances change. The criteria for recertification remain the same as for the initial Medicaid eligibility determination. In all cases, Medicaid for non-Title IV-E eligible children must be authorized for 12 months. All factors relating to eligibility are reevaluated at each recertification.[16]

III. Effect of Proposed Changes:

Currently, the DCF or the community-based lead agency is required to document that young adults who were formerly in out-of-home care are enrolled in Medicaid under s. 409.903(4), F.S.[17] The bill directs the DCF to develop a program to facilitate enrollment of these young adults into the Medicaid program. The DCF is required to provide outreach and technical assistance that includes:

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

The bill also amends s. 409.903(4), F.S., to conform the statute to federal law and existing Florida Medicaid rules, which require state Medicaid programs to extend eligibility for former foster care youth to the age of 26, without regard to any income, resource, or categorical eligibility test that is otherwise required in order to be in compliance with federal law.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15,%20%20Chapter%2002,%20Medicaid.pdf (last visited March 6, 2021).

[15] *Id*. Medicaid 2-9 b.

[16] The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-14 a.

[17] Section 409.1451(10), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1526 has an indeterminate negative fiscal impact on state government.

The DCF projects one-time costs to make the necessary technological updates to the Florida Safe Families Network (FSFN) and ACCESS Florida systems.[18] However, because the costs are projected to be minimal, the DCF would likely be able to absorb the costs within existing department resources.

The ACHA states that the bill poses no operational costs for the department.[19] The AHCA also provides that since former foster care youth are currently eligible for Medicaid coverage until age 26 as mandated by federal law, the bill codifies in statute to align with what is currently covered under Florida Medicaid. However, the AHCA states that the program to assist enrollment of former foster youth in Medicaid may result in an indeterminate increase in the number of Medicaid enrollees.[20]

VI. Technical Deficiencies:

None.

[18] DCF, *2021 Agency Legislative Bill Analysis, SB 1526* (on file with the Senate Appropriations Subcommittee on Health and Human Services).
[19] ACHA, *2021 Agency Legislative Bill Analysis, SB 1526* (on file with the Senate Committee on Children, Families, and Elder Affairs).
[20] *Id*.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1451 and 409.903.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 9, 2021:
The committee substitute revises eligibility for Medicaid coverage for specified young adults formerly eligible for foster care and who was living in out-of-home care in Florida on his or her 18th birthday remains eligible until the young adult reaches 26 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required in order to be in compliance with federal law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Children, Families, and Elder Affairs; and Senator Garcia

586-02622-21 20211526c1

A bill to be entitled

An act relating to Medicaid coverage for former foster youth; amending s. 409.1451, F.S.; requiring the Department of Children and Families to develop a program to facilitate enrollment of certain young adults in Medicaid; authorizing the department to coordinate with a community-based care lead agency in implementing the program; specifying requirements for outreach services provided by the program; amending s. 409.903, F.S.; revising eligibility for Medicaid coverage for certain young adults formerly eligible for foster care; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) of section 409.1451, Florida Statutes, is amended to read:

409.1451 The Road-to-Independence Program.—

(10) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN CARE.—

(a) Notwithstanding paragraph (2)(a), the department ~~or community-based care lead agency~~ shall develop a program to facilitate the enrollment of ~~document that eligible~~ young adults eligible for ~~are enrolled in~~ Medicaid under s. 409.903(4).

(b) The department may coordinate with the community-based care lead agency in implementing the program.

(c) The program must provide outreach services that must include:

1. Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02622-21 20211526c1

the eligibility and options for enrollment.

2. Providing technical assistance to eligible young adults in enrolling.

3. Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

Section 2. Subsection (4) of section 409.903, Florida Statutes, is amended to read:

409.903 Mandatory payments for eligible persons.—The agency shall make payments for medical assistance and related services on behalf of the following persons who the department, or the Social Security Administration by contract with the Department of Children and Families, determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(4) A child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. This category includes:

(a) A young adult who is eligible to receive services under s. 409.1451, until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.

(b) Notwithstanding paragraph (a), a young adult who as a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

child was eligible under Title IV-E of the Social Security Act for foster care or state-provided foster care and was living in out-of-home care in this state on his or her 18th birthday until the young adult reaches 26 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required ~~A person who as a child was eligible under Title IV-E of the Social Security Act for foster care or the state-provided foster care and who is a participant in the Road-to-Independence Program~~.

(c) A child who is eligible for the Guardianship Assistance Program as provided in s. 39.6225.

Section 3. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #CS/SB 1526**, relating to Medicaid Coverage for Former Foster Youth, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 37

File signed original with committee office

S-020 (03/2004)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

1526
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medicaid / Foster Care

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-321-9386

Email fcfap@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 1526
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____
Street

Phone 682-276-5245

_____
City *State* *Zip*

Email claym@fha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-2021
Meeting Date

1526
Bill Number (if applicable)

Topic Medicaid Coverage for Former Foster Youth

Amendment Barcode (if applicable)

Name Tim Parson

Job Title

Address 113 E. College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-910-2678

Email tim@libertypathwaysfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Lutheran Services Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1540
INTRODUCER:	Health Policy Committee and Senator Gibson
SUBJECT:	Maternal Health Outcomes
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.	Howard	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1540 authorizes "Closing the Gap" grants to be awarded to projects that aim to decrease racial and ethnic disparities in severe maternal morbidity rates and other maternal health outcomes. The bill requires the Department of Health (department) to coordinate with existing community-based maternal health programs.

The bill creates telehealth minority maternity care pilot programs in Duval and Orange counties to use telehealth to expand capacity for positive maternal health outcomes in racial and ethnic minority populations. The bill provides detailed requirements for the pilot programs, including specifying services for eligible pregnant women that the programs must provide or coordinate with prenatal home visiting services to provide. The bill authorizes the department to adopt rules to implement the pilot programs.

The bill requires that funds appropriated by the Legislature for the Closing the Gap grant program be used to fund the pilot programs. The bill requires the department's Division of Community Health Promotion and its Office of Minority Health and Health Equity to work together to apply for available federal funds to assist in the implementation of the bill.

The bill requires the department to use funds appropriated by the Legislature for the Closing the Gap grant program. The Fiscal Year 2020-2021 General Appropriations Act provided $4,850,354 in recurring general revenue for Minority Health Initiatives, which includes the Closing the Gap grant program. The department must also work in partnership to apply for

federal funds that are available to assist the department in accomplishing the program's purpose and successfully implementing the pilot program.

The bill takes effect on July 1, 2021.

II. Present Situation:

History of the Office of Minority Health and Health Equity

In 1993, Florida's Minority Health Improvement Act authorized the Minority Health Commission. In 1995, the Commission sunset.[1] In 1998, the Department of Health (department) established the Office of Equal Opportunity and Minority Health.[2] In 2004, the Legislature established the Office of Minority Health within the department, pursuant to s. 20.43(9), F.S.[3] In 2016, the Legislature renamed it as the Office of Minority Health and Health Equity (office).[4]

Currently, under s. 20.43, F.S., the office must be headed by a senior health equity officer who administers the Closing the Gap grant program in a manner that maximizes the impact of the grants in achieving health equity. The senior health equity officer must evaluate the grants awarded by the program and assess the effectiveness and efficiency of the use of funds to determine best practices. The senior health equity officer is also responsible for disseminating information on best practices to stakeholders and for ensuring that the assessments inform future grant award decisions.

The office currently has five Full-Time-Equivalent (FTE) staff positions: one senior health equity officer, one grants administrator, two Florida-certified contract managers, and one administrative assistant. The office also has four Other Personal Services (OPS) staff positions: one program evaluator, two program analysts, and one senior clerk.

Closing the Gap Grant Program

In 2000, the Florida Legislature created the Reducing the Racial and Ethnic Health Disparities: "Closing the Gap" (CTG) grant program.[5] The program is administered through the office and its implementation is subject to a specific appropriation in the General Appropriations Act.[6] The purposes of the grant program is to improve health outcomes of racial and ethnic populations and promote disease prevention activities in the following priority areas:

- Maternal and infant mortality;
- Cancer;
- HIV/AIDS;
- Cardiovascular disease;
- Diabetes;
- Adult and child immunization;

[1] Florida Department of Health, History of the Office of Minority Health and Health Equity, *available at* http://www.floridahealth.gov/programs-and-services/minority-health/about-us.html (last visited Feb. 2, 2021).
[2] *Id.*
[3] Chapter 2004-350, s. 2, Laws of Fla.
[4] Chapter 2016-230, Laws of Fla.
[5] Chapter 2000-256, ss. 31-32, Laws of Fla.
[6] Section 381.7356(7), F.S.

- Oral health care;
- Sickle cell disease;
- Lupus; and
- Alzheimer's disease and dementia.[7]

Closing the Gap grants are intended to stimulate the development of community and neighborhood-based projects that impact health outcomes of racial and ethnic populations and stimulate partnerships between state and local governments, faith-based organizations, private sector organizations, and other non-traditional partners.[8] Priority is given to grant proposals that:

- Represent areas with the greatest documented ethnic and racial health status disparities;
- Exceed the statutory local match requirement;[9]
- Demonstrate broad-based local community support from entities representing racial and ethnic populations;
- Demonstrate high levels of participation by the heath care community in clinical preventive services and health promotion activities;
- Have been submitted by counties with high levels of residents living in poverty and with poor health status indicators;
- Demonstrate a coordinated community approach to addressing racial and ethnic health disparities within existing publicly financed health care programs;
- Incorporate intervention mechanisms that have a high probability of improving the targeted populations health status;
- Demonstrate a commitment to quality management in all aspects of project administration and implementation; and
- Incorporate policy approaches that will lead to long-term sustainability and improvement.[10]

Projects receiving grants are required to provide matching funds of one dollar for every three dollars awarded.[11] In counties with populations greater than 50,000, up to 50 percent of the local matching funds may be in-kind in the form of free services or human resources.[12] In counties with populations of 50,000 or less, local matching funds may be provided entirely through in-kind contributions.[13]

The office is responsible for:

- Publicizing the availability of funds and establishing an application process for submitting a grant proposal;
- Providing technical assistance and training, including a statewide meeting promoting best practice programs, as requested, to grant recipients;
- Developing uniform data reporting requirements for the purpose of evaluating the performance of the grant recipients and demonstrating improved health outcomes;
- Developing a monitoring process to evaluate progress toward meeting grant objectives; and

[7] Section 381.7355(2)(a), F.S.
[8] Section 381.7352, F.S.
[9] Section 381.7356, F.S.
[10] Section 381.7355(3), F.S.
[11] Section 381.7356(2), F.S.
[12] *Id.*
[13] *Id.*

- Coordinating with existing community-based programs, such as chronic disease community intervention programs, cancer prevention and control programs, diabetes control programs, the Healthy Start program, the Florida Kidcare Program, the HIV/AIDS program, immunization programs, and other related programs at the state and local levels, to avoid duplication of effort and promote consistency.[14]

In relation to the Closing the Gap grant program, the department must coordinate with existing community-based programs to avoid duplication of effort and promote consistency, such as:
- Chronic disease community intervention programs;
- Cancer prevention and control programs;
- Diabetes control programs;
- The Healthy Start program;
- The Florida Kidcare Program;
- The HIV/AIDS program;
- Immunization programs; and
- Other related programs at the state and local levels.[15]

Current Department of Health Initiatives and Programs relating to Maternal Health

Pregnancy-Associated Mortality Review[16]

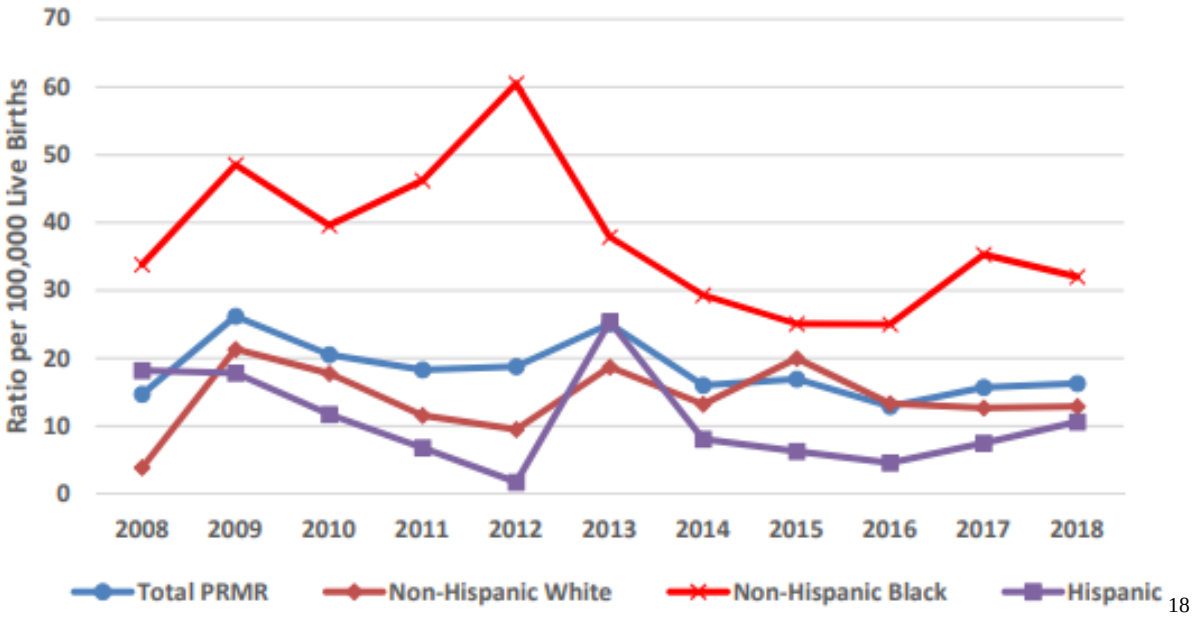
In 1996, the department established the Pregnancy-Associated Mortality Review (PAMR) process to improve surveillance and analysis of pregnancy-related deaths in Florida. This case review program seeks to close gaps in care, identify systemic service delivery issues, and make recommendations to facilitate improvements in the overall systems of care. The PAMR Committee consists of two co-chairs and a committee membership representative of diverse geographic, medical, psychosocial, community and epidemiological expertise.[17] The PAMR Committee reviews all deaths identified as pregnancy-related and reviews the medical records to see what, if anything, could have been done to prevent this death.

The PAMR defines "pregnancy-associated death" as a death to a woman from any cause while she is pregnant or within one year of termination of the pregnancy, regardless of duration and site of the pregnancy. Before they are reviewed and found to be "pregnancy-associated," such deaths are identified through:
- Death certificates identified by the assigned cause of death being in the category of Pregnancy, Childbirth and the Puerperium (pregnancy related);
- Florida's Prenatal Risk Screen (formerly known as the Healthy Start screen);
- Birth Certificate/Fetal death certificate;

[14] Department of Health, *Committee Substitute for Senate Bill 404 Analysis* (March 9, 2021) (on file with the Senate Committee on Health Policy).
[15] Section 381.7353(2)(e), F.S.
[16] Florida Department of Health, Pregnancy-Associated Mortality Review (PAMR) *available at* http://www.floridahealth.gov/statistics-and-data/PAMR/index.html (last visited Mar. 27, 2021).
[17] Department of Health, *House Bill 1383 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).

- Death certificates with a checked box identifying the woman as either pregnant at time of death, pregnant within 42 days of death, or pregnant between 43 days to one year before death.

Figure 3. Pregnancy-Related Mortality Ratios (PRMRs) by Race/Ethnicity, Florida, 2008–2018



[18]

The 2018 PAMR Report found that the pregnancy-related mortality ratio (PRMR) in Florida was 16.3 per 100,000 live births.[19] Although the 2018 PRMR was lower than the 2009 ratio (26.2 per 100,000 live births), the trend for the period 2008-2018 was not statistically significant.[20] The 2018 PAMR Report noted a significant decrease in the Black-White racial disparity gap from 8.7 in 2008 to 2.5 in 2018.[21] Throughout the study period, non-Hispanic Black women exhibited higher PRMRs than non-Hispanic White or Hispanic women.[22] During 2012, the PRMR for non-Hispanic Black women was 60.5, an all-time high. In 2018, the PRMR per 100,000 live births was 32.0 for non-Hispanic Black women, 12.9 for non-Hispanic White women, and 10.6 for Hispanic women.[23]

The report issued recommendations relating to improved training for providers and education for patients, earlier access to prenatal care, assessment standards, and screening procedures.[24]

[18] Florida Department of Health, Florida's Pregnancy-Associated Mortality Review 2018 Update (May 2020) *available at* http://www.floridahealth.gov/statistics-and-data/PAMR/_documents/pamr-2018-update.pdf at 7. (last visited Mar. 27, 2021).
[19] *Id.* at 3.
[20] *Id.*
[21] *Id.* at 7.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 21-23.

Florida Perinatal Quality Collaborative (FPQC)[25]

The FPQC was established in 2010 to improve Florida's maternal and infant health outcomes through the delivery of high quality, evidence-based perinatal care. The department works with the Florida Perinatal Quality Collaborative (FPQC) which is housed in the Chiles Center at the University Of South Florida College Of Public Health. Led by a Steering Committee (that the department remains engaged in)[26] and a leadership team, the FPQC engages all its stakeholders to identify the priority perinatal quality improvement issues and to determine which initiatives are appropriate, feasible, engaging, measurable and supportable. PAMR findings have often been used to help inform initiatives addressed by the FPQC.

Florida Healthy Start Program[27]

The department's Division of Community Health Promotion, Bureau of Family Health Services, Maternal and Child Health Section oversees the Florida Healthy Start program.[28] Healthy Start is a voluntary program that provides home visiting services that include prenatal education and support, screening and services, parenting education, and care coordination to assure access to needed services. These services may include psychosocial, nutritional, smoking cessation counseling, childbirth, breastfeeding, substance abuse education, and interconception education and counseling. Healthy Start services pregnant women and children up to three years of age in all 67 counties. Duval County is provided services through the Northeast Healthy Start Coalition and Orange County is provided services through the Healthy Start Coalition of Orange County.[29]

HRSA Grant to Address Perinatal Mental Health and Substance Abuse[30]

The department has a grant from the federal Health Resources and Services Administration (HRSA) to administer a pilot program to address perinatal mental health and substance use. The department has partnered with Florida State University, the University of Florida, and the Florida Association of Healthy Start Coalitions to implement this pilot program with plans to expand statewide. The pilot program expands screening for depression, anxiety, and substance use and access to needed services for pregnant and postpartum women. The pilot program aims to promote maternal and child health by building the capacity of health care providers to address these critical issues through professional development, expert consultation and support, and dissemination of best practices.

Florida Pregnancy Support Services Program[31]

The department has a contract with the Florida Pregnancy Care Network to implement the Florida Pregnancy Support Services Program (FPSSP). The FPSSP's network of pregnancy support centers located throughout the state provide pregnancy support services to women and

[25] University of South Florida, College of Public Health, Florida Perinatal Quality Collaborative *available at* https://health.usf.edu/publichealth/chiles/fpqc (last visited Mar. 27, 2021).
[26] Department of Health, *House Bill 1383 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).
[27] *Id.*
[28] Department of Health, *Senate Bill 1540 Fiscal Analysis* (Feb. 26, 2021) (on file with the Senate Committee on Health Policy).
[29] *Id.*
[30] *Supra* note 26.
[31] *Id.*

their families. Pregnancy help centers are local, non-profit organizations that provide support and assistance to women and men. In addition to free pregnancy tests, peer counseling, and referrals, most centers offer free classes on pregnancy, childbirth, parenting, and life skills. Participation is encouraged by offering free items such as maternity and baby clothing, diapers, formula, cribs, and car seats to women participating in the FPSSP throughout their pregnancy and the first year of their baby's life. The FPSSP also has a wellness program that offers referrals to health care providers that will provide free well-woman exams performed by a physician, nurse practitioner, or physician assistant.

"My Birth Matters" Florida Campaign[32]

The Department of Health, the Agency for Health Care Administration, the FPQC, and the Florida Hospital Association have launched the "My Birth Matters" Florida campaign, modeled after the California "My Birth Matters" campaign (MyBirthMatters.org). The purpose of the campaign is to promote vaginal deliveries and reduce unnecessary caesarean section deliveries for expectant mothers with low-risk pregnancies. The campaign offers free educational materials and resources for parents and providers, including posters, brochures, videos, and social media messages.

Nurse Family Partnership program

The department has implemented the Nurse Family Partnership program which serves 20 counties throughout the state.[33] In this program, specially trained nurses visit young, first-time moms-to-be, beginning in early pregnancy and continuing through the child's second birthday.[34] The goal of the program is to improve pregnancy outcomes by helping women use preventive health practices, including:

- Thorough prenatal care from their health care providers;
- Improving diets;
- Reducing consumption of nicotine, alcohol, and illegal substances;
- Improving child health and development by helping parents provide responsible and competent care; and
- Improving the economic self-sufficiency of the family by helping parents to develop a vision for their own future, plan future pregnancies, continue their education, and find work.[35]

Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23 which created s. 456.47, F.S. The bill became effective on July 1, 2019.[36] It authorizes Florida-licensed health care providers[37] to use telehealth to deliver health care services within their respective scopes of

[32] Florida Department of Health, My Birth Matters Florida *available* at http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/my-birth-matters/index.html (last visited Mar. 27, 2021).
[33] Nurse-Family Partnership Florida *available at* https://www.nursefamilypartnership.org/wp-content/uploads/2020/11/FL_2020-State-Profile-1.pdf (last visited Mar. 27, 2021).
[34] *Id.*
[35] Department of Health, *House Bill 1383 Fiscal Analysis* (Mar. 12, 2021) (on file with the Senate Committee on Health Policy).
[36] Chapter 2019-137, s. 6, Laws of Fla.
[37] Section 467.47(1)(b), F.S.

practice and also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the department or the applicable board[38] and meet certain eligibility requirements.[39] A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida while registered as an out-of-state telehealth provider.

Section 456.47, F.S., defines the term "telehealth" as the use of synchronous (real-time) or asynchronous (in separate time frames) telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 381.7353, F.S., to require the Department of Health (department) to coordinate with community-based maternal health programs at the state and local levels to avoid duplication of effort and promote consistency.

A Closing the Gap grant proposal must address one or more priority areas, as listed in s. 381.7355, F.S. **Section 2** of the bill s. 381.7355, F.S., to add "decreasing racial and ethnic disparities in severe maternal morbidity rates and other maternal health outcomes" as a priority area.

Section 3 of the bill creates s. 383.2163, F.S., to require the department to establish a telehealth minority maternity care pilot program in Duval County and Orange County by July 1, 2022. The pilot programs would use telehealth to expand the capacity for positive maternal health outcomes in racial and ethnic minority populations. Under the bill, the department must direct and assist the county health departments in Duval County and Orange County to implement the pilot programs.

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[38] Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the department or, in some cases, within the department's Division of Medical Quality Assurance.

[39] On March 16, 2020, Surgeon General Scott Rivkees executed department Emergency Order 20-002 authorizing certain out-of-state physicians, osteopathic physicians, physician assistants, and advanced practice registered nurses to provide telehealth in Florida without the need to register as a telehealth provider under s. 456.47(4), F.S. This emergency order was extended and will remain in effect until the expiration of the Governor's Executive Order No. 20-52 and extensions thereof. Department of Health, State of Florida, *Emergency Order DOH No. 20-003* (Mar. 21, 2020) *available at* https://s33330.pcdn.co/wp-content/uploads/2020/03/DOH-EO-20-003-3.21.2020.pdf (last visited Mar. 27, 2021).

[39] Department of Health, State of Florida, *Emergency Order DOH No. 20-005* (Apr. 21, 2020) *available at* https://s33330.pcdn.co/wp-content/uploads/2020/04/DOH-Emergency-Order-20-005-extending-20-003.pdf (last visited Mar. 27, 2021).

[39] Section 20.42, F.S.

The pilot programs must use telehealth to provide, or coordinate with prenatal home visiting programs to provide all of the following services and education to eligible pregnant women[40] up to the last day of their postpartum[41] periods, as applicable:

- Referrals to Healthy Start's coordinated intake and referral program to offer families prenatal home visiting services.
- Services and education addressing social determinants of health, including, but not limited to, all of the following:
  - Housing placement options.
  - Transportation services or information on how to access such services.
  - Nutrition counseling.
  - Access to healthy foods.
  - Lactation support.
  - Lead abatement and other efforts to improve air and water quality.
  - Child care options.
  - Car seat installation and training.
  - Wellness and stress management programs.
  - Coordination across safety net and social support services and programs.
- Evidence-based health literacy and pregnancy, childbirth, and parenting education for women in the prenatal and postpartum periods.
- For women during their pregnancies through the postpartum periods, connection to support from doulas and other perinatal health workers.
- Tools to conduct key components of maternal wellness checks, including, but not limited to, all of the following:
  - A scale to measure body weight.
  - A device to measure blood pressure.
  - A device to measure blood sugar levels.
  - Any other device that the health care practitioner performing wellness checks through telehealth deems necessary.

The pilot programs created in the bill must also provide training to health care practitioners and perinatal professionals[42] participating in the plan on:

- Implicit and explicit biases, racism, and discrimination in the provision of maternity care and how to eliminate them.
- Remote patient monitoring tools for pregnancy-related complications.
- Screening for social determinants of health risks in the prenatal and postpartum periods.
- Best practices in screening for evaluating and treating maternal mental health conditions and substance use disorders.
- Information collection, recording, and evaluation activities to:
  - Study the impact of the pilot program;

[40] Under the bill, "eligible pregnant woman" means a pregnant woman who is receiving, or is eligible to receive, maternal or infant care services from the department under ch. 381 or ch. 383, F.S.
[41] Under the bill, "postpartum" means the 1-year period beginning on the last day of a woman's pregnancy.
[42] Under the bill, "perinatal professionals" means doulas, personnel from Healthy Start and home visiting programs, childbirth educators, community health workers, peer supporters, certified lactation consultants, nutritionists and dietitians, social workers, and other licensed and non-licensed professionals who assist women through their prenatal or postpartum periods.

- Ensure access to and the quality of care;
- Evaluate patient outcomes;
- Measure patient experience; and
- Identify best practices for the expansion of the pilot program.

The bill provides that the pilot programs are to be funded using funds appropriated by the Legislature for the Closing the Gap grant program. The bill requires the department's Division of Community Health Promotion and its Office of Minority Health and Health Equity to work in partnership and apply for federal funds that are available to assist the department in accomplishing the purpose of the pilot programs and in successfully implementing the programs.

The bill authorizes the department to adopt rules to implement the pilot programs.

Section 4 of the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Adding "decreasing racial and ethnic disparities in severe maternal morbidity rates and other maternal health outcomes" as a priority area may reduce the funds available for Closing the Gap grant awards for other priority areas.

C. Government Sector Impact:

CS/SB 1540 does not have a direct fiscal impact on the state because the bill provides that the pilot programs will be funded from appropriations made by the Legislature for the Closing the Gap grant program. Therefore, implementation of the pilot programs is subject to such appropriation. The 2020-2021 General Appropriations Act provided $4,850,354 in recurring general revenue for Minority Health Initiatives, which includes the Closing the Gap grant program. (Specific Appropriation 429).

The Department of Health (department) estimates, based on the number of pregnancies in Duval and Orange counties and the number of those pregnancies that may be covered by Medicaid, that it would cost $5,465,197 to provide a scale ($40.73 each), blood pressure cuff ($79.96 each), and glucose monitor ($206 each) to each woman who may be eligible for the pilot programs in those counties.[43] That estimate is for medical equipment only. The department indicates that the department will use existing resources to fulfill other requirements of the bill.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.7353 and 381.7355.

This bill creates section 383.2163 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 31, 2021:
The CS:

- Adds personnel from Healthy Start and home visiting programs to the definition of "perinatal professionals."
- Deletes the underlying bill's definition of "telehealth" that included audio-only telephone calls, e-mail messages, and facsimile transmissions.
- Authorizes a pilot program to coordinate with prenatal visiting programs to provide services specified in the bill, in lieu of providing the services through telehealth.

[43] *Supra* note 28.
[44] *Id.*

- Requires a pilot program to provide referrals to Healthy Start's coordinated program intake and referral program to offer families prenatal home visiting services.
- Authorizes a pilot program to provide a device to a woman that a health care practitioner performing wellness checks through telehealth deems necessary, regardless of whether that device is necessary to ensure that an accurate assessment of a pregnant women participating in the program is conducted.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Health Policy; and Senator Gibson

588-03617-21 20211540c1

A bill to be entitled

An act relating to maternal health outcomes; amending s. 381.7353, F.S.; revising the Department of Health's duties under the Closing the Gap grant program; amending s. 381.7355, F.S.; revising the requirements for Closing the Gap grant proposals; creating s. 383.2163, F.S.; requiring the department to establish telehealth minority maternity care pilot programs in Duval County and Orange County by a specified date; defining terms; providing program purposes; requiring the pilot programs to provide specified telehealth services, or coordinate with prenatal home visiting programs to provide specified services, to eligible pregnant women for a specified period; requiring pilot programs to train participating health care practitioners and perinatal professionals on specified topics; providing for funding for the pilot programs; requiring the department's Division of Community Health Promotion and Office of Minority Health and Health Equity to apply for certain federal funding; authorizing the department to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (2) of section 381.7353, Florida Statutes, is amended to read:

381.7353 Reducing Racial and Ethnic Health Disparities: Closing the Gap grant program; administration; department duties.—

(2) The department shall:

(e) Coordinate with existing community-based programs, such as chronic disease community intervention programs, cancer prevention and control programs, diabetes control programs, the Healthy Start program, the Florida Kidcare Program, the HIV/AIDS program, immunization programs, maternal health programs, and other related programs at the state and local levels, to avoid duplication of effort and promote consistency.

Section 2. Paragraph (a) of subsection (2) of section 381.7355, Florida Statutes, is amended to read:

381.7355 Project requirements; review criteria.—

(2) A proposal must include each of the following elements:

(a) The purpose and objectives of the proposal, including identification of the particular racial or ethnic disparity the project will address. The proposal must address one or more of the following priority areas:

1. Decreasing racial and ethnic disparities in maternal and infant mortality rates.

2. Decreasing racial and ethnic disparities in severe maternal morbidity rates and other maternal health outcomes.

3. Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cancer.

4.~~3.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to HIV/AIDS.

5.~~4.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cardiovascular disease.

6.~~5.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to diabetes.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7.~~6.~~ Increasing adult and child immunization rates in certain racial and ethnic populations.

8.~~7.~~ Decreasing racial and ethnic disparities in oral health care.

9.~~8.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease.

10.~~9.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to Lupus.

11.~~10.~~ Decreasing racial and ethnic disparities in morbidity and mortality rates relating to Alzheimer's disease and dementia.

12.~~11.~~ Improving neighborhood social determinants of health, such as transportation, safety, and food access, as outlined by the Centers for Disease Control and Prevention's "Tools for Putting Social Determinants of Health into Action."

Section 3. Effective January 1, 2022, section 383.2163, Florida Statutes, is created to read:

383.2163 Telehealth minority maternity care pilot programs.—By July 1, 2022, the department shall establish a telehealth minority maternity care pilot program in Duval County and Orange County which uses telehealth to expand the capacity for positive maternal health outcomes in racial and ethnic minority populations. The department shall direct and assist the county health departments in Duval County and Orange County to implement the programs.

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Health.

(b) "Eligible pregnant woman" means a pregnant woman who is receiving, or is eligible to receive, maternal or infant care

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

services from the department under chapter 381 or chapter 383.

(c) "Health care practitioner" has the same meaning as in s. 456.001.

(d) "Health professional shortage area" means a geographic area designated as such by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(e) "Indigenous population" means any Indian tribe, band, or nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the United States Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in 43 U.S.C. s. 1602(c), the Alaska Native Claims Settlement Act, as that definition existed on the effective date of this act.

(f) "Maternal mortality" means a death occurring during pregnancy or the postpartum period which is caused by pregnancy or childbirth complications.

(g) "Medically underserved population" means the population of an urban or rural area designated by the United States Secretary of Health and Human Services as an area with a shortage of personal health care services or a population group designated by the United States Secretary of Health and Human Services as having a shortage of such services.

(h) "Perinatal professionals" means doulas, personnel from Healthy Start and home visiting programs, childbirth educators, community health workers, peer supporters, certified lactation consultants, nutritionists and dietitians, social workers, and other licensed and nonlicensed professionals who assist women through their prenatal or postpartum periods.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(i) "Postpartum" means the 1-year period beginning on the last day of a woman's pregnancy.

(j) "Severe maternal morbidity" means an unexpected outcome caused by a woman's labor and delivery which results in significant short-term or long-term consequences to the woman's health.

(k) "Technology-enabled collaborative learning and capacity building model" means a distance health care education model that connects health care professionals, particularly specialists, with other health care professionals through simultaneous interactive videoconferencing for the purpose of facilitating case-based learning, disseminating best practices, and evaluating outcomes in the context of maternal health care.

(2) PURPOSE.—The purpose of the pilot programs is to:

(a) Expand the use of technology-enabled collaborative learning and capacity building models to improve maternal health outcomes for the following populations and demographics:

1. Ethnic and minority populations.

2. Health professional shortage areas.

3. Areas with significant racial and ethnic disparities in maternal health outcomes and high rates of adverse maternal health outcomes, including, but not limited to, maternal mortality and severe maternal morbidity.

4. Medically underserved populations.

5. Indigenous populations.

(b) Provide for the adoption and use of telehealth services that allow for screening and treatment of common pregnancy-related complications, including, but not limited to, anxiety, depression, substance use disorder, hemorrhage, infection,

amniotic fluid embolism, thrombotic pulmonary or other embolism, hypertensive disorders relating to pregnancy, diabetes, cerebrovascular accidents, cardiomyopathy, and other cardiovascular conditions.

(3) TELEHEALTH SERVICES AND EDUCATION.—The pilot programs shall adopt the use of telehealth or coordinate with prenatal home visiting programs to provide all of the following services and education to eligible pregnant women up to the last day of their postpartum periods, as applicable:

(a) Referrals to Healthy Start's coordinated intake and referral program to offer families prenatal home visiting services.

(b) Services and education addressing social determinants of health, including, but not limited to, all of the following:

1. Housing placement options.

2. Transportation services or information on how to access such services.

3. Nutrition counseling.

4. Access to healthy foods.

5. Lactation support.

6. Lead abatement and other efforts to improve air and water quality.

7. Child care options.

8. Car seat installation and training.

9. Wellness and stress management programs.

10. Coordination across safety net and social support services and programs.

(c) Evidence-based health literacy and pregnancy, childbirth, and parenting education for women in the prenatal

and postpartum periods.

(d) For women during their pregnancies through the postpartum periods, connection to support from doulas and other perinatal health workers.

(e) Tools for prenatal women to conduct key components of maternal wellness checks, including, but not limited to, all of the following:

1. A device to measure body weight, such as a scale.

2. A device to measure blood pressure which has a verbal reader to assist the pregnant woman in reading the device and to ensure that the health care practitioner performing the wellness check through telehealth is able to hear the reading.

3. A device to measure blood sugar levels with a verbal reader to assist the pregnant woman in reading the device and to ensure that the health care practitioner performing the wellness check through telehealth is able to hear the reading.

4. Any other device that the health care practitioner performing wellness checks through telehealth deems necessary.

(4) TRAINING.—The pilot programs shall provide training to participating health care practitioners and other perinatal professionals on all of the following:

(a) Implicit and explicit biases, racism, and discrimination in the provision of maternity care and how to eliminate these barriers to accessing adequate and competent maternity care.

(b) The use of remote patient monitoring tools for pregnancy-related complications.

(c) How to screen for social determinants of health risks in the prenatal and postpartum periods, such as inadequate

housing, lack of access to nutritional foods, environmental risks, transportation barriers, and lack of continuity of care.

(d) Best practices in screening for and, as needed, evaluating and treating maternal mental health conditions and substance use disorders.

(e) Information collection, recording, and evaluation activities to:

1. Study the impact of the pilot program;

2. Ensure access to and the quality of care;

3. Evaluate patient outcomes as a result of the pilot program;

4. Measure patient experience; and

5. Identify best practices for the future expansion of the pilot program.

(5) FUNDING.—The pilot programs shall be funded using funds appropriated by the Legislature for the Closing the Gap grant program. The department's Division of Community Health Promotion and Office of Minority Health and Health Equity shall also work in partnership to apply for federal funds that are available to assist the department in accomplishing the program's purpose and successfully implementing the pilot programs.

(6) RULES.—The department may adopt rules to implement this section.

Section 4. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Military and Veterans Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON
6th District

April 6, 2021

Senator Kelli Stargel, Chair
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Stargel: Kelli

I respectfully request that SB 1540, be placed on the next committee agenda.

SB 1540 through Closing the Gap grant proposals within the Department of Health establishes telehealth minority maternity care pilot programs in Duval and Orange counties. The pilot programs will use telehealth to expand the capacity for positive maternal outcomes in racial and ethnic minority populations and track reduction in maternal mortality, which will hopefully lead to expansion. The bill will also identify barriers to decreasing maternal and infant mortality rates and other maternal health outcomes in medically underserved populations. This bill passed unanimously in the first committee.

Thank you for your kind and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

SENATE APPROPRIATIONS
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STAFF

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

04/19/2021
Meeting Date

SB 1540
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Clay Meenan

Job Title Government Relations Coordinator

Address _____ Phone 682-276-5245
Street

_____ Email claym@fha.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/19/2021
Meeting Date

1540
Bill Number (if applicable)

Topic Maternal Health Outcomes

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-321-9386

Email fcfap@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-19-21
Meeting Date

1540
Bill Number (if applicable)

Topic Maternal Health Outcomes

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title

Address 625 E Brevard St
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 251-4280

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information ☑ Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1568
INTRODUCER:	Appropriations Committee; Health Policy Committee; and Senator Rodriguez
SUBJECT:	Department of Health
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke/Rossitto Van-Winkle	Brown	HP	**Fav/CS**
2.	Howard	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1568 addresses numerous health care-related issues regulated by the Department of Health (DOH).

The bill:

- Updates the Targeted Outreach for Pregnant Women Act of 1998.
- Creates section 395.3042, Florida Statutes, to establish requirements for the triage and transportation of heart attack victims to adult cardiovascular services (ACS) providers; requires the DOH to perform certain tasks and develop a heart attack assessment tool and licensed EMS medical directors to develop and implement assessment, treatment, and transport-destination protocols for heart attack patients.
- Amends section 401.465, Florida Statutes, to define "telecommunicator cardiopulmonary resuscitation training" to require each 911 public safety telecommunicator to receive training every two years; and the DOH monitor with ability to adjust state grant or shared revenue funding to a public safety agency based on the agency's adherence to the training requirements.
- Amends section 408.033, Florida Statutes, authorizing local health councils to collect utilization data from licensed hospitals within their respective local health council districts for a specified purpose.
- Authorizes a telehealth provider, practicing in a manner consistent with his or her scope of practice, to prescribe Schedule III, IV, and V controlled substances through telehealth.
- Authorizes a telehealth provider, practicing in a manner consistent with his or her scope of practice, to prescribe Schedule II controlled substances under certain circumstances.

- Amends section 464.008, Florida Statutes, deleting a requirement that certain nursing program graduates complete a specified preparatory course.
- Amends section 465.1893, Florida Statutes, to provide long-acting medications pharmacists may administer under certain circumstances and revising requirements for a continuing education course such pharmacists must complete.
- Updates chapter 467, Florida Statutes, relating to midwifery, by removing duplicative or obsolete language and duplicative rulemaking authority and clarifying language regarding preceptorships, approval of midwifery programs, and minimum standards.
- Amends sections 490.003, 490.005, and 490.051, Florida Statutes, to clarify the educational requirements for psychologists applying for licensure by examination or endorsement;
- Amends section 491.005, Florida Statutes, regarding mental health counselors to update educational requirements and authorize a licensed mental health professional to be available by phone or other electronic methods when clinical services are being provided by a registered intern by telehealth methods; and
- Amends sections 460.406, 468.803, 483.824, and 490.005, Florida Statutes, to deletes references to the term "regional" and replace it with the term "institutional" to conform to the U.S. Department of Education accreditation nomenclature for approving educational institutions.

The bill amends and creates sections of the Florida Statutes relating to the DOH's regulation of Onsite Sewage Treatment and Disposal Systems (OSTDS). The bill:

- Amends section 381.0061, Florida Statutes, as amended by section 41 of chapter 2020-150, Laws of Florida, to strike the DOH's authority to assess fines related to OSTDS and septic tank contracting. The regulation of these programs will transfer to the Department of Environmental Protection (DEP) on July 1, 2021.[1]
- Creates section 381.00635, Florida Statutes, to authorize the DOH to issue an order requiring a correction to improper conditions of any private or public water system not covered or included in the Florida Safe Drinking Water Act,[2] which constitutes a nuisance or menace to public health. Amends section 381.0067, Florida Statutes, to eliminate DEP's authority over public and private water systems not included in the Florida Safe Drinking Water Act, the regulation of which is retained by the DOH.
- Amends section 381.0101, Florida Statutes, to retain the requirement that onsite evaluations of OSTDS be done by certified environmental health professionals.

The DOH Division of Medical Quality Assurance (MQA) will incur recurring and nonrecurring workload costs associated with the bill and costs related to updating department systems, enforcing the new training requirements for public safety telecommunicators, and rulemaking; however, it is anticipated that current resources are adequate to absorb.

The bill takes effect on July 1, 2021.

[1] Chapter 2020-150, Laws of Fla.
[2] Part VI of ch. 403, F.S.

II. Present Situation:

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as "septic systems," generally consist of two basic parts: the septic tank and the drainfield.[3] Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.[4]

Please note: Septic systems vary. Diagram is not to scale.

Until July 1, 2021, the Department of Health (DOH) will administer OSTDS programs, develop statewide rules, and provide training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.[5] The DOH regulations focus on construction standards and setback distances. The DOH also conducts research to evaluate performance, environmental health, and public health effects of OSTDSs. Innovative OSTDS products and technologies must be approved by the DOH.[6]

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[3] DOH, *Septic System Information and Care*, *available at* http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html (last visited March 25, 2021); EPA, *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited March 25, 2021) (showing the graphic provided in the analysis.)
[4] *Id.*
[5] Section 381.0065(3), F.S.
[6] Section 381.0065(3), F.S.

The DOH and the Department of Environmental Protection (DEP) have an interagency agreement that standardizes procedures and clarifies responsibilities between them regarding the regulation of OSTDSs.[7] The DEP has jurisdiction over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless the DOH grants a variance).[8] In all other circumstances, the DOH regulates OSTDSs.

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[9] In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[10] For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.[11] The remainder of systems are generally serviced only when they fail, often leading to costly repairs that may have been avoided with routine maintenance.[12]

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.[13] This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.[14]

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as "advanced" or "nutrient-reducing" septic systems).[15] The DOH publishes on its website approved products and resources on advanced systems.[16] Determining which advanced system is the best option can depend on site-specific conditions.

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[7] *Interagency Agreement between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems* (Sept. 30, 2015), *available at* https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf

[8] *Id.* at 6-13; s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, *available at* https://floridadep.gov/water/domestic-wastewater/content/septic-systems (last visited March 25, 2021).

[9] DOH, *Onsite Sewage*, *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited March 25, 2021).

[10] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf p. 59 (last visited March 25, 2021).

[11] *Id*.

[12] *Id*.

[13] DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf (last visited March 25, 2021) *See* Fla. Admin. Code R. 64E-6.006(2).

[14] University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), *available at* http://edis.ifas.ufl.edu/pdffiles/SS/SS55000.pdf (last visited March 25, 2021).

[15] DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf (last visited March 25, 2021).

[16] DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html (last visited March 25, 2021).

The owner of a properly functioning OSTDS must connect to a sewer system within one year of receiving notification that a sewer system is available for connection.[17] Owners of an OSTDS in need of repair or modification must connect within 90 days of notification from the DOH.[18]

The Blue-Green Algae Task Force made the following recommendations relating to OSTDSs:
- The DEP should develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health.
- More post-permitting septic tank inspections should take place.
- Protections for vulnerable areas in the state should be expanded.
- Additional funding to accelerate septic to sewer conversions.[19]

Chapter 2020-150, Laws of Florida

In 2020, the Legislature passed ch. 2020-150, Laws of Florida to respond to recommendations from the Blue-Green Algae Task Force. Regarding OSTDSs, the law:
- Transfers the regulation of OSTDSs from the DOH to the DEP.
- Directs the DEP to adopt rules to locate OSTDSs by July 1, 2022:
  - These rules will take into consideration conventional and advanced OSTDS designs, impaired water bodies, wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and the recommendations of an OSTDS technical advisory committee;
  - Once those rules are adopted, they will supersede the existing statutory requirements for setbacks.
- To meet the requirements of a Total Maximum Daily Load (TMDL), the law requires the DEP to implement a fast-track approval process for the use in this state of American National Standards Institute 245 systems approved by National Sanitation Foundation (NSF) International before July 1, 2020.
- Deletes the DOH OSTDS technical advisory committee and creates a DEP OSTDS technical advisory committee that will expire on August 15, 2022, after making recommendations to the Governor and the Legislature regarding the regulation of OSTDSs.
- Requires local governments to develop OSTDS remediation plans within Basin Management Action Plans (BMAPs) if the DEP determines that OSTDSs contribute at least 20 percent of the nutrient pollution or if the DEP determines remediation is necessary to achieve the total maximum daily load. Such plans must be adopted as part of the BMAPs no later than July 1, 2025.[20]

Targeted Outreach for Pregnant Women

The Targeted Outreach for Pregnant Women Act (TOPWA) was enacted by the Florida Legislature in 1998. The TOPWA program is designed to establish targeted outreach to high-risk

[17] Section 381.00655, F.S.
[18] *Id*.
[19] DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), *available at* https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf (last visited March 25, 2021).
[20] Analysis of CS/CS/SB 712 (Feb. 24, 2020), *available at* https://www.flsenate.gov/Session/Bill/2020/712/Analyses/2020s00712.ap.PDF (last visited, March 25, 2021).

pregnant women who may not be receiving proper prenatal care, who suffer from substance abuse problems, or who may be infected with the human immunodeficiency virus (HIV). The goal of the program is to provide these high-risk pregnant women with referrals for information and services.

In 2019, there were 453 HIV-exposed births in Florida. Without proper care for both mother and newborn, each of these births risks vertical transmission. The TOPWA supports outreach programs aimed at preventing vertical HIV transmission and other health issues by linking high-risk pregnant women with services that can help them have healthier pregnancies and deliveries and can aid them in ensuring their newborn gets a healthy start.[21]

Many of the women targeted by TOPWA programs may not otherwise receive prenatal care or know their HIV status. In 2019, there were seven TOPWA programs in Florida. The TOPWA programs, which are funded through General Revenue (GR) dollars and grant funds from the federal Centers for Disease Control and Prevention (CDC), provided services to 7,703 women from January 2016 to July 2020. Women living with HIV made up just under 10 percent of TOPWA program enrollments.[22]

If a pregnant woman tests positive for HIV, medical interventions and prevention, such as the following, can greatly reduce her risk of transmitting the virus to her baby during childbirth:
- Antiretroviral medication to the mother;
- Delivery by caesarian section;
- Avoiding breastfeeding; and
- Antiretroviral medication to the newborn.[23]

Telehealth to Provide Services

Current law prohibits telehealth providers from prescribing any controlled substance unless the controlled substance is prescribed for:
- The treatment of a psychiatric disorder;
- Inpatient treatment at a licensed hospital;
- The treatment of a patient receiving hospice services; or
- The treatment of a resident of a nursing home facility. [24]

Prescribers and dispensers are required to report to and review the Prescription Drug Monitoring Program database to review a patient's controlled substance dispensing history prior to prescribing or dispensing a Schedule II-IV controlled substance for patients 16 years or older.[25] These prescribing limitations and requirements apply to practitioners providing services in-person and through telehealth.

[21] Section 381.0045(2), F.S.
[22] Department of Health, *Senate Bill 1568 Fiscal Analysis* (Mar, 12, 2021) (on file with the Senate Committee on Health Policy.)
[23] *Id.*
[24] Section 456.47(2)(c), F.S.
[25] Section 89.055, F.S.

Federal Guidance during the COVID-19 Public Health Emergency

In response to COVID-19, on January 31, 2020, the Secretary of the Department of Health and Human Services (HHS) issued a public health emergency.[26] On March 16, 2020, the federal Drug Enforcement Agency (DEA) published a COVID-19 Information page on the Diversion Control Division website, authorizing qualified prescribers to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable federal and state law.[27]

Florida DOH Emergency Order No. 20-002

The same day that the HHS Secretary authorized qualified prescribers to prescribe Schedule II-V controlled substances, Surgeon General Rivkees issued DOH Emergency Order No. 20-002,[28] which suspended s. 456.47(2)(c), F.S., and authorized specified Florida-licensed prescribers[29] to issue a renewal prescription for a Schedule II-IV controlled substance only for an existing patient for the purpose of treating chronic nonmalignant pain without conducting another physical examination of the patient. This emergency order was extended[30] and will remain in effect until the expiration of Executive Order No. 20-52 and extensions thereof.[31]

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[26] Determination that a Public Health Emergency Exists, Alex M. Azar II, Secretary of U.S. Department of Health and Human Services (January 31, 2020), *available at* https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx (last visited Feb. 9, 2021).

[27] Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, *COVID-19 Information Page*, *available at* https://www.deadiversion.usdoj.gov/coronavirus.html (last visited Feb. 9, 2021). Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020), *available at* https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Feb. 9, 2021).

[28] Department of Health, State of Florida, *Emergency Order DOH No. 20-002* (Mar. 16, 2020), *available at* http://floridahealthcovid19.gov/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf (last visited Feb. 14, 2021).

[29] Physicians, osteopathic physicians, physician assistants, or advanced practice registered nurses that have designated themselves as a controlled substance prescribing practitioner on their practitioner profiles pursuant to s. 456.44, F.S.

[30] Department of Health, State of Florida, *Emergency Order DOH No. 20-011* (June 30, 2020), *available at* https://floridahealthcovid19.gov/wp-content/uploads/2020/06/DOH-Emergency-Order-DOH-No.-20-011.pdf (last visited Feb. 14, 2021).

[31] Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20- 166, 20-192, 20-213, 20-276, 20-316, and 21-45. Executive Order 21-45 will remain in effect until April 28, 2021. Office of the Governor, State of Florida, *Executive Order 21-45* (Feb. 26, 2021), *available at* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-45.pdf (last visited March 17, 2021).

Chiropractic Licensure

The "practice of chiropractic medicine" is a non-combative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and treatment of the human body to restore the normal flow of nerve impulse which produces normal function and health by chiropractic physicians using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by the Council on Chiropractic Education.

Section 460.406, F.S., requires:
- An applicant matriculating in a chiropractic college after July 1, 1990, to hold a bachelor's degree awarded by a college or university accredited by a regional accrediting agency recognized and approved by the U.S. Department of Education; and
- An applicant after July 1, 2000, to complete, prior to matriculating in a chiropractic college, a bachelor's degree from a college or university accredited by a regional accrediting agency recognized and approved by the U.S. Department of Education.

The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published in that year omit references to "regional" and "national" accreditation. The letter specifies that "[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. § 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.

Nursing

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the DOH[32] and are regulated by the Fla. Board of Nursing (BON).[33] Currently, a nurse desiring to practice nursing in the state of Florida must obtain a Florida license by examination or endorsement.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN) must, among other requirements:
- Graduate from an approved program or its equivalent as determined by the Fla. Bd. of Nursing.[34]
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;[35] and
- Pass the National Council Licensure Examination (NCLEX).[36]

[32] Section 464.008, F.S.
[33] The BON is composed of 13 members appointed by the Governor and confirmed by the Senate who serve four-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.
[34] Section 464.008(1)(c), F.S.
[35] Section 464.008(1)(b), F.S.
[36] Section 464.008(2), F.S.

Licensure by endorsement requirements include submitting an application and fee, passing a criminal background screening, and:

- Holding a valid license to practice professional or practical nursing in another state or territory of the United States which, when issued, met or exceeded those in Florida at that time;
- Meeting the requirements for licensure in Florida and having successfully completed an examination in another state which is substantially equivalent to the examination in Florida; or
- Having actively practiced nursing in another state, jurisdiction, or territory of the United States for two of the preceding three years without having his or her license acted against by the licensing authority of any jurisdiction.[37]

In 2016, the Legislature created s. 464.0095, F.S., Florida's entrance into the Nurse Licensure Compact (NLC), which took effect January 19, 2018, and adopts the revised NLC in its entirety into state law. This allows for licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse's primary state of residence. To date, 34 states, including Florida, have adopted the revised NLC.[38]

The National Council of State Boards of Nursing, Inc. (NCSBN)

The NCSBN is an independent, non-profit organization that was created in 1978 out of recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needs to be a separate entity from the American Nurses Association (ANA) Council on State Boards of Nursing, which represents professional nurses. The NCSBN's membership is now composed of state boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety, and welfare. To meet that goal, the NCSBN developed a psychometrically sound and legally-defensible nurse licensure examination consistent with current nursing practice. NCSBN became the first organization to implement computerized adaptive testing for nationwide licensure examinations in 1994, the NCLEX-RN and NCLEX-LPN.[39]

Nursing Education Program Approval and Accreditation

Section 464.019, F.S., requires an institution desiring to offer a pre-licensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that

[37] Section 464.009, F.S.
[38] The National Council of State Boards of Nursing administers the NLC. They refer to it as the enhanced NLC. *available at* https://www.nursecompact.com/Updated_onepaged_NLC.pdf (last visited on March 23, 2021).
[39] National Council of State Boards of Nursing, Inc., *History. available at* https://www.ncsbn.org/history.htm (last visited Mar. 28, 2021).

no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.[40]

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.[41]

An "accredited program" is accredited by a specialized nursing accrediting agency that is nationally recognized by the U.S. Secretary of Education to accredit nursing education programs.[42] The specialized nursing accrediting agencies currently recognized by the U.S. Department of Education include the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.[43]

A Florida BON approved nursing education program[44] is required to submit an annual report to the Florida BON which includes an affidavit certifying compliance with the program standards and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.[45]

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the Fla. Bd. of Nursing is authorized to terminate the program or may extend the probation for one additional year.[46] An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.[47]

An approved program graduate who does not take the licensure examination within six months after graduation must enroll in, and successfully complete, a licensure examination preparatory course pursuant to s. 464.008, F.S.

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[40] Section 464.019(2)(c), F.S. If the Fla. Bd. of Nursing does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*
[41] The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.
[42] Section 464.003(1), F.S.
[43] United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, *available at* https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited Mar. 25, 2021).
[44] Section 464.003(4), F.S., defines an "approved program" as "a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status."
[45] Section 464.019(3), F.S.
[46] Section. 464.019(5), F.S.
[47] *Id.*

The Practice of Pharmacy

The Board of Pharmacy (BOP), in conjunction with the DOH, regulates the practice of pharmacists and registered pharmacist interns pursuant to ch. 465, F.S.[48]

Licensure

To be licensed as a pharmacist in Florida, a person must:[49]

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;[50]
- Have completed a BOP approved internship; and
- Successfully complete the BOP approved examination.

A pharmacist must complete at least 30 hours of BOP approved continuing education during each biennial licensure renewal period.[51] Pharmacists who are certified to administer vaccines or epinephrine auto-injections must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections, as a part of their licensure renewal.[52]

Scope of Pharmacy Practice

In Florida, the practice of the profession of pharmacy includes:[53]

- Compounding, dispensing, and consulting concerning the contents, therapeutic values, and uses of a medicinal drug;
- Consultation concerning therapeutic values and interactions of patented or proprietary preparations;
- Monitoring a patient's drug therapy and assisting the patient in the management of his or her drug therapy;
- Reviewing, and making recommendations regarding the patient's drug therapy and health care status in communication with the patient's prescribing health care provider as authorized by the patient;
- Initiating, modifying, or discontinuing drug therapy for a chronic health condition under a collaborative pharmacy practice agreement;[54]
- Transmitting information from prescribers to their patients;

[48] Sections 465.004 and 465.005, F.S.
[49] Section 465.007, F.S. The DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.
[50] If the applicant has graduated from a four-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the BOP-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist.
[51] Section 465.009, F.S.
[52] Section 465.009(6), F.S.
[53] Section 465.003(13), F.S.
[54] Section 465.1865, F.S.

- Preparing prepackaged drug products in facilities holding Class III institutional facility permits;[55]
- Ordering and dispensing over-the-counter drugs approved by the FDA;[56]
- Ordering and dispensing within his or her professional judgment, subject to specified conditions:[57]
  - Certain oral analgesics for mild to moderate pain;
  - Anti-nausea preparations;
  - Certain antihistamines and decongestants;
  - Certain topical antifungal/antibacterial;
  - Topical anti-inflammatory preparations containing an amount of hydrocortisone not exceeding 2.5 percent;
  - Otic antifungal/antibacterial;
  - Salicylic acid;
  - Vitamins;
  - Ophthalmics;
  - Certain histamine H2 antagonists;
  - Acne products; and
  - Topical antivirals for herpes simplex infections of the lips.

Pharmacist Authorization to Administer Antipsychotropic Medications by Injection

A pharmacist, at the direction of a physician, may also administer a long-acting antipsychotic medication by injection if the medication is approved by the U.S. Food and Drug Administration if the pharmacist:

- Is authorized by and acting within the framework of an established protocol with the prescribing physician;
- Practices at a facility that accommodates privacy for nondeltoid injections and conforms with state rules and regulations regarding the appropriate and safe disposal of medication and medical waste; and
- Has completed the required 8-hour continuing education course offered by:
  - A statewide professional association of physicians accredited to provide educational activities designated for:
    - The American Medical Association Physician's Recognition Award (AMA PRA) Category 1 Credit; or
    - The American Osteopathic Association (AOA) Category 1-A continuing medical education (CME) credit; or
    - A statewide association of pharmacists.

The course required course to administer Antipsychotropic Medications by Injection:

- May be offered in a distance learning format;
- Must include 30 hours of continuing professional pharmaceutical education.[58]

[55] A Class III institutional pharmacy are those pharmacies affiliated with a hospital. *See* s. 465.019(2)(d), F.S.
[56] Section 465.186, F.S.
[57] Fla. Admin. Code R. 64B16-27.220 (2020).
[58] Section 465.009(1), F.S.

- Must have a curriculum of instruction that concerns the safe and effective administration of behavioral health and antipsychotic medications by injection, including, but not limited to, potential allergic reactions to such medications.

A separate prescription from a physician is required for each injection administered by a pharmacist.[59]

Dentistry

Any person wishing to practice dentistry in this state must apply to the DOH and meet specified requirements. Section 466.006, F.S., requires dentistry licensure applicants to sit for and pass the following licensure examinations:

- The National Board of Dental Examiners dental examination (NBDE);
- A written examination on Florida laws and rules regulating the practice of dentistry; and
- A practical examination, which is the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc., and graded by a Florida-licensed dentist employed by the DOH for such purpose.[60]

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association Commission on Dental Accreditation (CODA) or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.[61] If the applicant is not a graduate of a CODA-accredited program, the applicant must demonstrate that he or she holds a degree from an accredited American dental school or has completed two years at a full-time supplemental general dentistry program accredited by CODA.[62]

Under Florida law, non-dentists are prohibited from influencing or otherwise interfering with a dentist's exercise of his or her independent professional judgment. The profession of dentistry prohibits persons other than a dentist or professional corporation or limited liability company composed of dentists, from:

- Employing a dentist or dental hygienist in a dental office;
- Controlling the use of any dental equipment or material; or
- Directing, controlling, or interfering with a dentist's clinical judgment.[63]

Conversely, dentists who are employed by any corporation, organization, group, or person other than a dentist or a professional corporation or limited liability company composed of dentists to practice dentistry will subject a dentist to a denial of license or disciplinary action.[64]

[59] Section 465.1893, F.S.

[60] A passing score is valid for 365 days after the date the official examination results are published. A passing score on an examination obtained in another jurisdiction must be completed on or after October 1, 2011.
[61] Section 466.006(2), F.S.
[62] Section 466.006(3), F.S.
[63] Section 466.00285, F.S.
[64] Section 466.028, F.S.

Midwifery

"Midwifery" is the practice of supervising the conduct of a normal labor and childbirth, with the informed consent of the parent; the practice of advising the parents as to the progress of the childbirth; and the practice of rendering prenatal and postpartal care.[65]

Chapter 467, F.S., is the Midwifery Practice Act. Any person who seeks to practice midwifery in Florida must be at least 21 years of age and:

- Licensed under s. 464.012, F.S., as an Advanced Practice Registered Nurse (APRN) nurse midwife; or
- Licensed as a midwife under ch. 467, F.S.

Section 467.009, F.S., governs midwifery programs and education and training requirements which are a minimum of three years in an approved program. An applicant must have:

- A high school diploma or the equivalent.
- Taken at least three college-level credits such as math and English.

It is unclear under current law whether both a high school diploma and three college level credits are required for admission, or whether one or the other will satisfy the admission requirement.

Section 467.009, F.S., also requires a student midwife, during training, to undertake the care of 50 women in each of the prenatal, intrapartal, and postpartal periods, and observe an additional 25 women in the intrapartal period under the supervision of a preceptor, but the same women need not be seen through all periods. Prenatal, intrapartal, and postpartal periods are not defined and the statute is unclear as to whether this requires 150 patients prenatal, intrapartal, and postpartal periods, or just 50 in any one of the three phases of pregnancy and delivery. The statute is also unclear as to whether the two references to intrapartal care and observation may be the same patient or require different patient contacts.

Section 467.009, F.S., uses the terms, "applicant" and "student midwife" interchangeably, which is inaccurate. These sections frame standards for admission, education, and clinical training in the context of student requirements. Preceptors direct, teach, supervise, and evaluate the learning experiences of the student midwife and may be physicians, licensed midwives, or a certified nurse midwife, who have a minimum of three years professional experience.[66] Persons with previous midwifery education, Registered Nurses (RNs), and Licensed Practical Nurses (LPNs) may have a reduced training period, but in no case less than two years.

Chapter 467.009, F.S., does not include any provisions explicitly allowing a new midwifery program to be provisionally approved nor does it provide guidance to schools regarding the circumstances under which the DOH may rescind the approval of program.

Section 467.011, F.S., licensure by examination, requires the DOH to:

- Administer the licensure examination to test the proficiency of applicants in the core competencies required to practice midwifery as specified in s. 467.009, F.S.;

[65] Section 467.003(8), F.S.
[66] Section 467.003(12), F.S.

- Develop, publish, and make available to interested parties at a reasonable cost a bibliography and guide for the examination; and
- Issue a license to practice midwifery to an applicant who has graduated from an approved midwifery program, successfully completed the examination, and paid a licensure fee.

The DOH no longer administers midwifery examinations, and, pursuant to s. 456.017(c), F.S., the DOH has approved the use of a national examination for midwives seeking to become licensed.[67]

In lieu of examination, an applicant may apply for a license by endorsement based on verification that the applicant holds a current valid license to practice in another jurisdiction that has equivalent or more stringent licensure requirements than those in Florida.[68]

A midwife may only accept and provide care for those women who are expected to have a normal pregnancy, labor, and delivery and must ensure that:
- The patient has signed an informed consent form; and
- If the patient is delivering at home, the home is safe and hygienic.

The statute does not define "normal delivery," "low risk pregnancy," or "high risk pregnancy."

A midwife licensed under ch. 467, F.S., may administer the following:
- Prophylactic ophthalmic medication;
- Oxygen;
- Postpartum oxytocin;
- Vitamin K;
- Rho immune globulin (human); and
- Local anesthetic and other medications prescribed by practitioner.[69]

A midwife's care of mothers and infants throughout the prenatal, intrapartal, and postpartal periods must be in conformity with the DOH rules and the public health laws of this state. The midwife must:
- Prepare a written plan of action with the family to ensure continuity of medical care throughout labor and delivery and to provide for immediate medical care if an emergency arises;
- Instruct the patient and family regarding the preparation of the environment and ensure availability of equipment and supplies needed for delivery and infant care;
- Instruct the patient in the hygiene of pregnancy and nutrition as it relates to prenatal care;
- Maintain equipment and supplies;
- Determine the progress of labor and, when birth is imminent, be immediately available until delivery is accomplished and must:
    - Maintain a safe and hygienic environment;
    - Monitor the progress of labor and the status of the fetus;

[67] Department of Health, *Senate Bill 1568 Fiscal Analysis -Midwifery* (July 16, 2020) (on file with the Senate Committee on Health Policy.)
[68] Section 467.0125, F.S.
[69] Section 467.015, F.S.

  - Recognize early signs of distress or complications; and
  - Enact the written emergency plan when indicated;
- Remain with the postpartal mother until the conditions of the mother and the neonate are stabilized; and
- Instill into each eye of the newborn infant a prophylactic in accordance with s. 383.04, F.S.

Section 467.0125, F.S., also includes provisions for licensure by endorsement and temporary certification of a midwife who is qualifying for endorsement to practice in an area of critical need. This statute defines the term "area of critical need" differently from every other profession which has temporary certification that allows practice in an area of critical need. In addition, the current provisions for temporary certification of midwives require revocation if the area in which they practice loses its designation as an area of critical need.

Section 467.205, F.S., provides that any accredited or state-licensed institution of higher learning, public or private, may provide midwifery education and training. The statute sets out the DOH approval requirements for programs desiring to conduct an approved midwifery education program. Under the application and recertification process:

- The applicant must submit evidence of the program's compliance with the requirements in s. 467.009, F.S.
- The DOH must survey the organization applying for approval. If the department is satisfied that the program meets the requirements of s. 467.009, F.S., it must approve the program.
- The DOH must certify whether each approved midwifery program complies with the standards developed under s. 467.009, F.S., at least every three years.
  - If the DOH finds that an approved program no longer meets the required standards, it may place the program on probation until such time as the standards are restored.
  - If a program fails to correct these conditions within a specified period of time, the department may rescind the approval.
  - Any program having its approval rescinded has the right to reapply.
- Provisional approval of a new program may be granted pending the licensure results of the first graduating class.

Practice of Orthotics, Prosthetics, and Pedorthics

The practice of Orthotics, Prosthetics, and Pedorthics is governed by part XIV of ch. 468, F.S., and all three professions evaluate, treatment formulation, measure, design, fabricate, assemble, fit, adjust, service, or provide the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.[70]

Section 468.803, F.S., provides minimum qualifications for licensure to practice orthotics, prosthetics, and pedorthics. Each profession includes the requirement of completion of a program from a "regionally accredited" institution. The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to "regional" and "national" accreditation. The letter specifies, "Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. §

[70] Section 468.80, F.S.

602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.

Section 468.803 (2)(a), F.S., requires an applicant for licensure to submit to the DOH, along with the application, the fingerprint forms and to pay the cost of the state and national criminal history checks. The DOH no longer collects forms or fees from applicants to process the initial criminal history check for licensure. Applicants are required to complete fingerprinting electronically through independent vendors and provide an originating agency identifier number specific to the profession for the results to be submitted to the DOH. If a criminal history is indicated, the Board of Orthotists and Prosthetists will review the application for consideration of licensure.[71]

Clinical Lab Personnel

Part I of ch. 483, F.S., regulates clinical laboratory personnel. "Clinical laboratory personnel" includes a clinical laboratory director, supervisor, technologist, blood gas analyst, or technician who performs or is responsible for laboratory test procedures, but the term does not include trainees, persons who perform screening for blood banks or plasmapheresis centers, phlebotomists, or persons employed by a clinical laboratory to perform manual pretesting duties or clerical, personnel, or other administrative responsibilities.[72]

Section 483.824(2), F.S., requires the doctoral degree held by a clinical laboratory director be from a regionally-accredited institution in a chemical, physical, or biological science.

The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to "regional" and "national" accreditation. The letter specifies, "[b]ecause the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. s. 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.[73]

Psychologists

Chapter 490, F.S., regulates the practice of psychology by psychologists. "Psychologist" is a person licensed by examination under s. 490.005(1), F.S., or endorsement under s. 490.006, F.S.

Section 390.003. F.S., defines a "doctoral-level psychological education" and "doctoral degree in psychology" as of July 1, 1999, to include a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated:

- Had institutional accreditation from an agency recognized and approved by the U.S. Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

[71] Department of Health, *Senate Bill 1568 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 15, 2020) (on file with the Senate Committee on Health Policy.)
[72] Section 483.803(4), F.S.
[73] Department of Health, *Senate Bill 1568 Fiscal Analysis - Clinical Lab Personnel* (July 16, 2020) (on file with the Senate Committee on Health Policy.)

- Had programmatic accreditation from the American Psychological Association.

Section 490.005, F.S., provides that any person desiring to be licensed by examination as a psychologist must apply to the DOH to take the licensure examination. The DOH will license each applicant who the Board of Psychology (BOP) certifies has:

- Completed an application and submitted a fee;
- Submitted proof satisfactory to the BOP that the applicant has received:
  - Doctoral-level psychological education; or
  - The equivalent of a doctoral-level psychological education, from a program at a school or university located outside the U.S.;
  - Had at least two years or 4,000 hours of experience in the field of psychology; and
  - Passed the licensing examination.

Section 490.0051, F.S., also requires the DOH to issue a provisional psychology license to each applicant who the BOP certifies has:

- Completed the application form and paid the fee;
- Earned a doctoral degree in psychology as defined in s. 490.003(3); and
- Met any additional requirements established by BOP rule.

Provisional licensees must practice under the supervision of a licensed psychologist until the provisional licensee receives a license or a letter from the DOH stating that he or she is licensed as a psychologist. A provisional license expires 24 months after the date it is issued and may not be renewed or reissued.

Mental Health Professionals

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.[74]

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience outside the academic arena, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.[75]

[74] Section 491.0046, F.S.
[75] Section 491.0045, F.S.

Section 491.005(1), F.S., relates to licensure by examination for social workers. Section 491.005(3), F.S., relates to licensure by examination for marriage and family therapists. Section 491.005(4), F.S., relates to licensure by examination for mental health counselors.

Marriage and Family Therapy – Minimum Educational Requirements

During the 2020 Legislative Session, s. 491.0045, F.S., was amended to revise the minimum requirements for licensure as a marriage and family therapist to include graduation from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP). The minimum requirement for licensure revision was effective July 1, 2020.

Currently, there are six universities in Florida with a marriage and family program that is not accredited by either COAMFTE or CACREP, they are: Carlos Albizu, Jacksonville University, Palm Beach Atlantic University, St. Thomas University, University of Miami, and University of Phoenix. As a result, students who are presently enrolled in a marriage and family program at one of the specified universities will not meet minimum requirements for Florida licensure upon graduation, although the programs did meet the requirements at the time of enrollment.[76]

Mental Health Counseling – Minimum Education Requirements

A mental health counselor is an individual who uses scientific and applied behavioral science theories, methods, and techniques to describe, prevent, and treat undesired behavior and enhance mental health and human development and is based on research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.[77] To qualify for licensure as a mental health counselor, an individual must:[78]

- Have a master's degree from a mental health counseling program accredited by the Council of the Accreditation of Counseling and Related Educational Programs, or a program related to the practice of mental health counseling that includes coursework and a 1,000-hour practicum, internship, or fieldwork of at least 60 semester hours that meet certain requirements;
- Have at least two years of post-master's supervised clinical experience in mental health counseling;
- Have passed a theory and practice examination provided by the DOH; and
- Have passed an eight-hour course on Florida laws and rules approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.[79]

Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours to apply for licensure.

[76] Department of Health, *Senate Bill 1568 Fiscal Analysis - Mental Health Professionals* (July 15, 2020) (on file with the Senate Committee on Health Policy.)
[77] Sections 491.003(6) and (9), F.S.
[78] Section 491.005(4), F.S.
[79] Section 491.005(4), F.S., and Fla. Admin. Code R. 64B4-3.0035, (2021).

Registered Interns – Licensed Professional on Premises

As documented in the DOH Annual Report and Long-Range Plan, Fiscal Year 2018-2019, there are 13,474 registered mental health interns in Florida. To qualify as a registered intern, the applicant must have completed a master's or doctoral degree in a clinical counseling field and a practicum including face-to-face psychotherapy (clinical-level therapy sessions) under direct supervision of a licensed practitioner. Some registered interns may also complete internships prior to graduation. Registered interns routinely provide counseling and psychotherapy including the use of methods to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders, behavioral disorders, interpersonal relationships, and addictions.

Psychotherapy and counseling may be provided in a variety of settings. Registered interns provide services at facilities including, but not limited to:

- Crisis Centers – e.g. suicide prevention programs, shelters for abuse victims, child endangerment response;
- Inpatient and outpatient behavioral health centers;
- Private practice settings;
- Hospitals;
- Hospice; and
- Rehabilitation centers.

Registered interns are required to complete 1,500 face-to-face psychotherapy hours prior to applying for full licensure. The face-to-face psychotherapy hours must be completed within five years. Registered interns are a force multiplier to increase the number of educated and prepared mental health practitioners to manage growing mental health concerns and currently provide these services in a variety of face-to-face settings.

In accordance with s. 491.005, F.S., registered interns are required to have a licensed professional on the premises during counseling sessions. The licensed professional is not required to be in the counseling room observing the session, but must be on the premises to provide oversight, guidance, and evaluation. This provision ensures that registered interns have a licensed professional readily available, if necessary, during a therapeutic session and to restrict registered interns from operating an independent practice without direct oversight available.

In response to the COVID-19 pandemic, the board revised Rule 64B4-2.002 of the Florida Administrative Code, defining supervision, to authorize registered interns to provide face-to-face psychotherapy by electronic methods (telehealth) if the intern establishes a written telehealth protocol and safety plan with their qualified supervisor. The protocol must include a provision that the supervisor remain readily available during electronic therapy sessions and that the registered intern and their qualified supervisor have determined that providing face-to-face psychotherapy by electronic methods is not detrimental to the patient, is necessary to protect the health, safety, or welfare of the patient, and does not violate any existing statutes.[80]

[80] *Id.*

Regional Accreditation

The minimum qualifications for licensure specified in s. 491.005(3), F.S., includes the requirement of completion of a graduate program from a "regionally accredited body recognized by the Commission on Recognition of Postsecondary Accreditation." The U.S. Department of Education issued a letter of guidance on February 26, 2020, specifying that final regulations published that year omit references to "regional" and "national" accreditation. The letter specifies, "Because the Department holds all accrediting agencies to the same standards, distinctions between regional and national accrediting agencies are unfounded." Provisions implemented in 34 C.F.R. s. 602.32(d), relating to the recognition of accrediting agencies, will become effective January 1, 2021.[81]

Department Examination

The DOH has discontinued the practice of conducting examinations or purchasing examinations for licensure. Applicants are presently responsible for coordinating the completion of an examination with an approved vendor and submitting passing scores to the board to meet minimum qualifications. Current statutory references to the department collecting fees for examinations or conducting examinations is not consistent with current practice.[82]

911 Public Safety Telecommunicator Certification

Chapter 401, F.S., relates to medical telecommunications and transportation. Part I of ch. 401, F.S., is specific to the state's emergency telecommunication systems, administered by the Department of Management Services. Part II of ch. 401, F.S., is specific to the emergency medical services (EMS) grants program administered by the DOH.

Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., is specific to medical transportation services and provides for the regulation of EMS by the DOH, including the licensure of EMS service entities, the certification of staff employed by those services, and the permitting of vehicles used by such staff—whether for basic life support (BLS), advanced life support (ALS), or air ambulance services (AAS). At present, the DOH is responsible for the licensure and oversight of more than 60,000 emergency medical technicians and paramedics, more than 270 advanced and basic life support agencies, and over 4,500 EMS vehicles.[83]

Section 401.465, F.S., is specific to 911 public safety telecommunicator (PST) certification, as administered as part of the DOH EMS program. For purposes of that section, the following terms are defined:[84]

- "911 public safety telecommunicator" means a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, such as, but not limited to,

[81] *Id.*
[82] *Id.*
[83] See http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html (last visited March 24, 2021).
[84] Section 401.465(1), F.S.

those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel.

- "Public safety telecommunication training program" means a 911 emergency public safety telecommunication training program that the DOH determines to be equivalent to the public safety telecommunication training program curriculum framework developed by the Department of Education (DOE) and consists of not less than 232 hours.

Any person employed as a PST at a public safety answering point, as defined in s. 365.172(3), F.S.,[85] must be certified by the DOH. A public safety agency, as defined in s. 365.171(3)(d), F.S.,[86] may employ a PST for a period not to exceed 12 months if the trainee works under the direct supervision of a certified 911 public safety telecommunicator, as determined by rule of the DOH, and is enrolled in a PST training program. An applicant for certification or recertification as a PST must apply to the DOH under oath on DOH provided forms. The DOH establishes by rule educational and training criteria for the certification and recertification of PSTs, determines whether the applicant meets the statutory and rule requirements, and issues a certificate to any person who meets such requirements including those specific to training program completion, an oath of no addiction, an oath that there is no physical or mental impairment, application fee, application submission, and passage of a certification examination.[87]

A PST certification expires automatically if not renewed at the end of the two-year period and may be renewed if the certificate holder meets the DOH-established qualifications. The DOH establishes by rule a procedure that requires 20 hours of training for the biennial renewal certification of PSTs. The DOH may suspend or revoke a certificate at any time if it determines that the certificate holder does not meet the applicable qualifications. There is a process by which a certificate holder may request that his or her certificate be placed on inactive status.[88]

A person who was employed as a PST or a state-certified firefighter before April 1, 2012, must pass the examination approved by the DOH which measures the competency and proficiency in the subject material of the PST program, and upon passage of the examination, the completion of the PST training program is waived. In addition, the requirement for certification as a PST is waived for a person employed as a sworn, state-certified law enforcement officer, provided specified criteria are met.[89]

The following PST related fees are specified in statute:

- Initial application for original certification: $50;
- Examination fee, set by the DOH, not to exceed $75;
- Biennial renewal certificate, set by the DOH, not to exceed $50;
- Training program fee, set by the DOH, not to exceed $50; and
- Duplicate, substitute or replacement certificate fee, set by the DOH, not to exceed $25.

[85] Section 365.172 (3)(y), F.S., defines a "public safety answering point" as the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.
[86] Section 365.171(3)(d), F.S., defines a "public safety agency" as a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.
[87] Section 401.465(2), F.S.
[88] Id.
[89] Id.

Fees collected are deposited into the DOH EMS Trust Fund and used solely for administering this program.[90] The fees currently applied by the DOH are the maximum fees indicated above.[91]

The DOH has adopted three rules specific to its PST program responsibilities. These rules, which address PST certification, certification renewal, and PST course equivalency, were adopted in 2012.[92] These rules not only link to the DOH forms and reference documents but also link to the relevant DOE documents, such as PST curriculum framework.

The DOH website has extensive details specific to the PST program and includes links to all applicable forms for individuals who are seeking to become certified or re-certified as a PST, including PST examination details, training program requirements, and fees. Training programs must follow the DOE Public Safety Telecommunication Curriculum Framework and consist of not less than 232 hours in order to be approved as a PST training program. The DOH uses a vendor, Prometric,[93] to administer the testing for PST candidates.[94]

The DOH develops the learning objectives for the PST program, and these are reflected in the 142-page program study guide.[95] Until State Fiscal Year 2014-2015, the DOH learning objectives and the DOE curriculum framework included a requirement that PST training must include CPR training. In conjunction with the DOE and other stakeholders, the CPR element of required training was discontinued.[96]

According to the DOH, there are currently 115 active approved PST training programs in the state.[97]

Curriculum Framework for Public Safety Telecommunication

One of the divisions within the DOE is the Division of Adult and Community Education. Under this division is the DOE's Career & Technical Education (CTE) Programs section, which is responsible for developing and maintaining educational programs that prepare individuals for occupations important to Florida's economic development. These programs are organized into 17 different career clusters and are geared toward middle school, high school, district technical school, and Florida College System students throughout the state. Listed among the DOE's

[90] Section 401.465(3), F.S.
[91] *See* the Department of Health, *911 Public Safety Telecommunicator Program*, *available at* http://www.floridahealth.gov/licensing-and-regulation/911-public-safety-telecommunicator-program/index.html (last visited March 24, 2021).
[92] Fla. Adm. Code R. 64J-3 (2012).
[93] Prometric is a provider of technology-enabled testing and assessment solutions to many licensing and certification organizations, academic institutions, and government agencies.
[94] *Supra* note 9.
[95] *See* the Department of Health, *Florida 911 Public Safety Telecommunicator Study Guide*, *available at* http://www.floridahealth.gov/licensing-and-regulation/911-public-safety-telecommunicator-program/_documents/911-pst-studyguide-2017E4.pdf.pdf (last visited March 24, 2021).
[96] E-mail from Department of Education to staff of the Senate Committee on Health Policy (January 30, 2020) (on file with the Senate Committee on Health Policy).
[97] E-mail from the Department of Health to staff of the Senate Committee on Health Policy (January 30, 2020) (on file with the Senate Committee on Health Policy).

Career Clusters and Programs is Law, Public Safety, and Security. Among the certificate programs is the public safety telecommunicator program.[98]

The DOE Curriculum Framework for the PST program title indicates that the program offers a sequence of courses that:

- Provide coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in DOE's Law, Public Safety and Security career cluster;
- Provide technical skill proficiency, and;
- Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, occupation-specific skills, and knowledge of all aspects of the Law, Public Safety and Security career cluster.[99]

Cardiopulmonary Resuscitation (CPR): First Aid

Cardiopulmonary resuscitation (CPR) is a lifesaving technique useful in many emergencies, including a heart attack or near drowning, in which someone's breathing or heartbeat has stopped. At its most basic, CPR is a technique which utilizes chest compressions when a patient has suffered from cardiac arrest. The American Heart Association recommends that everyone — untrained bystanders and medical personnel alike — begin CPR with chest compressions. CPR can keep oxygenated blood flowing to the brain and other vital organs until more definitive medical treatment can restore a normal heart rhythm. When the heart stops, the lack of oxygenated blood can cause brain damage in only a few minutes. A person may die within eight to 10 minutes.[100]

Adult Cardiovascular Services

There are two levels of hospital program licensure for ACS. A Level I program is authorized to perform adult percutaneous cardiac intervention (PCI)[101] without onsite cardiac surgery and a Level II program is authorized to perform PCI with onsite cardiac surgery.[102]

For a hospital seeking a Level I ACS program license, it must demonstrate that, for the most recent 12-month period as reported to Agency for Health Care Administration (AHCA), it has:

- Provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations; or

[98] Department of Educations, *Career and Technical Education*, *available at* http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/ (last visited March 24, 2021).
[99] *Id.*
[100] *See* Mayo Clinic: *Cardiopulmonary resuscitation (CPR): First aid*, *available at* https://www.mayoclinic.org/first-aid/first-aid-cpr/basics/art-20056600 (last visited March 24, 2021).
[101] Percutaneous cardiac intervention (PCI), commonly known as coronary angioplasty or angioplasty, is a nonsurgical technique for treating obstructive coronary artery disease.
[102] Section 395.1055(18)(a), F.S.

- Discharged or transferred at least 300 inpatients with the principal diagnosis of ischemic heart disease;[103] and that it has formalized, written transfer agreement with a hospital that has a Level II program.[104]

A hospital seeking a Level II program license, it must demonstrate that, for the most recent 12-month period as reported to AHCA, it has:

- Performed a minimum of 1,100 adult inpatient and outpatient cardiac catheterizations, of which at least 400 must be therapeutic catheterizations; or
- Discharged at least 800 patients with the principal diagnosis of ischemic heart disease.

The AHCA currently maintains a list on its website of hospitals with Level I and Level II ACS programs.[105]

Local Health Councils

Section 408.033, F.S., establishes local health councils as a network of non-profit agencies that conduct regional health planning and implementation activities.

Each council's district is designated in s. 408.032, F.S. The Board of Directors of these councils are composed of health care providers, purchasers, and nongovernmental consumers. Members serve for two years and are eligible for reappointment. Local health councils develop district health plans containing data, analysis, and recommendations that relate to health care status and needs in the community. The recommendations are designed to improve access to health care, reduce disparities in health status, assist state and local governments in the development of sound and rational health care policies, and advocate on behalf of the underserved. [106]

Local health councils:

- Develop a district area health plan that permits each local health council to develop strategies and set priorities for implementation based on its unique local health needs.
- Advise the AHCA on health care issues and resource allocations.
- Promote public awareness of community health needs, emphasizing health promotion and cost-effective health service selection.
- Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and assist the agency and other state agencies in carrying out data collection activities that relate to the functions in this subsection.

[103] Heart condition caused by narrowed heart arteries. This is also called "coronary artery disease" and "coronary heart disease."
[104] Section 408.0361(3)(b), F.S.
[105] Agency for Health Care Administration, *Hospital & Outpatient Services Unit, Reports, Cardiovascular – Level I and II ACS, available at* https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/Reports.shtml (last visited March 24, 2021.

[106] Florida's Local Health Councils, available at http://www.floridahealth.gov/provider-and-partner-resources/health-councils/index.html (last visited April 14, 2021)

- Monitor the onsite construction progress, if any, of certificate-of-need approved projects and report council findings to the agency on forms provided by the Agency for Health Care Administration.
- Advise and assist any regional planning councils within each district that have elected to address health issues in their strategic regional policy plans with the development of the health element of the plans to address the health goals and policies in the State Comprehensive Plan.
- Advise and assist local governments within each district on the development of an optional health plan element of the comprehensive plan, to assure compatibility with the health goals and policies in the State Comprehensive Plan and district health plan. To facilitate the implementation of this section, the local health council annually provide the local governments in its service area, upon request, with:
  - A copy and appropriate updates of the district health plan;
  - A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and
  - Applicable AHCA rules and calculated need methodologies for health facilities and services regulated under s. 408.033, F.S., for the district served by the local health council.
- Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of local, state, federal, and private funds distributed to meet the needs of the medically indigent and other underserved population groups.
- In conjunction with the DOH, plan for services at the local level for persons infected with the human immunodeficiency virus.
- Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.
- Provide the AHCA with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.[107]

III. Effect of Proposed Changes:

Onsite Sewage Treatment and Disposal Systems

This bill amends and creates multiple sections of the Florida statutes related to the Department of Health (DOH) regulation of OSTDS. The bill:

- Amends s. 381.0061, F.S., as amended by s. 41 of ch. 2020-150, Laws of Florida to strike DOH's authority to assess fines related to OSTDS and septic tank contracting. The regulation of these programs will transfer to the Department of Environmental Protection (DEP) on July 1, 2021.[108]
- Creates s. 381.00635, F.S., to authorize the DOH to issue an order requiring a correction to improper conditions of any private or public water system not covered or included in the Florida Safe Drinking Water Act[109] which constitutes a nuisance or menace to public health.

[107] See https://www.flhealthplanning.org/services/ (last visited April 14, 2021).
[108] Chapter 2020-150, Laws of Fla.
[109] Part VI of ch. 403, F.S.

- Amends s. 381.0067, F.S., to eliminate DEP authority over public and private water systems not included in the Florida Safe Drinking Water Act, the regulation of which is retained by the DOH. Amends s. 381.0101, F.S., to retain the requirement that onsite evaluations of OSTDS be done by certified environmental health professionals.

Targeted Outreach for Pregnant Women

The bill amends s. 381.0045, F.S., to:
- Add pregnant women who are suffering from mental health problems to the list of outreach targets;
- Encourage high risk pregnant women to get tested for other sexually transmissible diseases, as well as HIV, per the DOH rule;
- Provide pregnant women with information on:
  - The need for antiretroviral medications, deleting reference to a single type of antiretroviral (AZT), for themselves and their newborn; and
  - How to access antiretroviral medications after discharge from the hospital;
- Link women to mental health services; and
- Require additional follow up for HIV-exposed newborns to determine final HIV status and ensure continued linkages to care, if needed.

Telehealth to Provide Services

The bill amends s. 456.47(2)(6), F.S., to remove the prohibition on prescribing controlled substances through telehealth. This section authorizes a telehealth provider, acting within the scope of his or her practice, to prescribe controlled substances listed in Schedule III, Schedule IV, and Schedule V of s. 893.03, F.S. The bill also authorizes a telehealth provider to prescribe Schedule II controlled substances if prescribed for any of the following:
- The treatment of a psychiatric disorder.
- Inpatient treatment at a hospital licensed under ch. 395, F.S.
- The treatment of a patient receiving hospice services.
- The treatment of a resident of a nursing home facility.
- The treatment of a post-operative patient's acute pain resulting from surgery within 14 days after the surgery has been performed, in accordance with certain prescription supply requirements.

The telehealth provider must also comply with ch. 893, F.S., by consulting and reporting to the Prescription Drug Monitoring Program database.

Chiropractic Licensure

The bill amends s. 460.406, F.S., to delete references to the term "regional" and replaces it with the term "institutional" to conform to the U.S. Department of Education accreditation nomenclature for approving educational institutions.

Dentistry

The bill amends ss. 466.028 and 466.0285, F.S., to provide that a dentist may be employed by a hospital and adds children's hospitals licensed as of January 1, 2021, to the list of entities that may employ a dentist or dental hygienist in the operation of a dental office or that may control specified aspects of a dental practice.

Local Health Councils

The bill amends s. 408.033, F.S., to authorize local health councils to collect utilization data from licensed hospitals within their respective local health council districts for a specified purpose.

Pharmacy

The bill amends s. 465.1893, F.S., to provide additional long-acting medications pharmacists may administer under certain circumstances and revising requirements for a continuing education course such pharmacists must complete. This adds naltrexone that is an Intramuscular extended release medication approved by the Food and Drug Administration (FDA) to treat both opioid use disorder (OUD) and alcohol use disorder (AUD) as a medication-assisted treatment (MAT) option.

Nursing

The bill amends s. 464.008, F.S., deleting a requirement that certain nursing program graduates complete a specified preparatory course; and makes technical changes to s. 464.018, F.S., disciplinary actions.

911 Public Safety Telecommunicator Certification

The bill creates s. 395.3042, F.S., to require:

- The DOH to send a list of providers of Level I and Level II ACS to the medical director of each licensed EMS provider in the state by June 1 of each year.
- The DOH to develop a sample heart attack-triage assessment tool, post the tool on its webpage, and provide a copy of the tool to each licensed EMS provider.
- Each licensed EMS provider to use a heart attack-triage assessment tool that is substantially similar to the sample triage assessment tool provided by the DOH.
- The medical director of each licensed EMS provider to develop and implement assessment, treatment, and transport-destination protocols for heart attack patients, with the intent to assess and treat patients and transport them to the most appropriate hospital. Such protocols must include the development and implementation of a plan for the triage and transport of patients with acute heart attack symptoms.

The bill also amends s. 401.465, F.S., to define “telecommunicator cardiopulmonary resuscitation training” to mean specific training and continuing education that is evidence-based and uses nationally accepted guidelines for high-quality telecommunicator cardiopulmonary resuscitation, including for the recognition of out-of-hospital cardiac arrest over the telephone and the delivery of telephonic instructions for treating such cardiac arrest and performing compression-only

cardiopulmonary resuscitation. The bill adds telecommunicator cardiopulmonary resuscitation training to the list of training that each PST who takes telephone calls and provides dispatch functions for emergency medical conditions must take every two years.

Midwifery

The bill:

- Amends the definition of "preceptor" to clearly define that role in the midwifery education process. Specifically, it explicitly states that a preceptor may not supervise an individual as a midwifery student unless the student has been enrolled in an approved midwifery program;
- Defines "pre-licensure course" to mean a course of study, offered by an approved midwifery program and approved by the DOH, which an applicant for licensure must complete before a license may be issued and which provides instruction in the laws and rules of this state and demonstrates the student's competency to practice midwifery;
- Clarifies language to promote consistency in terminology and that midwifery programs must incorporate all required standards, guidelines, and education objectives;
- Clarifies that both of the following may be required for admission to a midwifery program:
  - A high school diploma or the equivalent; and
  - Three college-level credits in math and English or demonstration of competency in communication and computation.
- Requires that clinical training include all of the following:
  - Care for 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor, and
  - Observation of an additional 25 women in the intrapartal period before qualifying for a license.
  - Training in a hospital and alternate birth settings or both; and
  - Assessment and differentiation between a high risk and low risk pregnancy.
- Amends s. 467.011, F,S., to require the following for the issuance of a midwifery license:
  - Application and fee, pursuant to 467.0135, F.S.;
  - Graduation from:
    - An approved midwifery program;
    - A medical or midwifery program offered in another jurisdiction whose graduation requirements were equivalent to or exceeded those required in Florida;
  - Completion of a pre-licensure course offered by an approved midwifery program; and
  - A passing score on the examination specified by the DOH.
- Amends s. 467.0125, F.S, to repeal the abbreviated oral examination to determine the applicant's competency without a written examination for temporary certificates and clarifies criteria for obtaining a license by endorsement and temporary certificate to practice in areas of critical need. The bill does not define "areas of critical need" directly for temporary certificates, but requires the applicant to:
  - Specify that he or she will only practice in one or more of the following areas:
    - A county health department;
    - A correctional facility;
    - A Department of Veterans' Affairs clinic;
    - A community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Service Act; or

        - Any other agency or institution that is approved by the State Surgeon General that provides health care to meet the needs of an underserved populations in this state; and
    - Practice only under the supervision of a physician, an APRN certified nurse midwife, or a midwife licensed under ch. 467, F.S., who has a minimum of three years professional experience; and
    - Voluntarily relinquish the temporary certificate, or report a new practice area of critical need to the DOH, if his or her current practice area ceases to be an area of critical need.
- Amends s. 467.205, F.S., to update the DOH's approval process of midwifery programs to allow midwifery programs to be provisionally approved for five years. This conforms to the five-year period provisional licensure period the Department of Education's Commission for Independent Education uses when seeking accreditation status. For private institutions, demonstrates its accreditation by a member of the Council for Higher Education Accreditation, or an accrediting agency approved by the United States Department of Education. The DOH will be able to give provisional approval to a new program who has met all requirements except for showing their students have an 80-percent passage rate on the national exam. Programs provisionally approved will have five years to demonstrate the required exam approval rate after they are preliminary approved. This time period should allow completion of the three-year education program for at least one cohort of students, and for those students to take the exam before the DOH tries to determine the passing rate.[110]

Practice of Orthotics, Prosthetics, and Pedorthics

The bill amends part XIV of ch. 468, F.S., to update the statute and reflect current procedures for applicants to obtain a criminal history check and the method of transmission to the DOH for review.

The bill deletes references to the term "regionally accredited" and replaces it with the term "institutionally accredited" or simply references the programmatic accrediting body to conform to the United States Department of Education accreditation nomenclature for approving educational institutions.[111]

Clinical Lab personnel

The bill amends s. 483.801, F.S., to exempt persons performing alternate-site testing within a hospital or offsite emergency department of a hospital and amends s. 483.824, F.S., to delete the reference to the term "regionally" in regard to the accredited institution that a clinical laboratory director is required to hold a doctoral degree in a chemical, physical, or biological science from.

Psychologists

The bill amends ss. 490.003, 490.005, 490.0051, and 491.005, F.S., to clarify the educational requirements for psychologists applying for licensure by examination or endorsement. Under the bill, psychologists may obtain a doctoral degree from:

[110] Department of Health, *Senate Bill 1568 Fiscal Analysis - Midwifery* (July 16, 2020) (on file with the Senate Committee on Health Policy.)
[111] Department of Health, *Senate Bill 1568 Fiscal Analysis - Practice of Orthotics, Prosthetics, and Pedorthics* (July 15, 2020) (on file with the Senate Committee on Health Policy.)

- An American Psychological Association (APA) accredited program; or
- An institution accredited from an agency recognized by the United States Department of Education or Association of Universities and colleges of Canada.

Mental Health Counselors

The bill amends 491.005, to:

- Authorize programs not yet accredited by COAMFTE, CACREP, the Masters in Psychology and Counseling Accreditation Council or equivalent accrediting body a period of five years to become accredited;
- Authorize a licensed mental health professional to be available by phone or other electronic methods when clinical services are being provided by a registered intern by telehealth methods;
- Delete references to the term "regional" in s. 491.005(3), F.S., and replaces it with the term "institutional" to conform with the U.S. Department of Education accreditation nomenclature for approving educational institutions; and
- Delete current statutory references to the DOH collecting fees for examinations or conducting examinations.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health (DOH) Division of Medical Quality Assurance (MQA) may experience an increase in workload associated with additional complaints if a midwife holding a temporary certificate fails to comply with the provisions of this bill. It is anticipated that the impact will be minimal and can be absorbed with current resources.

The DOH MQA will experience a non-recurring workload associated with updating the online application and websites. The License and Enforcement Database System (LEIDS) must be updated and the Versa Online (on-line application) system will need to be modified. Current resources are adequate to absorb.

The DOH may have an indeterminate negative fiscal impact related to enforcing new training requirements for public safety telecommunicators; however, it is anticipated that current resources are adequate to absorb.[112]

The department MQA will incur non-recurring cost for rulemaking, which current budget authority is adequate to absorb.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0045, 381.0061, 381.0067, 381.0101, 401.465, 408.033, 456.47, 460.406, 464.008, 464.018, 465.1893, 466.028, 466.0285, 467.003, 467.009, 467.011, 467.0125, 467.205, 468.803, 483.801, 483.824, 490.003, 490.005, 490.0051, and 491.005.

This bill creates the following sections of the Florida Statutes: 381.00635 and 395.3042.

[112] Department of Health, Senate Bill 1568 Fiscal Analysis (Mar, 12, 2021) (on file with the Senate Committee on Health Policy.)

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Authorizes local health councils to collect utilization data from licensed hospitals within their respective local health council districts for a specified purpose.
- Deletes a requirement that certain nursing program graduates complete a specified preparatory course.
- Provides long-acting medications pharmacists may administer under certain circumstances and revising requirements for a continuing education course such pharmacists must complete.
- Establishes requirements for the triage and transportation of heart attack victims to adult cardiovascular services (ACS) providers.
- Authorizes a telehealth provider, practicing in a manner consistent with his or her scope of practice, to prescribe Schedule III, IV, and V controlled substances through telehealth.
- Authorizes a telehealth provider, practicing in a manner consistent with his or her scope of practice, to prescribe Schedule II controlled substances under certain circumstances.
- Requires each 911 public safety telecommunicator to receive telecommunicator cardiopulmonary resuscitation training that is defined in the bill, every two years and establishes a procedure to monitor adherence to such training and allows the DOH to adjust state grant or shared revenue funding to a public safety agency based on the public safety agency's adherence to the training requirements.

CS by Health Policy on March 31, 2021:
The CS:

- Removes the underlying bill's revisions to medical marijuana statutes;
- Makes technical corrections to the underlying bill's provisions relating to onsite sewage treatment and disposal systems;
- Provides that a dentist may be employed by a hospital and adds children's hospitals licensed as of January 1, 2021, to the list of entities that may employ a dentist or dental hygienist in the operation of a dental office or that may control specified aspects of a dental practice;
- Amends s. 467.205, F.S., to add an accrediting agency approved by the United States Department of Education to those agencies that may accredit private midwifery programs;
- Amends s. 483.801. F.S., to exempt persons performing alternate-site testing within a hospital or off-site emergency department from statutory provisions and the Department of Health regulations pertaining to clinical laboratories and clinical laboratory personnel; and
- Provides an additional accreditation, plus other equivalent accreditations, that a master's degree program may have in order to qualify an applicant for a mental health counseling license, beginning July 1, 2025.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 131 and 132
insert:

Section 4. Paragraph (l) of subsection (4) of section 381.0065, Florida Statutes, as amended by section 7 of chapter 2020-150, Laws of Florida, is amended to read

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not

construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department. A construction permit is valid for 18 months after the date of issuance and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after the date of issuance. An operating permit must be obtained before the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A fee is not associated with

the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from

surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection

as defined by department rule.

3. In areas not scheduled to be served by a central sewerage system, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by a central sewerage system by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewerage system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that meets the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.

8. Notwithstanding any other law, an onsite sewage

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treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewerage system until December 31, 2020.

9. The department may grant a waiver from the timeframe specified in subparagraph 3. to the owner of an individual septic system to install a new onsite sewage treatment and disposal system and allow the owner to continue using his or her current septic tank, provided that the individual septic systems were identified in the original master plan and approved by the permitting entities for the central sewerage system as being excluded for service; the septic tanks are operated and maintained on an annual basis; and when the owner's septic tank is found to be failing, the new onsite sewage treatment and disposal system as required by subparagraph 1. must be commenced within 1 year.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 23

and insert:

systems; amending s. 381.0065, F.S., as amended by s. 7 of chapter 2020-150, Laws of Florida; authorizing the department to grant certain septic tank owners waivers from specified requirements for onsite sewage treatment and disposal systems under certain circumstances; amending s. 381.0067, F.S.; conforming

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 232 and 233
insert:

Section 6. Section 395.3042, Florida Statutes, is created to read:

395.3042 Emergency medical services providers; triage and transportation of heart attack victims to an adult cardiovascular services provider.—

(1) By June 1 of each year, the department shall send a

list of providers of Level I and Level II adult cardiovascular services to the medical director of each licensed emergency medical services provider in this state.

(2) The department shall develop a sample heart attack-triage assessment tool. The department shall post this sample assessment tool on its website and provide a copy of the assessment tool to each licensed emergency medical services provider. Each licensed emergency medical services provider shall use a heart attack-triage assessment tool that is substantially similar to the sample heart attack-triage assessment tool provided by the department.

(3) The medical director of each licensed emergency medical services provider shall develop and implement assessment, treatment, and transport-destination protocols for heart attack patients with the intent to assess, treat, and transport heart attack patients to the most appropriate hospital. Such protocols must include the development and implementation of plans for the triage and transport of patients with acute heart attack symptoms.

(4) Each emergency medical services provider licensed under chapter 401 must comply with this section.

Section 7. Present subsections (3) and (4) of section 401.465, Florida Statutes, are redesignated as subsections (4) and (5), respectively, paragraph (d) is added to subsection (1) and a new subsection (3) is added to that section, and paragraphs (d) and (j) of subsection (2) of that section are amended, to read:

401.465 911 public safety telecommunicator certification.—

(1) DEFINITIONS.—As used in this section, the term:

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(d) "Telecommunicator cardiopulmonary resuscitation training" means specific training, including continuous education, that is evidence based and contains nationally accepted guidelines for high-quality telecommunicator cardiopulmonary resuscitation with the recognition of out-of-hospital cardiac arrest over the telephone and the delivery of telephonic instructions for treating cardiac arrest and performing compression-only cardiopulmonary resuscitation.

(2) PERSONNEL; STANDARDS AND CERTIFICATION.—

(d) The department shall determine whether the applicant meets the requirements specified in this section and in rules of the department and shall issue a certificate to any person who meets such requirements. Such requirements must include the following:

1. Completion of an appropriate 911 public safety telecommunication training program;

2. Certification under oath that the applicant is not addicted to alcohol or any controlled substance;

3. Certification under oath that the applicant is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties;

4. Submission of the application fee prescribed in subsection (4) ~~(3)~~;

5. Submission of a completed application to the department which indicates compliance with subparagraphs 1., 2., and 3.; and

6. Effective October 1, 2012, passage of an examination approved by the department which measures the applicant's competency and proficiency in the subject material of the public

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safety telecommunication training program.

(j)1. The requirement for certification as a 911 public safety telecommunicator is waived for a person employed as a sworn state-certified law enforcement officer, provided the officer:

a. Is selected by his or her chief executive to perform as a 911 public safety telecommunicator;

b. Performs as a 911 public safety telecommunicator on an occasional or limited basis; and

c. Passes the department-approved examination that measures the competency and proficiency of an applicant in the subject material comprising the public safety telecommunication program.

2. A sworn state-certified law enforcement officer who fails an examination taken under subparagraph 1. must take a department-approved public safety telecommunication training program prior to retaking the examination.

3. The testing required under this paragraph is exempt from the examination fee required under subsection (4) ~~(3)~~.

(3) TELECOMMUNICATOR CARDIOPULMONARY RESUSCITATION TRAINING.—In addition to the certification and recertification requirements imposed by this section, 911 public safety telecommunicators who take telephone calls and provide dispatch functions for emergency medical conditions also shall receive telecommunicator cardiopulmonary resuscitation training every 2 years.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 28

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and insert:

changes; creating s. 395.3042, F.S.; requiring the department to send a list of certain providers of adult cardiovascular services to the medical directors of licensed emergency medical services providers by a specified date each year; requiring the department to develop a sample heart attack-triage assessment tool; requiring the department to post the sample assessment tool on its website and provide a copy of it to all licensed emergency medical services providers; requiring such providers to use an assessment tool substantially similar to the one developed by the department; requiring the medical director of each licensed emergency medical services provider to develop and implement certain protocols for heart attack patients; providing requirements for such protocols; requiring licensed emergency medical services providers to comply with certain provisions; amending s. 401.465, F.S.; defining the term "telecommunicator cardiopulmonary resuscitation training"; requiring certain 911 public safety telecommunicators to receive biannual telecommunicator cardiopulmonary resuscitation training; amending s. 460.406, F.S.; revising

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 232 and 233
insert:

Section 6. Paragraph (h) is added to subsection (1) of section 408.033, Florida Statutes, to read:

408.033 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(h) For the purpose of performing their duties under this section, local health councils may collect utilization data from

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each hospital licensed under chapter 395 which is located within their respective local health council districts.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 28

and insert:

changes; amending s. 408.033, F.S.; authorizing local health councils to collect utilization data from licensed hospitals within their respective local health council districts for a specified purpose; amending s. 460.406, F.S.; revising

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 311 and 312

insert:

Section 7. Subsection (4) of section 464.008, Florida Statutes, is amended to read:

464.008 Licensure by examination.—

~~(4) If an applicant who graduates from an approved program does not take the licensure examination within 6 months after graduation, he or she must enroll in and successfully complete a~~

649510

~~board-approved licensure examination preparatory course. The applicant is responsible for all costs associated with the course and may not use state or federal financial aid for such costs. The board shall by rule establish guidelines for licensure examination preparatory courses.~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 30

and insert:

licensing; amending s. 464.008, F.S.; deleting a requirement that certain nursing program graduates complete a specified preparatory course; amending s. 464.018, F.S.; revising grounds

625826

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 323 and 324
insert:

Section 8. Section 465.1893, Florida Statutes, is amended to read:

465.1893 Administration of long-acting ~~antipsychotic~~ medication by injection.—

(1)(a) A pharmacist, at the direction of a physician licensed under chapter 458 or chapter 459, may administer a

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long-acting antipsychotic medication or an extended-release medication indicated to treat opioid use disorder, alcohol use disorder, or other substance use disorders or dependencies, including, but not limited to, buprenorphine, naltrexone, or other medications that have been approved by the United States Food and Drug Administration by injection to a patient if the pharmacist:

1. Is authorized by and acting within the framework of an established protocol with the prescribing physician.

2. Practices at a facility that accommodates privacy for nondeltoid injections and conforms with state rules and regulations regarding the appropriate and safe disposal of medication and medical waste.

3. Has completed the course required under subsection (2).

(b) A separate prescription from a physician is required for each injection administered by a pharmacist under this subsection.

(2)(a) A pharmacist seeking to administer a ~~long-acting antipsychotic~~ medication described in paragraph (1)(a) ~~by injection~~ must complete an 8-hour continuing education course offered by:

1. A statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award (AMA PRA) Category 1 Credit or the American Osteopathic Association (AOA) Category 1-A continuing medical education (CME) credit; and

2. A statewide association of pharmacists.

(b) The course may be offered in a distance learning format

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and must be included in the 30 hours of continuing professional pharmaceutical education required under s. 465.009(1). The course shall have a curriculum of instruction that concerns the safe and effective administration of behavioral health, addiction, and antipsychotic medications by injection, including, but not limited to, potential allergic reactions to such medications.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 31 and 32

insert:

amending s. 465.1893, F.S.; providing additional long-acting medications pharmacists may administer under certain circumstances; revising requirements for a continuing education course such pharmacists must complete;

847040

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 232 and 233
insert:

Section 6. Paragraph (c) of subsection (2) of section 456.47, Florida Statutes, is amended to read:

456.47 Use of telehealth to provide services.—

(2) PRACTICE STANDARDS.—

(c) A telehealth provider, acting within the scope of his or her practice and in accordance with chapter 893, may ~~not~~ use

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telehealth to prescribe a controlled substance listed in Schedule III, Schedule IV, or Schedule V of s. 893.03 and may use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03 if ~~unless~~ the controlled substance is prescribed for the following:

1. The treatment of a psychiatric disorder;

2. Inpatient treatment at a hospital licensed under chapter 395;

3. The treatment of a patient receiving hospice services as defined in s. 400.601; ~~or~~

4. The treatment of a resident of a nursing home facility as defined in s. 400.021; or

5. The treatment of a post-operative patient's acute pain resulting from surgery within 14 days after the surgery has been performed, in accordance with the prescription supply requirements of s. 456.44(5).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 28

and insert:

changes; amending s. 456.47, F.S.; authorizing telehealth providers to prescribe specified controlled substances through telehealth under certain circumstances; amending s. 460.406, F.S.; revising

By the Committee on Health Policy; and Senator Rodriguez

588-03618-21 20211568c1

A bill to be entitled

An act relating to the Department of Health; amending s. 381.0045, F.S.; revising the purpose of the department's targeted outreach program for certain pregnant women; requiring the department to encourage high-risk pregnant women of unknown status to be tested for sexually transmissible diseases; requiring the department to provide specified information to pregnant women who have human immunodeficiency virus (HIV); requiring the department to link women with mental health services when available; requiring the department to educate pregnant women who have HIV on certain information; requiring the department to provide, for a specified purpose, continued oversight of newborns exposed to HIV; amending s. 381.0061, F.S., as amended by s. 41 of chapter 2020-150, Laws of Florida; revising provisions related to administrative fines for violations relating to onsite sewage treatment and disposal systems and septic tank contracting; creating s. 381.00635, F.S.; transferring provisions from s. 381.0067, F.S., relating to corrective orders for private and certain public water systems; amending s. 381.0067, F.S.; conforming provisions to changes made by the act; amending s. 381.0101, F.S.; revising certification requirements for persons performing evaluations of onsite sewage treatment and disposal systems; making technical changes; amending s. 460.406, F.S.; revising provisions related to chiropractic physician

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-03618-21 20211568c1

licensing; amending s. 464.018, F.S.; revising grounds for disciplinary action against licensed nurses; amending s. 466.028, F.S.; revising grounds for disciplinary action by the Board of Dentistry; amending s. 466.0285, F.S.; exempting certain specialty hospitals from prohibitions relating to the employment of dentists and dental hygienists and the control of dental equipment and materials by nondentists; exempting such hospitals from a prohibition on nondentists entering into certain agreements with dentists or dental hygienists; making technical changes; amending s. 467.003, F.S.; revising and defining terms; amending s. 467.009, F.S.; revising provisions related to approved midwifery programs; amending s. 467.011, F.S.; revising provisions relating to licensure of midwives; amending s. 467.0125, F.S.; revising provisions relating to licensure by endorsement of midwives; revising requirements for temporary certificates to practice midwifery in this state; amending s. 467.205, F.S.; revising provisions relating to approval, continued monitoring, probationary status, provisional approval, and approval rescission of midwifery programs; amending s. 468.803, F.S.; revising provisions related to orthotist and prosthetist registration, examination, and licensing; amending s. 483.801, F.S.; exempting certain persons from clinical laboratory personnel regulations; amending s. 483.824, F.S.; revising educational requirements for clinical

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laboratory directors; amending s. 490.003, F.S.; defining the terms "doctoral degree from an American Psychological Association accredited program" and "doctoral degree in psychology"; amending ss. 490.005 and 490.0051, F.S.; revising education requirements for psychologist licensing and provisional licensing, respectively; amending s. 491.005, F.S.; revising licensing requirements for clinical social workers, marriage and family therapists, and mental health counselors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 381.0045, Florida Statutes, are amended to read:

381.0045 Targeted outreach for pregnant women.—

(2) It is the purpose of this section to establish a targeted outreach program for high-risk pregnant women who may not seek proper prenatal care, who suffer from substance abuse or mental health problems, or who have ~~are infected with~~ human immunodeficiency virus (HIV), and to provide these women with links to much needed services and information.

(3) The department shall:

(a) Conduct outreach programs through contracts with, grants to, or other working relationships with persons or entities where the target population is likely to be found.

(b) Provide outreach that is peer-based, culturally sensitive, and performed in a nonjudgmental manner.

(c) Encourage high-risk pregnant women of unknown status to

be tested for HIV and other sexually transmissible diseases as specified by department rule.

(d) Educate women not receiving prenatal care as to the benefits of such care.

(e) Provide ~~HIV-infected~~ pregnant women who have HIV with information on the need for antiretroviral medication for their newborn, their medication options, and how they can access the medication after their discharge from the hospital ~~so they can make an informed decision about the use of Zidovudine (AZT)~~.

(f) Link women with substance abuse treatment and mental health services, when available, and act as a liaison with Healthy Start coalitions, children's medical services, Ryan White-funded providers, and other services of the Department of Health.

(g) Educate pregnant women who have HIV on the importance of engaging in and continuing HIV care.

(h) Provide continued oversight of ~~to HIV-exposed~~ newborns exposed to HIV to determine the newborn's final HIV status and ensure continued linkage to care if the newborn is diagnosed with HIV.

Section 2. Subsection (1) of section 381.0061, Florida Statutes, as amended by section 41 of chapter 2020-150, Laws of Florida, is amended to read:

381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by chapter 120 or by other law, the department may impose a fine, which may not exceed $500 for each violation, for a violation of s. 381.006(15), ~~s. 381.0065, s. 381.0066,~~ s. 381.0072, ~~or part III of chapter 489, for a violation of~~ any rule adopted under

this chapter, or ~~for a violation of~~ chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 3. Section 381.00635, Florida Statutes, is created to read:

381.00635 Corrective orders; private and certain public water systems.—When the department or its agents, through investigation, find that any private water system or public water system not covered or included in the Florida Safe Drinking Water Act, part VI of chapter 403, constitutes a nuisance or menace to the public health or significantly degrades the groundwater or surface water, the department or its agents may issue an order requiring the owner to correct the improper condition.

Section 4. Section 381.0067, Florida Statutes, is amended to read:

381.0067 Corrective orders; ~~private and certain public water systems and~~ onsite sewage treatment and disposal systems.—When the department or its agents, through investigation, find that any ~~private water system, public water system not covered or included in the Florida Safe Drinking Water Act (part VI of chapter 403), or~~ onsite sewage treatment and disposal system constitutes a nuisance or menace to the public health or significantly degrades the groundwater or surface water, the department or its agents may issue an order requiring the owner to correct the improper condition. If the improper condition relates to the drainfield of an onsite sewage treatment and disposal system, the department or its agents may issue an order

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requiring the owner to repair or replace the drainfield. If an onsite sewage treatment and disposal system has failed, the department or its agents shall issue an order requiring the owner to replace the system. For purposes of this section, an onsite sewage treatment and disposal system has failed if the operation of the system constitutes a nuisance or menace to the public health or significantly degrades the groundwater or surface water and the system cannot be repaired.

Section 5. Subsections (2) and (4) of section 381.0101, Florida Statutes, are amended to read:

381.0101 Environmental health professionals.—

(2) CERTIFICATION REQUIRED.—A person may not perform environmental health or sanitary evaluations in any primary program area of environmental health or an onsite sewage treatment and disposal program under ss. 381.0065 and 381.00651 without being certified by the department as competent to perform such evaluations. This section does not apply to:

(a) Persons performing inspections of public food service establishments licensed under chapter 509; or

(b) Persons performing site evaluations in order to determine proper placement and installation of onsite sewage ~~wastewater~~ treatment and disposal systems who have successfully completed a department-approved soils morphology course and who are working under the direct responsible charge of an engineer licensed under chapter 471.

(4) STANDARDS FOR CERTIFICATION.—The department shall adopt rules that establish definitions of terms and minimum standards of education, training, or experience for those persons subject to this section. The rules must also address the process for

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application, examination, issuance, expiration, and renewal of certification and ethical standards of practice for the profession.

(a) Persons employed as environmental health professionals shall exhibit a knowledge of rules and principles of environmental and public health law in Florida through examination. A person may not conduct environmental health evaluations in a primary program area or an onsite sewage treatment and disposal program under ss. 381.0065 and 381.00651 unless he or she is currently certified in that program area or works under the direct supervision of a certified environmental health professional.

1. All persons who begin employment in a primary environmental health program or an onsite sewage treatment and disposal system program on or after September 21, 1994, must be certified in that program within 6 months after employment.

2. Persons employed in the primary environmental health program of a food protection program or an onsite sewage treatment and disposal system program before ~~prior to~~ September 21, 1994, are ~~shall be~~ considered certified while employed in that position and are ~~shall be~~ required to adhere to any professional standards established by the department pursuant to paragraph (b), complete any continuing education requirements imposed under paragraph (d), and pay the certificate renewal fee imposed under subsection (6).

3. Persons employed in the primary environmental health program of a food protection program or an onsite sewage treatment and disposal system program before ~~prior to~~ September 21, 1994, who change positions or program areas and transfer

into another primary environmental health program area on or after September 21, 1994, must be certified in that program within 6 months after such transfer, except that they are ~~will~~ not ~~be~~ required to possess the college degree required under paragraph (e).

4. Registered sanitarians are ~~shall be~~ considered certified and are ~~shall be~~ required to adhere to any professional standards established by the department pursuant to paragraph (b).

(b) At a minimum, the department shall establish standards for professionals in the areas of food hygiene and onsite sewage treatment and disposal.

(c) Those persons conducting primary environmental health evaluations or evaluations of onsite sewage treatment and disposal systems must ~~shall~~ be certified by examination to be knowledgeable in any primary area of environmental health in which they are routinely assigned duties.

(d) Persons who are certified shall renew their certification biennially by completing a minimum of ~~not less than~~ 24 contact hours of continuing education for each program area in which they maintain certification, subject to a maximum of 48 hours for multiprogram certification.

(e) Applicants for certification must ~~shall~~ have graduated from an accredited 4-year college or university with a degree or major coursework in public health, environmental health, environmental science, or a physical or biological science.

(f) A certificateholder must ~~shall~~ notify the department within 60 days after any change of name or address from that which appears on the current certificate.

Section 6. Subsection (1) of section 460.406, Florida Statutes, is amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has met all of the following criteria:

(a) Completed the application form and remitted the appropriate fee.

(b) Submitted proof satisfactory to the department that he or she is not less than 18 years of age.

(c) Submitted proof satisfactory to the department that he or she is a graduate of a chiropractic college which is accredited by or has status with the Council on Chiropractic Education or its predecessor agency. However, any applicant who is a graduate of a chiropractic college that was initially accredited by the Council on Chiropractic Education in 1995, who graduated from such college within the 4 years immediately preceding such accreditation, and who is otherwise qualified is ~~shall be~~ eligible to take the examination. An ~~No~~ application for a license to practice chiropractic medicine may not ~~shall~~ be denied solely because the applicant is a graduate of a

chiropractic college that subscribes to one philosophy of chiropractic medicine as distinguished from another.

(d)1. For an applicant who has matriculated in a chiropractic college before ~~prior to~~ July 2, 1990, completed at least 2 years of residence college work, consisting of a minimum of one-half the work acceptable for a bachelor's degree granted on the basis of a 4-year period of study, in a college or university accredited by an institutional accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 1990, must ~~shall~~ have been granted a bachelor's degree, based upon 4 academic years of study, by a college or university accredited by an institutional ~~a regional~~ accrediting agency which is a member of the Commission on Recognition of Postsecondary Accreditation.

2. Effective July 1, 2000, completed, before ~~prior to~~ matriculation in a chiropractic college, at least 3 years of residence college work, consisting of a minimum of 90 semester hours leading to a bachelor's degree in a liberal arts college or university accredited by an institutional accrediting agency recognized and approved by the United States Department of Education. However, before ~~prior to~~ being certified by the board to sit for the examination, each applicant who has matriculated in a chiropractic college after July 1, 2000, must ~~shall~~ have been granted a bachelor's degree from an institution holding accreditation for that degree from an institutional ~~a regional~~ accrediting agency which is recognized by the United States Department of Education. The applicant's chiropractic degree

must consist of credits earned in the chiropractic program and may not include academic credit for courses from the bachelor's degree.

(e) Successfully completed the National Board of Chiropractic Examiners certification examination in parts I, II, III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

(f) Submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.

Section 7. Paragraph (e) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in ss. 456.072(2) and 464.0095:

(e) Having been found guilty of~~, regardless of adjudication,~~ or entered a plea of nolo contendere or guilty to,

regardless of adjudication, any offense prohibited under s. 435.04 or similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

Section 8. Paragraph (h) of subsection (1) of section 466.028, Florida Statutes, is amended to read:

466.028 Grounds for disciplinary action; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(h) Being employed by any corporation, organization, group, or person other than a dentist, a hospital, or a professional corporation or limited liability company composed of dentists to practice dentistry.

Section 9. Section 466.0285, Florida Statutes, is amended to read:

466.0285 Proprietorship by nondentists.—

(1) A person or an entity ~~No person~~ other than a dentist licensed under ~~pursuant to~~ this chapter, a specialty-licensed children's hospital licensed under chapter 395 as of January 1, 2021, or ~~nor any entity other than~~ a professional corporation or limited liability company composed of dentists, may not:

(a) Employ a dentist or dental hygienist in the operation of a dental office.

(b) Control the use of any dental equipment or material while such equipment or material is being used for the provision of dental services, whether those services are provided by a dentist, a dental hygienist, or a dental assistant.

(c) Direct, control, or interfere with a dentist's clinical

judgment. To direct, control, or interfere with a dentist's clinical judgment does not mean ~~may not be interpreted to mean~~ dental services contractually excluded, the application of alternative benefits that may be appropriate given the dentist's prescribed course of treatment, or the application of contractual provisions and scope of coverage determinations in comparison with a dentist's prescribed treatment on behalf of a covered person by an insurer, health maintenance organization, or a prepaid limited health service organization.

Any lease agreement, rental agreement, or other arrangement between a nondentist and a dentist whereby the nondentist provides the dentist with dental equipment or dental materials must ~~shall~~ contain a provision whereby the dentist expressly maintains complete care, custody, and control of the equipment or practice.

(2) The purpose of this section is to prevent a nondentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment. In addition to the acts specified in subsection (1), a ~~no~~ person or an entity that ~~who~~ is not a dentist licensed under ~~pursuant to~~ this chapter, a specialty-licensed children's hospital licensed under chapter 395 as of January 1, 2021, or ~~nor any entity that is not~~ a professional corporation or limited liability company composed of dentists may not ~~shall~~ enter into a relationship with a licensee pursuant to which such unlicensed person or such entity exercises control over any of the following:

(a) The selection of a course of treatment for a patient, the procedures or materials to be used as part of such course of

treatment, and the manner in which such course of treatment is carried out by the licensee.~~;~~

(b) The patient records of a dentist.~~;~~

(c) Policies and decisions relating to pricing, credit, refunds, warranties, and advertising.~~; and~~

(d) Decisions relating to office personnel and hours of practice.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any contract or arrangement entered into or undertaken in violation of this section is ~~shall be~~ void as contrary to public policy. This section applies to contracts entered into or renewed on or after October 1, 1997.

Section 10. Present subsections (13) and (14) of section 467.003, Florida Statutes, are redesignated as subsections (14) and (15), respectively, a new subsection (13) is added to that section, and subsections (1) and (12) of that section are amended, to read:

467.003 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Approved midwifery program" means ~~a midwifery school or~~ a midwifery training program that ~~which~~ is approved by the department pursuant to s. 467.205.

(12) "Preceptor" means a physician licensed under chapter 458 or chapter 459, a ~~licensed~~ midwife licensed under this chapter, or a certified nurse midwife licensed under chapter 464~~,~~ who has a minimum of 3 years' professional experience~~,~~ and who directs, teaches, supervises, and evaluates the learning

experiences of a ~~the~~ student midwife as part of an approved midwifery program.

(13) "Prelicensure course" means a course of study, offered by an approved midwifery program and approved by the department, which an applicant for licensure must complete before a license may be issued and which provides instruction in the laws and rules of this state and demonstrates the student's competency to practice midwifery under this chapter.

Section 11. Section 467.009, Florida Statutes, is amended to read:

467.009 Approved midwifery programs; education and training requirements.—

(1) The department shall adopt standards for approved midwifery programs which must include, but need not be limited to, standards for all of the following:

(a) ~~. The standards shall encompass~~ Clinical and classroom instruction in all aspects of prenatal, intrapartal, and postpartal care, including all of the following:

1. Obstetrics.~~;~~

2. Neonatal pediatrics.~~;~~

3. Basic sciences.~~;~~

4. Female reproductive anatomy and physiology.~~;~~

5. Behavioral sciences.~~;~~

6. Childbirth education.~~;~~

7. Community care.~~;~~

8. Epidemiology.~~;~~

9. Genetics.~~;~~

10. Embryology.~~;~~

11. Neonatology.~~;~~

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12. Applied pharmacology.~~;~~

13. The medical and legal aspects of midwifery.~~;~~

14. Gynecology and women's health.~~;~~

15. Family planning.~~;~~

16. Nutrition during pregnancy and lactation.~~;~~

17. Breastfeeding.~~; and~~

18. Basic nursing skills~~; and any other instruction determined by the department and council to be necessary~~.

(b) ~~The standards shall incorporate the~~ Core competencies, incorporating those established by the American College of Nurse Midwives and the Midwives Alliance of North America, including knowledge, skills, and professional behavior in all of the following areas:

1. Primary management, collaborative management, referral, and medical consultation.~~;~~

2. Antepartal, intrapartal, postpartal, and neonatal care.~~;~~

3. Family planning and gynecological care.~~;~~

4. Common complications.~~; and~~

5. Professional responsibilities.

(c) Noncurricular ~~The standards shall include noncurriculum~~ matters under this section, including, but not limited to, staffing and teacher qualifications.

(2) An approved midwifery program must offer ~~shall include~~ a course of study ~~and clinical training~~ for a minimum of 3 years which incorporates all of the standards, curriculum guidelines, and educational objectives provided in this section and the rules adopted hereunder.

(3) An approved midwifery program may reduce ~~If the applicant is a registered nurse or a licensed practical nurse or~~

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~~has previous nursing or midwifery education,~~ the required period of training ~~may be reduced~~ to the extent of the student's ~~applicant's~~ qualifications as a registered nurse or licensed practical nurse or based on prior completion of equivalent nursing or midwifery education, as determined ~~under rules adopted~~ by ~~the~~ department rule~~. In no case shall the training be reduced to a period of less than 2 years~~.

(4)~~(3)~~ An approved midwifery program may accept students who ~~To be accepted into an approved midwifery program, an applicant shall~~ have both:

(a) A high school diploma or its equivalent.

(b) Taken three college-level credits each of math and English or demonstrated competencies in communication and computation.

(5)~~(4)~~ As part of its course of study, an approved midwifery program must require clinical training that includes all of the following:

(a) ~~A student midwife, during training, shall undertake, under the supervision of a preceptor,~~ The care of 50 women in each of the prenatal, intrapartal, and postpartal periods under the supervision of a preceptor.~~, but~~ The same women need not be seen through all three periods.

(b)~~(5)~~ Observation of ~~The student midwife shall observe~~ an additional 25 women in the intrapartal period ~~before qualifying for a license~~.

(6) Clinical ~~The~~ training required under this section must include all of the following:

(a) ~~shall include~~ Training in ~~either~~ hospitals~~, or~~ alternative birth settings, or both.

(b) A requirement that students demonstrate competency in the assessment of and differentiation~~, with particular emphasis on learning the ability to differentiate~~ between low-risk pregnancies and high-risk pregnancies.

(7) A hospital or birthing center receiving public funds shall be required to provide student midwives access to observe labor, delivery, and postpartal procedures, provided the woman in labor has given informed consent. The Department of Health shall assist in facilitating access to hospital training for approved midwifery programs.

(8)~~(7)~~ The Department of Education shall adopt curricular frameworks for midwifery programs conducted within public educational institutions under ~~pursuant to~~ this section.

~~(8) Nonpublic educational institutions that conduct approved midwifery programs shall be accredited by a member of the Commission on Recognition of Postsecondary Accreditation and shall be licensed by the Commission for Independent Education.~~

Section 12. Section 467.011, Florida Statutes, is amended to read:

467.011 Licensed midwives; qualifications; examination ~~Licensure by examination~~.—

~~(1) The department shall administer an examination to test the proficiency of applicants in the core competencies required to practice midwifery as specified in s. 467.009.~~

~~(2) The department shall develop, publish, and make available to interested parties at a reasonable cost a bibliography and guide for the examination.~~

~~(3)~~ The department shall issue a license to practice midwifery to an applicant who meets all of the following

criteria:

(1) Demonstrates that he or she has graduated from one of the following:

(a) An approved midwifery program.

(b) A medical or midwifery program offered in another state, jurisdiction, territory, or country whose graduation requirements were equivalent to or exceeded those required by s. 467.009 and the rules adopted thereunder at the time of graduation.

(2) Demonstrates that he or she has ~~and~~ successfully completed a prelicensure course offered by an approved midwifery program. Students graduating from an approved midwifery program may meet this requirement by showing that the content requirements for the prelicensure course were covered as part of their course of study.

(3) Submits an application for licensure on a form approved by the department and pays the appropriate fee.

(4) Demonstrates that he or she has received a passing score on an ~~the~~ examination specified by the department~~, upon payment of the required licensure fee~~.

Section 13. Section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensed midwives; qualifications; ~~Licensure by~~ endorsement; temporary certificates.—

(1) The department shall issue a license by endorsement to practice midwifery to an applicant who, upon applying to the department, demonstrates to the department that she or he meets all of the following criteria:

(a) ~~1. Holds a valid certificate or diploma from a foreign institution of medicine or midwifery or from a midwifery program offered in another state, bearing the seal of the institution or otherwise authenticated, which renders the individual eligible to practice midwifery in the country or state in which it was issued, provided the requirements therefor are deemed by the department to be substantially equivalent to, or to exceed, those established under this chapter and rules adopted under this chapter, and submits therewith a certified translation of the foreign certificate or diploma; or~~

~~2.~~ Holds an active, unencumbered ~~a valid certificate or~~ license to practice midwifery in another state, jurisdiction, or territory ~~issued by that state~~, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were ~~therefor are deemed by the department to be~~ substantially equivalent to~~,~~ or exceeded ~~to exceed,~~ those established under this chapter and the rules adopted thereunder ~~under this chapter~~.

(b) Has successfully completed a ~~4-month~~ prelicensure course conducted by an approved midwifery program ~~and has submitted documentation to the department of successful completion~~.

(c) Submits an application for licensure on a form approved by the department and pays the appropriate fee ~~Has successfully passed the licensed midwifery examination~~.

(2) The department may issue a temporary certificate to practice in areas of critical need to an applicant ~~any midwife~~ who is qualifying for a midwifery license ~~licensure by endorsement~~ under subsection (1) who meets all of the following criteria~~, with the following restrictions~~:

(a) Submits an application for a temporary certificate on a form approved by the department and pays the appropriate fee, which may not exceed $50 and is in addition to the fee required for licensure by endorsement under subsection (1);

(b) Specifies on the application that he or she will ~~The Department of Health shall determine the areas of critical need, and the midwife so certified shall~~ practice only in one or more of the following locations:

1. A county health department;

2. A correctional facility;

3. A Department of Veterans' Affairs clinic;

4. A community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Service Act; or

5. Any other agency or institution that is approved by the State Surgeon General and provides health care to meet the needs of an underserved population in this state; and ~~those specific areas,~~

(c) Will practice only under the supervision ~~auspices~~ of a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, a certified nurse midwife licensed under ~~pursuant to~~ part I of chapter 464, or a midwife licensed under this chapter~~,~~ who has a minimum of 3 years' professional experience.

(3) The department may issue a temporary certificate under this section with the following restrictions:

(a) A requirement that a temporary certificateholder practice only in areas of critical need. The State Surgeon General shall determine the areas of critical need, which ~~Such areas shall~~ include, but are not ~~be~~ limited to, health professional shortage areas designated by the United States

Department of Health and Human Services.

(b) A requirement that if a temporary certificateholder's practice area ceases to be an area of critical need, within 30 days after such change the certificateholder must either:

1. Report a new practice area of critical need to the department; or

2. Voluntarily relinquish the temporary certificate.

(c) The department shall review a temporary certificateholder's practice at least annually to determine whether the certificateholder is meeting the requirements of subsections (2) and (3) and the rules adopted thereunder. If the department determines that a certificateholder is not meeting these requirements, the department must revoke the temporary certificate.

(d) A temporary certificate issued under this section is ~~shall be~~ valid ~~only as long as an area~~ for ~~which it is issued remains an area of critical need, but no longer than~~ 2 years~~,~~ and is ~~shall~~ not ~~be~~ renewable.

~~(c) The department may administer an abbreviated oral examination to determine the midwife's competency, but no written regular examination shall be necessary.~~

~~(d) The department shall not issue a temporary certificate to any midwife who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of this section shall apply.~~

~~(e) The department shall review the practice under a temporary certificate at least annually to ascertain that the minimum requirements of the midwifery rules promulgated under~~

~~this chapter are being met. If it is determined that the minimum requirements are not being met, the department shall immediately revoke the temporary certificate.~~

~~(f) The fee for a temporary certificate shall not exceed $50 and shall be in addition to the fee required for licensure.~~

Section 14. Section 467.205, Florida Statutes, is amended to read:

467.205 Approval of midwifery programs.—

(1) The department shall approve an accredited or state-licensed public or private institution seeking to provide midwifery education and training as an approved midwifery program in this state if the institution meets all of the following criteria:

(a) Submits an application for approval on a form approved by the department.

(b) Demonstrates to the department's satisfaction that the proposed midwifery program complies with s. 467.009 and the rules adopted thereunder.

(c) For a private institution, demonstrates its accreditation by a member of the Council for Higher Education Accreditation or an accrediting agency approved by the United States Department of Education and its licensing or provisional licensing by the Commission for Independent Education ~~An organization desiring to conduct an approved program for the education of midwives shall apply to the department and submit such evidence as may be required to show that it complies with s. 467.009 and with the rules of the department. Any accredited or state-licensed institution of higher learning, public or private, may provide midwifery education and training.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~(2) The department shall adopt rules regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and other training requirements as are necessary to ensure that approved programs graduate midwives competent to practice under this chapter.~~

~~(3) The department shall survey each organization applying for approval. If the department is satisfied that the program meets the requirements of s. 467.009 and rules adopted pursuant to that section, it shall approve the program~~.

(2)~~(4)~~ The department shall, at least once every 3 years, certify whether each approved midwifery program is currently compliant, and has maintained compliance, ~~complies~~ with the requirements of ~~standards developed under~~ s. 467.009 and the rules adopted thereunder.

(3)~~(5)~~ If the department finds that an approved midwifery program is not in compliance with the requirements of s. 467.009 or the rules adopted thereunder, or has lost its accreditation status, the department must provide its finding to the program in writing and ~~no longer meets the required standards, it~~ may place the program on probationary status for a specified period of time, which may not exceed 3 years ~~until such time as the standards are restored~~.

(4) If a program on probationary status does not come into compliance with the requirements of s. 467.009 or the rules adopted thereunder, or regain its accreditation status, as applicable, within the period specified by the department ~~fails to correct these conditions within a specified period of time~~, the department may rescind the program's approval.

(5) A ~~Any~~ program that has ~~having~~ its approval rescinded

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has ~~shall have~~ the right to reapply for approval.

(6) The department may grant provisional approval of a new program seeking accreditation status, for a period not to exceed 5 years, provided that all other requirements of this section are met.

(7) The department may rescind provisional approval of a program that fails to the meet the requirements of s. 467.009, this section, or the rules adopted thereunder, in accordance with procedures provided in subsections (3) and (4) ~~may be granted pending the licensure results of the first graduating class~~.

Section 15. Subsections (2), (3), and (4) and paragraphs (a) and (b) of subsection (5) of section 468.803, Florida Statutes, are amended to read:

468.803 License, registration, and examination requirements.—

(2) An applicant for registration, examination, or licensure must apply to the department on a form prescribed by the board for consideration of board approval. Each initial applicant shall submit ~~a set of~~ fingerprints to the department ~~on a form and~~ under procedures specified by the department~~,~~ ~~along with payment in an amount equal to the costs incurred by the department~~ for state and national criminal history checks of the applicant. ~~The department shall submit the fingerprints provided by an applicant to the Department of Law Enforcement for a statewide criminal history check, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.~~ The board shall screen the results to determine

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if an applicant meets licensure requirements. The board shall consider for examination, registration, or licensure each applicant who the board verifies:

(a) Has submitted the completed application and completed the fingerprinting requirements ~~fingerprint forms~~ and has paid the applicable application fee, not to exceed $500~~, and the cost of the state and national criminal history checks~~. The application fee is ~~and cost of the criminal history checks shall be~~ nonrefundable;

(b) Is of good moral character;

(c) Is 18 years of age or older; and

(d) Has completed the appropriate educational preparation.

(3) A person seeking to attain the orthotics or prosthetics experience required for licensure in this state must be approved by the board and registered as a resident by the department. Although a registration may be held in both disciplines, for independent registrations the board may not approve a second registration until at least 1 year after the issuance of the first registration. Notwithstanding subsection (2), a person who has been approved by the board and registered by the department in one discipline may apply for registration in the second discipline without an additional state or national criminal history check during the period in which the first registration is valid. Each independent registration or dual registration is valid for 2 years after the date of issuance unless otherwise revoked by the department upon recommendation of the board. The board shall set a registration fee not to exceed $500 to be paid by the applicant. A registration may be renewed once by the department upon recommendation of the board for a period no

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

longer than 1 year, as such renewal is defined by the board by rule. The renewal fee may not exceed one-half the current registration fee. To be considered by the board for approval of registration as a resident, the applicant must have one of the following:

(a) A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an ~~a regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs.

(b) A minimum of a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a certificate in orthotics or prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(c) A minimum of a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a dual certificate in both orthotics and prosthetics from programs recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board.

(4) The department may develop and administer a state examination for an orthotist or a prosthetist license, or the board may approve the existing examination of a national standards organization. The examination must be predicated on a minimum of a baccalaureate-level education and formalized specialized training in the appropriate field. Each examination must demonstrate a minimum level of competence in basic scientific knowledge, written problem solving, and practical

clinical patient management. The board shall require an examination fee not to exceed the actual cost to the board in developing, administering, and approving the examination, which fee must be paid by the applicant. To be considered by the board for examination, the applicant must have:

(a) For an examination in orthotics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved orthotics internship of 1 year of qualified experience, as determined by the board, or an orthotic residency or dual residency program recognized by the board.

(b) For an examination in prosthetics:

1. A Bachelor of Science or higher-level postgraduate degree in orthotics and prosthetics from an institutionally ~~a regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs or, at a minimum, a bachelor's degree from an institutionally ~~a regionally~~ accredited college or university and a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board; and

2. An approved prosthetics internship of 1 year of

qualified experience, as determined by the board, or a prosthetic residency or dual residency program recognized by the board.

(5) In addition to the requirements in subsection (2), to be licensed as:

(a) An orthotist, the applicant must pay a license fee not to exceed $500 and must have:

1. A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from an institutionally ~~a regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree from an institutionally accredited college or university and ~~with~~ a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board;

2. An approved ~~appropriate~~ internship of 1 year of qualified experience, as determined by the board, or a residency program recognized by the board;

3. Completed the mandatory courses; and

4. Passed the state orthotics examination or the board-approved orthotics examination.

(b) A prosthetist, the applicant must pay a license fee not to exceed $500 and must have:

1. A Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics from an institutionally ~~a regionally~~ accredited college or university recognized by the Commission on Accreditation of Allied Health Education Programs, or a bachelor's degree from an institutionally accredited

college or university and ~~with~~ a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent, as determined by the board;

2. An internship of 1 year of qualified experience, as determined by the board, or a residency program recognized by the board;

3. Completed the mandatory courses; and

4. Passed the state prosthetics examination or the board-approved prosthetics examination.

Section 16. Subsection (7) is added to section 483.801, Florida Statutes, to read:

483.801 Exemptions.—This part applies to all clinical laboratories and clinical laboratory personnel within this state, except:

(7) Persons performing alternate-site testing within a hospital or offsite emergency department licensed under chapter 395.

Section 17. Section 483.824, Florida Statutes, is amended to read:

483.824 Qualifications of clinical laboratory director.—A clinical laboratory director must have 4 years of clinical laboratory experience with 2 years of experience in the specialty to be directed or be nationally board certified in the specialty to be directed, and must meet one of the following requirements:

(1) Be a physician licensed under chapter 458 or chapter 459;

(2) Hold an earned doctoral degree in a chemical, physical,

or biological science from an ~~a regionally~~ accredited institution and maintain national certification requirements equal to those required by the federal Health Care Financing Administration; or

(3) For the subspecialty of oral pathology, be a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466.

Section 18. Subsection (3) of section 490.003, Florida Statutes, is amended to read:

490.003 Definitions.—As used in this chapter:

(3)(a) "Doctoral degree from an American Psychological Association accredited program" means ~~Effective July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean~~ a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated:

1.~~(a)~~ Had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

2.~~(b)~~ Had programmatic accreditation from the American Psychological Association.

(b) "Doctoral degree in psychology" means a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from a psychology program at an educational institution that, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a

member in good standing with the Association of Universities and Colleges of Canada.

Section 19. Subsection (1) of section 490.005, Florida Statutes, is amended to read:

490.005 Licensure by examination.—

(1) Any person desiring to be licensed as a psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the board certifies has met all of the following requirements:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $500 and an examination fee set by the board sufficient to cover the actual per applicant cost to the department for development, purchase, and administration of the examination, but not to exceed $500.

(b) Submitted proof satisfactory to the board that the applicant has received:

1. A doctoral degree from an American Psychological Association accredited program ~~Doctoral-level psychological education~~; or

2. The equivalent of a doctoral degree from an American Psychological Association accredited program ~~doctoral-level psychological education, as defined in s. 490.003(3),~~ from a program at a school or university located outside the United States of America which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology. The applicant has the burden of establishing that this requirement has been met.

(c) Had at least 2 years or 4,000 hours of experience in

the field of psychology in association with or under the supervision of a licensed psychologist meeting the academic and experience requirements of this chapter or the equivalent as determined by the board. The experience requirement may be met by work performed on or off the premises of the supervising psychologist if the off-premises work is not the independent, private practice rendering of psychological services that does not have a psychologist as a member of the group actually rendering psychological services on the premises.

(d) Passed the examination. However, an applicant who has obtained a passing score, as established by the board by rule, on the psychology licensure examination designated by the board as the national licensure examination need only pass the Florida law and rules portion of the examination.

Section 20. Subsection (1) of section 490.0051, Florida Statutes, is amended to read:

490.0051 Provisional licensure; requirements.—

(1) The department shall issue a provisional psychology license to each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $250, as set by board rule.

(b) Earned a doctoral degree from an American Psychological Association accredited program ~~in psychology as defined in s. 490.003(3)~~.

(c) Met any additional requirements established by board rule.

Section 21. Subsections (1), (3), and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, ~~plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization,~~ the department shall issue a license as a clinical social worker to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. ~~Has~~ Received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by the United States Department of Education or ~~has~~ received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association of Schools of Social Work; or

c. Has been determined to have been a program equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program must have emphasized direct clinical patient or client health care services,

including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) ~~Has~~ Had at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's

graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. When a registered intern is providing clinical services through telehealth, a licensed mental health professional must be accessible by telephone or electronic means.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose~~.

(e) ~~Has~~ Demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost of the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Obtained one of the following:

a. ~~Has~~ A minimum of a master's degree with major emphasis in marriage and family therapy or a closely related field from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs.

b. A minimum of a master's degree with an emphasis in marriage and family therapy with a degree conferred date before July 1, 2026, from an institutionally accredited Florida college or university that is not yet accredited by the Commission on Accreditation for Marriage and Family Therapy Education or the Council for Accreditation of Counseling and Related Educational Programs.

2. Completed ~~and~~ graduate courses approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.

If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at

the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) ~~Has~~ Had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must have been ~~be~~ at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as

determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant must ~~shall~~ provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. When a registered intern is providing clinical services through telehealth, a licensed mental health professional must be accessible by telephone or other electronic means.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, ~~plus the actual per applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization,~~ the department shall issue a license as a mental health counselor to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. Obtained ~~Has~~ a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester

hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. ~~Has~~ Provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must

include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by

the Council for Accreditation of Counseling and Related Educational Programs, the Masters in Psychology and Counseling Accreditation Council, or an equivalent accrediting body which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) ~~Has~~ Had at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. When a registered intern is providing clinical services through telehealth, a licensed mental health professional must be accessible by telephone or other electronic means.

(d) ~~Has~~ Passed a theory and practice examination designated by department rule ~~provided by the department for this purpose~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 22. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

4/19/21
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1568
Bill Number (if applicable)

Topic Department of Health

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1570
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Rodriguez
SUBJECT:	Quasi-public Entities
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1570 creates section 20.059, Florida Statutes, relating to quasi-public entities. The bill provides definitions, requirements, and responsibilities for quasi-public entities.

The bill defines "quasi-public entity" to mean an entity with statewide application, other than a governmental entity, established by law, regardless of form, for a public purpose or to effectuate a government program, and is not under the direct control of a governmental entity. The term does not include a citizen support organization; a direct-support organization; a joint underwriting association, a risk apportionment plan, or entity created under sections 627.311 or 627.351, Florida Statutes; a research institute of the state university system; or an entity licensed as a health care facility under chapter 395, Florida Statutes.

The bill requires the Governor to designate a department with which each quasi-public entity will be affiliated and the requirements of the affiliated department.

The bill requires each quasi-public entity to submit an annual report, on September 15, to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and its affiliated department.

The bill requires a quasi-public entity to include additional specified information if the entity is organized as a corporation or has created an affiliated entity.

The bill requires each quasi-public entity to maintain a publicly available website with certain content.

A quasi-public entity is prohibited from using public funds to retain a lobbyist to represent the entity before the legislative or executive branch. However, a full-time employee of the entity may register as a lobbyist to provide such representation.

The bill prohibits a quasi-public entity from creating an entity separate from itself, including a citizen support organization or a direct-support organization.

The bill requires any meeting of a quasi-public entity to be video recorded. Additionally, the bill prohibits the executive director or an officer with similar responsibilities from recommending or being involved with the selection, appointment or retention of any member of the quasi-public entity's governing body.

The bill requires each quasi-public entity to post certain information on the Department of Financial Services contracting tracking system within 30 days after executing a contract.

The bill directs the Auditor General to compile a list of quasi-public entities subject to the bill and submit the list to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee by October 1, 2021. Furthermore, the Auditor General is required to make the list available on its website for public review.

The bill directs the Legislative Auditing Committee to establish procedures for annual selection of random samples of five of the identified quasi-public entities to undergo an operational audit by the Auditor General. Quasi-public entities who had operational audits completed within the preceding four years or who are subject to a statutorily-required operational audit are not included in the random sample.

The bill requires each quasi-public entity to post certain information on the Department of Financial Services contracting system within 30 days after executing a contract.

The bill requires the Department of Management Services (DMS) to include quasi-public entities on its Florida Has a Right to Know website. Further, the information included on the DMS website is required to be searchable by the term "quasi-public entity" and downloadable in a format that allows offline analysis.

The bill has an indeterminate fiscal impact to state revenues and funds. (*See* **V. Fiscal Impact Statement**.)

The bill takes effect July 1, 2021.

II. Present Situation:

Quasi-Public Entity

The term "quasi-public entity" is not defined in Florida Statutes. Quasi-public entities are generally considered a hybrid of private and public organizations, organized and established in law to provide and promote a public purpose by administering a governmental function of state government.[1] A quasi-public entity is typically appropriated funds from the state in order to accomplish the public purpose of its contract.

The table below is not intended to be a comprehensive list of entities but are examples of quasi-public entities:

Entity	Statute	Date of Creation
Correctional Work Programs Corporation	s. 946.504, F.S.	1983 (Ch. 83-209, L.O.F.)
Florida Independent Living Council	s. 413.395, F.S.	1988 (Ch. 88-214, L.O.F.)
Florida Birth-Related Neurological Injury Compensation Association	s. 766.315(1)(a), F.S.	1988 (Ch. 88-1, L.O.F.)
Inland Protection Financing Corporation	s. 376.3071, F.S.	1989 (Ch. 16-159, L.O.F.)
One Church, One Child of Florida Corporation	s. 409.1755, F.S.	1990 (Ch. 90-306, L.O.F.)
Florida Healthy Kids Corporation	s. 624.91(5), F.S.	1990 (Ch. 90-199, L.O.F.)
Enterprise Florida	s. 288.901(1), F.S.	1992 (Ch. 92-277, L.O.F.)
Sunshine State One-Call of Florida, Inc. (Sunshine 811)	s. 556.103, F.S.	1993 (Ch. 93-240, L.O.F.)
Florida Export Finance Corporation	s. 288.773, F.S.	1993 (Ch. 93-187, L.O.F.)
Florida Development Finance Corporation	s. 288.9604, F.S.	1993 (Ch. 93-187, L.O.F.)
CareerSource Florida, Inc.	s. 445.004, F.S.	1994 (Ch. 94-232, L.O.F.)
Assistive Technology Advisory Council	s. 413.407, F.S.	1994 (Ch. 94-324, L.O.F.)
Florida Engineers Management Corporation	s. 471.038, F.S.	1997 (Ch. 97-312, L.O.F.)
Florida Workers' Compensation Insurance Guaranty Association Guaranty Association, Inc.	s. 631.911, F.S.	1997 (Ch. 97-262, L.O.F.)
Ounce of Prevention Fund of Florida	s. 409.153, F.S.	1998 (Ch. 98-175, L.O.F.)
Tobacco Settlement Financing Corporation	s. 215.56005, F.S.	2000 (Ch. 2000-128, L.O.F.)
Florida Association of Drug Court Professionals	s. 397.334(7)(a), F.S.	2001 (Ch. 2001-48, L.O.F.)
Florida Mobile Home Relocation Corporation	s. 723.0611, F.S.	2001 (Ch. 2001-227, L.O.F.)
Florida Health Choices, Inc.	s. 408.910, F.S.	2002 (Ch. 2008-32, L.O.F.)
Florida Education Fund, Inc.	s. 1009.70, F.S.	2002 (Ch. 2002-387, L.O.F.)
Scripps Florida Funding Corporation	s. 288.955, F.S.	2003 (Ch. 2003-420, L.O.F.)
Florida Clerks of Court Operations Corporation	s. 28.35(1)(a), F.S.	2003 (Ch. 2003-402, L.O.F.)
Florida Public Health Institute, Inc.	s. 381.98, F.S.	2004 (Ch. 2004-2, L.O.F.)
Public Cord Blood Tissue Bank	s. 381.06015, F.S.	2005 (Ch. 2005-305, L.O.F.)
Florida Opportunity Fund	s. 288.9624, F.S.	2007 (Ch. 2007-189, L.O.F.)
Institute for Commercialization of Florida Technology	s. 288.9625, F.S.	2013 (Ch. 2013-120, L.O.F.)
Florida is for Veterans, Inc.	s. 295.21, F.S.	2014 (Ch. 2014-1, L.O.F.)

Citizen Support and Direct Support Organizations

A citizen support organization (CSO) is an organization that is a Florida corporation not-for-profit incorporated under the provisions of ch. 617, F.S., and is authorized by Florida law to exist

[1] *McClung-Gagne v. Harbour City Volunteer Ambulance Squad, Inc*., 721 So.2d 799 (Fla. App. 1 Dist.,1998)

as a citizen-support organization to benefit or provide assistance to a governmental entity.[2] A CSO is organized and operated to: conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of their affiliated department or agency.

A direct support organization (DSO) is an organization that is a Florida corporation not-for-profit incorporated under the provisions of ch. 617, F.S., and is authorized by Florida law to exist as a direct-support organization to benefit or provide assistance to a governmental entity.[3]

Section 20.058, F.S., establishes that by August 1st of each year, each CSO and DSO must submit the following information to their affiliated department or agency:
- The name, mailing address, telephone number, and website address of the CSO;
- The statutory authority or executive order pursuant to which the organization was created;
- A brief description of the mission, and results obtained by, the organization;
- A brief description of the plans of the organization for the next three years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

By August 15th of each year, the appropriate agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each organization.[4]

Transparency in Government Spending & the Contract Tracking System

Section 215.985, F.S., is referred to as the Transparency Government Act (the Act). The Act requires the Chief Financial Officer (CFO) to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website. The Department of Financial Services (DFS) maintains and updates the contract tracking system. The tracking system contains contracts, grant awards, and amendments to contracts.

Within 30 days after executing a contract, each state entity is required to post the following information relating to the contract on the contract tracking system:
- The names of the contracting entities;
- The procurement method;
- The contract beginning and ending dates;
- The nature or type of commodities or services purchased;
- Applicable contract unit prices and deliverables;
- Total compensation to be paid or received under the contract;
- All payments made to the contractor to date;
- Applicable contract performance measures;

[2] Section 20.2551, F.S.
[3] Section 16.618, F.S.
[4] Section 20.058, F.S.

- If a competitive solicitation was not used to procure the goods and services, the justification of the action, including citation to a statutory exemption from competitive solicitation if any;[5] and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.

Within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information on the contract tracking system.

State entities are required to redact confidential or exempt information from the contract and procurement documents before posting an electronic copy on the contract tracking system. If a state entity becomes aware that an electronic copy of a contract or procurement document has been posted but has not been properly redacted, the state entity must notify the CFO and remove the documents from the contract tracking system.[6] Consequently, the state entity has seven business days to post a properly redacted copy of the contract or procurement document on the contract tracking system. Request to redact confidential and exempt information must be made in writing, and delivered by mail, facsimile, electronic transmission, or in person to the state entity. The CFO is not responsible for redacting confidential and exempt information posted by a state entity on the system and is not liable for the failure of the state entity to post the information.

This section establishes the posting of information on the contract tracking system does not supersede the duty of the state entity to respond to a public records request or subpoena for the information. A request for a copy of a contract or procurement document must be made to the state entity. A subpoena for a copy of a contract or procurement document must be served on the quasi-public entity.

This section authorizes the CFO to regulate and prohibit the posting of records that could facilitate identity theft or fraud; however, such action by the CFO does not supersede the duty of a state entity to provide a copy of a public record upon request.

Florida Accountability Contract Tracking System (FACTS)

The Department of Financial Services' Division of Accounting and Auditing maintains FACTS. FACTS is a searchable consumer-friendly online system developed to make the government contracting process in Florida more transparent through the creation of a statewide contract reporting system. FACTS contains images, financial information and audit findings of all grant and contract documents, including purchase orders.[7]

[5] Section 215.985(14)(a), F.S.
[6] Section 215.985(14)(d), F.S.
[7] Department of Financial Services, Division of Accounting and Auditing, *FACTS Project*, https://www.myfloridacfo.com/division/aa/factsreporting/ (last visited Apr. 7, 2021)

Joint Legislative Auditing Committee

The Joint Legislative Auditing Committee (committee), established by the Joint Rules of the Florida Legislature, was created in law in 1967.[8] The committee's membership is comprised of five to seven members appointed from each legislative house and its responsibilities are designed to provide continuous oversight of government operations, in part, through the auditing and review activities of the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA).[9]

The committee may direct either the Auditor General or the OPPAGA to conduct an audit, review, or examination of any entity or record as specified in s. 11.45(3), F.S. This includes state agencies, counties, municipalities, special districts, district school boards, charter schools, numerous other government organizations, as well as nongovernmental agencies, corporations, and persons that have received any appropriation made by the Legislature.[10]

The committee is authorized to investigate any matter within the scope of an audit, review, or examination, and is granted subpoena power in connection with such investigations, and may conduct hearings as necessary. Under s. 11.42(2), F.S., the committee is responsible for appointing the Auditor General when there is a vacancy. Such appointment is subject to confirmation by both houses of the Legislature.[11]

Florida Auditor General

The Auditor General is the independent auditor for the State of Florida and is appointed by and serves at the pleasure of the Legislature. The Auditor General provides unbiased, timely and relevant information that the Legislature, citizens of Florida, public entities and other stakeholders can use to promote government accountability and stewardship and improve government operations. Article III, Section 2 of the Florida Constitution reads, in part, "[T]he legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution." Section 11.42, F.S, designates the constitutional auditor as the Auditor General, and s. 11.42 through s. 11.47, F.S., sets forth the general authority and duties of the Auditor General. Independently and in accordance with applicable professional standards, the Auditor General:

- Conducts financial audits of the accounts and records of State government, State universities, State colleges, and school districts.
- Conducts operational and performance audits of public programs, activities, and functions and information technology systems.
- Adopts rules, in consultation with the Florida Board of Accountancy, for audits performed by independent certified public accountants of local governmental entities, charter schools and technical career centers, school districts, and certain nonprofit and for-profit organizations.

[8] During 2011, the Legislature passed a reform package that included revisions to laws and joint rules related to Joint Legislative Auditing Committee. Chapter 2011-34, Laws of Florida, repealed the statutory creation of JLAC.
[9] Online Sunshine, *Historical Committees, Joint Legislative Auditing Committee*, http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=about.cfm&Directory=committees/joint/Jcla/&Tab=committees (last visited Apr. 14, 2021).
[10] *Id*.
[11] *Id*.

- Conducts reviews of audit reports of local governmental entities, charter schools and technical career centers, school districts, and certain nonprofit and for-profit organizations.
- Conducts examinations of school districts' and other entities' records to evaluate compliance with State requirements governing the Florida Education Finance Program student enrollment and student transportation funding allocations.
- Conducts quality assessment reviews of the internal audits performed by state agency offices of inspectors general.[12]

Pursuant to s. 11.45(8), F.S., the Auditor General, in consultation with the Board of Accountancy, adopts rules for the form and conduct of all financial audits performed by independent certified public accountants pursuant to ss. 215.981, 218.39, 1001.453, 1002.395, 1004.28, and 1004.70, F.S. The rules for audits of local governmental entities, charter schools, charter technical career centers, and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act as stated in s. 218.501, F.S.[13]

Operational Audit Requirements under Section 11.45, F.S.

Section 11.45(1)(i), F.S., defines operational audit to mean an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.[14]

Each year, the Florida Auditor General issues over 200 reports related to operational, financial, and federal award audits and attestation examination engagements of state and local governmental entities.[15] Audit findings and recommendations are used to help correct errors, strengthen controls and reduce risk.[16]

Entity Audit Filing Requirements[17]

Under ss. 215.97(2)(a) and 215.97(8)(a), F.S., referred to as the Florida Single Audit Act, each nonprofit and for-profit non-state entity that expends a total amount of state financial assistance

[12] Florida Auditor General, *About the Florida Auditor General*, https://flauditor.gov/pages/aboutus.html (last visited Apr. 7, 2021).
[13] Florida Auditor General, Rules of the Auditor General, https://flauditor.gov/pages/rules.html, (last visited Apr. 7, 2021).
[14] Section 11.45(1)(i), F.S.
[15] Florida Auditor General, *Our Annual Report*, https://flauditor.gov/pages/aboutus.html (last visited Apr. 7, 2021).
[16] Florida Auditor General, *Guide to Audits*, https://flauditor.gov/pages/pdf_files/audit%20guide%20pamphlet.pdf (last visited Apr. 7, 2021).
[17] Florida Auditor General, *Filing Requirements*, https://flauditor.gov/pages/filing_requirements_npfp.html (last visited Apr. 7, 2021).

equal to or in excess of $500,000 in any fiscal year prior to July 1, 2016, and $750,000 in any fiscal year on or subsequent to July 1, 2016, is required to have an audit for that fiscal year.

Pursuant to Section 10.657(2), Rules of the Auditor General, each entity required to submit an audit report under s. 215.97, F.S., must provide both a paper and an electronic copy (elements of which are described in Section 10.656, Rules of the Auditor General) along with the required submittal checklist.

Under Florida law, certain other nonprofit organizations are required to have an audit each year.[18] Section 10.740, Rules of the Auditor General, requires each of these entities to provide both a paper and an electronic copy (elements that are described in Section 10.730, Rules of the Auditor General) of the audit along with the required submittal checklist.

Annual financial audits of state agency direct-support organizations (DSO) and citizen support organizations (CSO) are required for each entity with annual expenditures of $100,000.[19] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and shall be submitted within nine months after the end of the fiscal year to the Auditor General and the state agency responsible for creation, administration, or approval of the DSO or the CSO.[20]

III. Effect of Proposed Changes:

Section 1 creates s. 20.059, F.S., to outline the definitions, requirements, and responsibilities of quasi-public entities.

This section provides the following definitions: the term "governmental entity" is defined to mean:

> A state, regional, county, municipal or special district entity, or any other political subdivision, whether executive, judicial, or legislative, including, but not limited to, a department, a division, a bureau, a commission, an authority, a district, or an agency thereof or a public school, a Florida College System institution a state university, or an associated board.

The term "operational audit" has the same meaning as in s. 11.45(1), F.S., which means:

> An audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules,

[18] *See* ss. 215.981(1), 288.906(1)(h), 288.955(14)(g), 288.1226(7), 1001.453(4), 1002.395(6)(m), 1004.28(5) and 1004.70(6), Florida Statutes.
[19] Section 215.981(1), F.S.
[20] Section 215.981(1), F.S., applies to state agency direct-support and citizen-support organizations created, approved or administered by a state agency, other than a university, community college or district school board. *See* Florida Auditor General, *Rules of the Auditor General, Chapter 10.700, Audits of Certain Nonprofit Organizations (Effective June 30, 2020)* https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited Apr. 7, 2021).

> contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

The term "quasi-public entity" is defined to mean:

> An entity with statewide application, other than a governmental entity, established by law, regardless of form, for a public purpose or to effectuate a government program, and is not under the direct control of a governmental entity. The term does not include a citizen support organization; a direct-support organization; a joint underwriting association, a risk apportionment plan, or entity created under ss. 627.311 or 627.351, F.S.; a research institute of the state university system; or an entity licensed as a health care facility under ch. 395, F.S.

The term "direct control" is defined to mean:

> For purposes of this paragraph, the term "direct control" means the ability to plan, direct, coordinate, and execute the powers, duties, functions, and responsibilities of a quasi-public entity, including the ability to control, supervise, and manage the quasi-public entity's daily operations. The term does not include the appointment of public officials or private persons to the governing body, regardless of appointment method, and does not include the approval of a plan of operation by a governmental entity.

This section provides that for a quasi-public entity created in law before July 1, 2021, the Governor must specify a department with which the quasi-public entity will be affiliated, unless a department is already specified in law, no later than December 31, 2021. For quasi-public entities created in law on or after July 1, 2021, the law creating the quasi-public entity must specify a department with which the quasi-public entity will be affiliated. The affiliated departments, whether specified by the Governor or in law, shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department must review the activities of the affiliated quasi-public entity at least annually and recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

This section provides that by September 15 of each year, each quasi-public entity is required to submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and its affiliated department. The report is required to have the following:

- The name, mailing address, physical address, telephone number, and website address of the quasi-public entity;
- The statutory authority creating the quasi-public entity;
- A description of the quasi-public entity's mission;

- A description of the quasi-public entity's plans for the next three fiscal years;
- A copy of the quasi-public entity's code of ethics; and
- If the quasi-public entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

If the quasi-public entity is organized as a corporation, the bill requires the following be provided:

- The corporate governance framework and structure;
- The policies and practices of the corporation's significant committees;
- The policies and practices for directing senior management; and
- Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight over its activities.

If the quasi-public entity has created an entity of any type with which it is affiliated, the following information must be included for each such affiliated entity: the name, mailing address, physical address, telephone number, and website address; the statutory authority creating or authorizing the creation of the affiliated entity; and a description of the affiliated entity's mission. If the affiliated entity is a corporation, it must provide all the required information for a corporation as set forth above. If the affiliated entity is a corporation not for profit, it must provide a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

This section requires each quasi-public entity to maintain a publicly accessible website. The website must include:

- The annual report;
- The most recently approved operating budget, maintained on the website for two years;
- The position title and annual salary or rate of pay for each regularly established position;
- A link to any state audit or report of the entity's operations;
- A link to any program or activity descriptions for which funds are expended;
- All meeting notices for meetings of the governing body, which must be on the website for two years; and
- The official minutes of each meeting of the governing body, which must be posted no later than seven days after the meeting.

This section provides that a quasi-public entity may not use public funds to retain a lobbyist to represent the quasi-public entity before the legislative or executive branch. A full-time employee of the quasi-public entity may register as a lobbyist and represent the entity before the legislative or executive branch. Except as a full-time employee, a person may not accept public funds from a quasi-public entity for lobbying.

This section provides a quasi-public entity may not create an entity separate from itself, including a citizen support or a direct-support organization.

Any meeting of the quasi-public entity's governing body must be video recorded. The executive director of a quasi-public entity, or an officer with similar responsibilities, may not recommend

or be involved in the selection, appointment, or retention of any member of the entity's governing body.

This section requires the Auditor General to compile a list of quasi-public entities and provide the list to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee. The Auditor General must make the list available on its website for public review.

The Legislative Auditing Committee is required to establish procedures for an annual selection of random sampling of five of the quasi-public entities, identified on the Auditor General's published list, to undergo an operational audit by the Auditor General. A quasi-public entity that had an operational audit completed within the preceding four years or that is otherwise subject to a statutorily required operational audit is excluded from the random sample.

Section 2 re-designates and revises s. 215.985, F.S., to require the Department of Management Services to include quasi-public entities on its Florida Has a Right to Know website. The information must include, at a minimum, the following for each employee or officer:

- Name and salary or hourly rate of pay;
- Position number, class code, and class title; and
- Employing agency or quasi-public entity and budget entity.

Further, the information contained on the Florida Has a Right to Know website is required to be searchable by the term "quasi-public entity" and downloadable in a format that allows offline analysis.

This section amends s. 215.985, F.S., to make each quasi-public entity subject to the DFS reporting requirements for the contract tracking system.

This section redefines the definition of the term "procurement document" in s. 215.985(14), F.S., to include a quasi-public entity.

This section defines the term "quasi-public entity" to mean:

> An entity with statewide application, other than a governmental entity, established by law, regardless of form, for a public purpose or to effectuate a government program, and is not under the direct control of a governmental entity. The term does not include a citizen support organization; a direct-support organization; a joint underwriting association, a risk apportionment plan, or entity created under s. 627.311 or s. 627.351, F.S.; a research institute of the state university system; or an entity licensed as a health care facility under ch. 395, F.S.

Section 3 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Auditor General is required to select an annual random sample of five quasi-public entities to undergo an operational audit. If selected, a quasi-public entity may incur additional workload. If not already maintained, quasi-public entities may incur additional costs related to maintaining a publicly accessible website as required by the bill.

Quasi-public entities will also experience additional workload in completing the required annual report and meeting the posting requirements on the contract tracking system.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact to state revenues and funds. The Executive Office of the Governor may incur additional workload by designating affiliate departments to the quasi-public entities (QPE). The affiliated departments may incur additional workload serving in an advisory role to the QPEs. The QPEs are required to enter certain information into the Department of Financial Services' (DFS) contract tracking system. The impact to the DFS's Division of Accounting and Auditing, Florida Accountability Contract Tracking System (FACTS) is estimated at $69,721 for

development and programming costs to add the quasi-entities to FACTS,[21] which can be absorbed within existing resources.[22]

The Department of Management Services (DMS) manages the Florida Has a Right to Know website. The DMS is required to add QPEs under the website's search parameters. The DMS may experience minimal impact for development and programming costs to include QPEs in the Florida Has a Right to Know website, which can be absorbed within existing resources.

VI. Technical Deficiencies:

In Section 2 of the bill, which amends s. 215.985, F.S., quasi-public entities are defined, for the purposes of that section, as having the same meaning as provided in the newly created s. 20.059, F.S. However, later provisions of the section define the term differently for the purposes of subsection (14). If the intent is to define quasi-public entities consistently, the definitions should be revised.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.985 of the Florida Statutes.

This bill creates section 20.059 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Clarifies that a quasi-public entity (QPE) is defined as an entity with statewide application, other than a governmental entity, established by law, regardless of form, for a public purpose or to effectuate a government program, and is not under the direct control of a governmental entity. The term does not include a citizen support organization; a direct-support organization; a joint underwriting association, a risk apportionment plan, or entity created under ss. 627.311 or 627.351, F.S.; a research institute of the state university system; or an entity licensed as a health care facility under ch. 395, F.S. Defines "direct control" for purposes of the definition.

[21] Email from Meredith Stansfield, Director of Legislative and Cabinet Affairs, Department of Financial Services to Michelle Sanders, Legislative Analyst, Senate Appropriations Subcommittee on Agriculture, Environment, and General Government (Apr. 8, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government)
[22] Conversation with Chase Mitchell, Office of Legislative and Cabinet Affairs, Department of Financial Services (Apr. 8, 2021)

- Removes language requiring QPEs to have operational audits conducted by the Auditor General every three years.
- Directs the Auditor General to compile a list of QPEs subject to the bill and submit the list to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee by October 1, 2021, and requires the Auditor General to make the list available on its website for public review.
- Directs the Legislative Auditing Committee to establish procedures for an annual selection of random samples of five of the identified QPEs for purposes of an operational audit by the Auditor General. Clarifies QPEs who had operational audits completed within the preceding four years or are subject to statutorily-required operational audit are not included in the random sample.
- Requires the Department of Management Services (DMS) to include QPEs on its Florida Has a Right to Know website. Further, the information included on the DMS website is required to be searchable by the term "quasi-public entity" and downloadable in a format that allows offline analysis.

CS by Governmental Oversight and Accountability on March 24, 2021:
The CS:

- Requires the Governor to specify a department with which a quasi-public entity created in law before July 1, 2021, will be affiliated, unless a department is specified in law. For a quasi-public entity created in law on or after July 1, 2021, the law creating the quasi-public entity shall specify a department with which the quasi-public entity will be affiliated.
- Requires each quasi-public entity to have an operational audit completed by the Auditor General at least once every three years.
- Removes a provision providing a repeal date for quasi-public entities unless they are reviewed and saved by the Legislature.
- Removes a provision requiring each quasi-public entity having to contract with an independent entity to conduct a cost-benefit analysis.
- Removes a provision providing salary and compensation limits for employees of quasi-public entities.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

229772

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 50 - 165
and insert:
(a) "Governmental entity" means a state, regional, county, municipal, or special district entity, or any other political subdivision, whether executive, judicial, or legislative, including, but not limited to, a department, a division, a bureau, a commission, an authority, a district, or an agency thereof or a public school, a Florida College System

institution, a state university, or an associated board.

(b) "Operational audit" has the same meaning as in s. 11.45(1).

(c) "Quasi-public entity" means an entity, other than a governmental entity, established by general law, regardless of form, for a public purpose or to effectuate a government program, and that is not under the direct control of a governmental entity. The term does not include a citizen support organization or a direct-support organization. For purposes of this paragraph, the term "direct control" means the ability to plan, direct, coordinate, and execute the powers, duties, functions, and responsibilities of a quasi-public entity, including the ability to control, supervise, and manage the quasi-public entity's daily operations. The term does not include the appointment of public officials or private persons to the governing body, regardless of appointment method, and does not include the approval of a plan of operations by a governmental entity.

(2)(a) For a quasi-public entity created in law before July 1, 2021, the Governor must specify a department with which the quasi-public entity will be affiliated, unless a department is already specified in law, no later than December 31, 2021. The affiliated department, whether specified by the Governor or in law, shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective

operation.

(b) For a quasi-public entity created in law on or after July 1, 2021, the law creating the quasi-public entity shall specify a department with which the quasi-public entity will be affiliated. The affiliated department shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

(3) By September 15 of each year, each quasi-public entity shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and its affiliated department which includes all of the following information:

(a) The name, mailing address, physical address, telephone number, and website address of the quasi-public entity.

(b) The statutory authority creating the quasi-public entity.

(c) A description of the quasi-public entity's mission.

(d) A description of the quasi-public entity's plans for the next 3 fiscal years.

(e) A copy of the quasi-public entity's code of ethics.

(f) If the quasi-public entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(g) If the quasi-public entity is organized as a

corporation, a copy of all of the following:

1. Corporate governance framework and structure.

2. Policies and practices of the corporation's significant committees, including any compensation committee.

3. Policies and practices for directing senior management.

4. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight over the corporation's activities.

(h) If the quasi-public entity has created an entity of any type with which it is affiliated, the following information must be included for each such affiliated entity:

1. The name, mailing address, physical address, telephone number, and website address of the affiliated entity.

2. The statutory authority creating or authorizing the creation of the affiliated entity, if any.

3. A description of the affiliated entity's mission.

4. If the affiliated entity is a corporation, a copy of all of the information described in paragraph (g).

5. If the affiliated entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(4) Each quasi-public entity shall maintain a publicly accessible website. The website must include the following:

(a) The report required pursuant to subsection (4).

(b) The most recently approved operating budget, which must be maintained on the website for 2 years.

(c) The position title and annual salary or rate of pay for each regularly established position.

(d) A link to any state audit or report of the entity's operations.

(e) A link to any program or activity descriptions for which funds may be expended.

(f) All meeting notices for meetings of the entity's governing body, which must be maintained on the website for 2 years.

(g) The official minutes of each meeting of the entity's governing body, which must be posted no later than 7 days after the date of the meeting in which the minutes are approved.

(5) A quasi-public entity may not use public funds to retain a lobbyist to represent the entity before the legislative or executive branch. However, a full-time employee of the quasi-public entity may register as a lobbyist and represent the entity before the legislative or executive branch. Except as a full-time employee, a person may not accept public funds from a quasi-public entity for lobbying.

(6) Unless specifically authorized by law, a quasi-public entity may not create an entity separate from itself, including a citizen support organization or a direct-support organization.

(7) Any meeting of a quasi-public entity's governing body must be video recorded.

(8) The executive director of a quasi-public entity, or an officer with responsibilities similar to that of an executive director, may not recommend or otherwise be involved in the selection, appointment, or retention of any member of the entity's governing body.

(9)(a) By October 1, 2021, the Auditor General shall compile a list of the quasi-public entities subject to this

section and provide such list to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee. The list must be available on the Auditor General's website for review by the public.

(b) The Legislative Auditing Committee shall establish procedures for the annual selection of a random sample of 5 percent of the quasi-public entities identified in paragraph (a) to undergo an operational audit by the Auditor General. A quasi-public entity that has had an operational audit completed within the preceding 4 years or that is otherwise subject to a statutorily-required operational audit shall not be included in the random sample.

Section 2. Paragraph (d) of subsection (2) of section 215.985, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, and subsections (6) and (14) of that section are amended to read:

215.985 Transparency in government spending.—

(2) As used in this section, the term:

(d) "Quasi-public entity" has the same meaning as provided in s. 20.059.

(6) The Department of Management Services shall establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, a Florida College System institution, a quasi-public entity, or the State Board of Administration, regardless of the appropriation category from which the person is paid.

(a) For each employee or officer, the information must include, at a minimum, his or her:

1. Name and salary or hourly rate of pay.

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2. Position number, class code, and class title.

3. Employing agency or quasi-public entity and budget entity.

(b) The information must be searchable by state agency, state university, Florida College System institution, quasi-public entity, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 8 - 24

and insert:

requiring a quasi-public entity to submit an annual report that includes certain information to the Governor, the Legislature, and its affiliated department by a certain date; requiring a quasi-public entity to maintain a website that includes certain information; prohibiting a quasi-public entity from using public funds to retain a lobbyist; authorizing certain employees of a quasi-public entity to register as a lobbyist and represent the quasi-public entity; prohibiting a quasi-public entity from creating an entity separate from itself; requiring that meetings of the quasi-public entity's governing body be video recorded; prohibiting an executive director or similar officer of a quasi-public entity from certain involvement with the entity's governing body;

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requiring the Auditor General to identify quasi-public entities; requiring the Legislative Auditing Committee to establish a process for random selection of quasi-public entities to undergo operational audits; providing exceptions to the audit process for certain entities; amending s. 215.985, F.S.; defining the term "quasi-public entity"; requiring the Department of Management Services to provide certain information relating to quasi-public entity employees or officers on a website; requiring such information to be searchable in a certain manner;

874262

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Rodriguez) recommended the following:

Senate Substitute for Amendment (229772) (with title amendment)

Delete lines 50 - 165
and insert:
(a) "Governmental entity" means a state, regional, county, municipal, or special district entity, or any other political subdivision, whether executive, judicial, or legislative, including, but not limited to, a department, a division, a bureau, a commission, an authority, a district, or an agency

thereof or a public school, a Florida College System institution, a state university, or an associated board.

(b) "Operational audit" has the same meaning as in s. 11.45(1).

(c) "Quasi-public entity" means an entity with statewide application, other than a governmental entity, established by general law, regardless of form, for a public purpose or to effectuate a government program, and that is not under the direct control of a governmental entity. The term does not include a citizen support organization, a direct-support organization, a joint underwriting association authorized pursuant to s. 627.351, a research institute of the state university system, or an entity licensed as a health care facility under chapter 395. For purposes of this paragraph, the term "direct control" means the ability to plan, direct, coordinate, and execute the powers, duties, functions, and responsibilities of a quasi-public entity, including the ability to control, supervise, and manage the quasi-public entity's daily operations. The term does not include the appointment of public officials or private persons to the governing body, regardless of appointment method, and does not include the approval of a plan of operations by a governmental entity.

(2)(a) For a quasi-public entity created in law before July 1, 2021, the Governor must specify a department with which the quasi-public entity will be affiliated, unless a department is already specified in law, no later than December 31, 2021. The affiliated department, whether specified by the Governor or in law, shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the

affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

(b) For a quasi-public entity created in law on or after July 1, 2021, the law creating the quasi-public entity shall specify a department with which the quasi-public entity will be affiliated. The affiliated department shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

(3) By September 15 of each year, each quasi-public entity shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and its affiliated department which includes all of the following information:

(a) The name, mailing address, physical address, telephone number, and website address of the quasi-public entity.

(b) The statutory authority creating the quasi-public entity.

(c) A description of the quasi-public entity’s mission.

(d) A description of the quasi-public entity’s plans for the next 3 fiscal years.

(e) A copy of the quasi-public entity’s code of ethics.

(f) If the quasi-public entity is a corporation not for

profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(g) If the quasi-public entity is organized as a corporation, a copy of all of the following:

1. Corporate governance framework and structure.

2. Policies and practices of the corporation's significant committees, including any compensation committee.

3. Policies and practices for directing senior management.

4. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight over the corporation's activities.

(h) If the quasi-public entity has created an entity of any type with which it is affiliated, the following information must be included for each such affiliated entity:

1. The name, mailing address, physical address, telephone number, and website address of the affiliated entity.

2. The statutory authority creating or authorizing the creation of the affiliated entity, if any.

3. A description of the affiliated entity's mission.

4. If the affiliated entity is a corporation, a copy of all of the information described in paragraph (g).

5. If the affiliated entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(4) Each quasi-public entity shall maintain a publicly accessible website. The website must include the following:

(a) The report required pursuant to subsection (4).

(b) The most recently approved operating budget, which must be maintained on the website for 2 years.

(c) The position title and annual salary or rate of pay for each regularly established position.

(d) A link to any state audit or report of the entity's operations.

(e) A link to any program or activity descriptions for which funds may be expended.

(f) All meeting notices for meetings of the entity's governing body, which must be maintained on the website for 2 years.

(g) The official minutes of each meeting of the entity's governing body, which must be posted no later than 7 days after the date of the meeting in which the minutes are approved.

(5) A quasi-public entity may not use public funds to retain a lobbyist to represent the entity before the legislative or executive branch. However, a full-time employee of the quasi-public entity may register as a lobbyist and represent the entity before the legislative or executive branch. Except as a full-time employee, a person may not accept public funds from a quasi-public entity for lobbying.

(6) Unless specifically authorized by law, a quasi-public entity may not create an entity separate from itself, including a citizen support organization or a direct-support organization.

(7) Any meeting of a quasi-public entity's governing body must be video recorded.

(8) The executive director of a quasi-public entity, or an officer with responsibilities similar to that of an executive director, may not recommend or otherwise be involved in the

selection, appointment, or retention of any member of the entity's governing body.

(9)(a) By October 1, 2021, the Auditor General shall compile a list of the quasi-public entities subject to this section and provide such list to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee. The list must be available on the Auditor General's website for review by the public.

(b) The Legislative Auditing Committee shall establish procedures for the annual selection of a random sample of 5 of the quasi-public entities identified in paragraph (a) to undergo an operational audit by the Auditor General. A quasi-public entity that has had an operational audit completed by the Auditor General within the preceding 4 years or that is otherwise subject to a statutorily-required operational audit by the Auditor General shall not be included in the random sample.

Section 2. Paragraph (d) of subsection (2) of section 215.985, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, and subsections (6) and (14) of that section are amended to read:

215.985 Transparency in government spending.—

(2) As used in this section, the term:

(d) "Quasi-public entity" has the same meaning as provided in s. 20.059.

(6) The Department of Management Services shall establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, a Florida College System institution, a quasi-public entity, or the State Board of Administration, regardless of the

appropriation category from which the person is paid.

(a) For each employee or officer, the information must include, at a minimum, his or her:

1. Name and salary or hourly rate of pay.

2. Position number, class code, and class title.

3. Employing agency or quasi-public entity and budget entity.

(b) The information must be searchable by state agency, state university, Florida College System institution, quasi-public entity, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 8 - 24

and insert:

requiring a quasi-public entity to submit an annual report that includes certain information to the Governor, the Legislature, and its affiliated department by a certain date; requiring a quasi-public entity to maintain a website that includes certain information; prohibiting a quasi-public entity from using public funds to retain a lobbyist; authorizing certain employees of a quasi-public entity to register as a lobbyist and represent the quasi-public entity; prohibiting a quasi-public entity from creating an entity separate from itself; requiring that meetings

874262

of the quasi-public entity’s governing body be video recorded; prohibiting an executive director or similar officer of a quasi-public entity from certain involvement with the entity’s governing body; requiring the Auditor General to identify quasi-public entities; requiring the Legislative Auditing Committee to establish a process for random selection of quasi-public entities to undergo operational audits; providing exceptions to the audit process for certain entities; amending s. 215.985, F.S.; defining the term "quasi-public entity"; requiring the Department of Management Services to provide certain information relating to quasi-public entity employees or officers on a website; requiring such information to be searchable in a certain manner;

891770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Broxson) recommended the following:

Senate Amendment to Substitute Amendment (874262)

Delete lines 20 - 23
and insert:
include a citizen support organization; a direct-support organization; a joint underwriting association, a risk apportionment plan, or other entity created under ss. 627.311 or 627.351; a research institute of the state university system; or an entity licensed as a health care

By the Committee on Governmental Oversight and Accountability; and Senator Rodriguez

585-03334-21 20211570c1

A bill to be entitled

An act relating to quasi-public entities; creating s. 20.059, F.S.; providing definitions; requiring the Governor to specify affiliated departments for certain quasi-public entities by a certain date; providing requirements for the affiliated departments; providing requirements for a law creating a quasi-public entity; requiring the completion of an operational audit at certain intervals; requiring a quasi-public entity to submit an annual report that includes certain information to the Governor, the Legislature, and its affiliated department by a certain date; requiring a quasi-public entity to maintain a website that includes certain information; prohibiting a quasi-public entity from using public funds to retain a lobbyist; authorizing certain employees of a quasi-public entity to register as a lobbyist and represent the quasi-public entity; prohibiting a quasi-public entity from creating an entity separate from itself; requiring that meetings of the quasi-public entity's governing body be video recorded; prohibiting an executive director or similar officer of a quasi-public entity from certain involvement with the entity's governing body; amending s. 215.985, F.S.; requiring a quasi-public entity to post and update certain information on the secure contract tracking system established and maintained by the Chief Financial Officer; requiring a quasi-public entity to redact certain information; providing that the Chief

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-03334-21 20211570c1

Financial Officer, the Department of Financial Services, and officers, employees, and contractors thereof are not responsible for redacting, and are not liable for the failure to redact, certain information posted on the secure contract tracking system by a quasi-public entity; providing that the posting of certain information does not supersede the duty of a quasi-public entity to respond to certain requests or subpoenas; providing that certain actions by the Chief Financial Officer do not supersede the duty of a quasi-public entity to provide certain records upon request; revising and providing definitions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 20.059, Florida Statutes, is created to read:

20.059 Quasi-public entities.—

(1) As used in this section, the term:

(a) "Governmental entity" means a state, regional, county, municipal, special district, or any other political subdivision, whether executive, judicial, or legislative, including, but not limited to, a department, a division, a bureau, a commission, an authority, a district, or an agency thereof or a public school, a Florida College System institution, a state university, or an associated board.

(b) "Operational audit" has the same meaning as in s. 11.45(1).

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) "Quasi-public entity" means an entity established by general law, regardless of form, for a public purpose or to effectuate a government program and which is not directly controlled by a governmental entity. The term does not include a citizen support organization or a direct-support organization.

(2)(a) For a quasi-public entity created in law before July 1, 2021, the Governor must specify a department with which the quasi-public entity will be affiliated, unless a department is already specified in law, no later than December 31, 2021. The affiliated department, whether specified by the Governor or in law, shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

(b) For a quasi-public entity created in law on or after July 1, 2021, the law creating the quasi-public entity shall specify a department with which the quasi-public entity will be affiliated. The affiliated department shall serve in an advisory capacity to the governing body of the affiliated quasi-public entity. The head of the affiliated department shall review the activities of the affiliated quasi-public entity at least annually and shall recommend appropriate statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation.

(3) Each quasi-public entity shall have an operational audit completed by the Auditor General at least once every 3

years.

(4) By September 15 of each year, each quasi-public entity shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and its affiliated department which includes all of the following information:

(a) The name, mailing address, physical address, telephone number, and website address of the quasi-public entity.

(b) The statutory authority creating the quasi-public entity.

(c) A description of the quasi-public entity's mission.

(d) A description of the quasi-public entity's plans for the next 3 fiscal years.

(e) A copy of the quasi-public entity's code of ethics.

(f) If the quasi-public entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(g) If the quasi-public entity is organized as a corporation, a copy of all of the following:

1. Corporate governance framework and structure.

2. Policies and practices of the corporation's significant committees, including any compensation committee.

3. Policies and practices for directing senior management.

4. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight over the corporation's activities.

(h) If the quasi-public entity has created an entity of any type with which it is affiliated, the following information must

be included for each such affiliated entity:

1. The name, mailing address, physical address, telephone number, and website address of the affiliated entity.

2. The statutory authority creating or authorizing the creation of the affiliated entity, if any.

3. A description of the affiliated entity's mission.

4. If the affiliated entity is a corporation, a copy of all of the information described in paragraph (g).

5. If the affiliated entity is a corporation not for profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).

(5) Each quasi-public entity shall maintain a publicly accessible website. The website must include the following:

(a) The report required pursuant to subsection (4).

(b) The most recently approved operating budget, which must be maintained on the website for 2 years.

(c) The position title and annual salary or rate of pay for each regularly established position.

(d) A link to any state audit or report of the entity's operations.

(e) A link to any program or activity descriptions for which funds may be expended.

(f) All meeting notices for meetings of the entity's governing body, which must be maintained on the website for 2 years.

(g) The official minutes of each meeting of the entity's governing body, which must be posted no later than 7 days after the date of the meeting in which the minutes are approved.

(6) A quasi-public entity may not use public funds to retain a lobbyist to represent the entity before the legislative or executive branch. However, a full-time employee of the quasi-public entity may register as a lobbyist and represent the entity before the legislative or executive branch. Except as a full-time employee, a person may not accept public funds from a quasi-public entity for lobbying.

(7) Unless specifically authorized by law, a quasi-public entity may not create an entity separate from itself, including a citizen support organization or a direct-support organization.

(8) Any meeting of a quasi-public entity's governing body must be video recorded.

(9) The executive director of a quasi-public entity, or an officer with responsibilities similar to that of an executive director, may not recommend or otherwise be involved in the selection, appointment, or retention of any member of the entity's governing body.

Section 2. Subsection (14) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(14) The Chief Financial Officer shall establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website. The Chief Financial Officer shall use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

(a) Within 30 calendar days after executing a contract, each state and quasi-public entity shall post the following information relating to the contract on the contract tracking

system:

1. The names of the contracting entities.

2. The procurement method.

3. The contract beginning and ending dates.

4. The nature or type of the commodities or services purchased.

5. Applicable contract unit prices and deliverables.

6. Total compensation to be paid or received under the contract.

7. All payments made to the contractor to date.

8. Applicable contract performance measures.

9. If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any.

10. Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.

(b) Within 30 calendar days after an amendment to an existing contract, the state entity or quasi-public entity that is a party to the contract must update the information described in paragraph (a) in the contract tracking system. An amendment to a contract includes, but is not limited to, a renewal, termination, or extension of the contract or a modification of the terms of the contract.

(c) By January 1, 2014, each state and quasi-public entity shall post to the contract tracking system the information required in paragraph (a) for each existing contract that was executed before July 1, 2013, with payment from state funds made

after June 30, 2013.

(d)1. Records made available on the contract tracking system may not reveal information made confidential or exempt by law.

2. Each state and quasi-public entity that is a party to a contract must redact confidential or exempt information from the contract and procurement documents before posting an electronic copy on the contract tracking system. If a state entity or quasi-public entity that is a party to the contract becomes aware that an electronic copy of a contract or a procurement document has been posted but has not been properly redacted, the state entity or quasi-public entity must immediately notify the Chief Financial Officer and must immediately remove the contract or procurement document from the contract tracking system. Within 7 business days, the state entity or quasi-public entity must post a properly redacted copy of the contract or procurement document on the contract tracking system.

3.a. If a party to a contract, or an authorized representative of a party to a contract, discovers that an electronic copy of a contract or procurement document has been posted to the contract tracking system but has not been properly redacted, the party or representative may request the state entity or quasi-public entity that is a party to the contract to redact the confidential or exempt information. Upon receipt of the request, the state entity or quasi-public entity shall redact the confidential or exempt information.

b. A request to redact confidential or exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity or

quasi-public entity that is a party to the contract. The request must identify the specific document, the page numbers that include the confidential or exempt information, the information that is confidential or exempt, and the applicable statutory exemption. A fee may not be charged for a redaction made pursuant to the request.

c. A party to a contract may petition the circuit court for an order directing compliance with this paragraph.

4. The contract tracking system shall display a notice of the right of an affected party to request redaction of confidential or exempt information contained on the system.

5.a. The Chief Financial Officer, the Department of Financial Services, or an officer, employee, or contractor thereof, is not responsible for redacting confidential or exempt information from an electronic copy of a contract or procurement document posted by another state entity or quasi-public entity on the system.

b. The Chief Financial Officer, the Department of Financial Services, or an officer, employee, or contractor thereof, is not liable for the failure of a state entity or quasi-public entity to redact the confidential or exempt information.

(e)1. The posting of information on the contract tracking system or the provision of contract information on a website for public viewing and downloading does not supersede the duty of a state entity or quasi-public entity to respond to a public records request or subpoena for the information.

2. A request for a copy of a contract or procurement document or certified copy of a contract or procurement document shall be made to the state entity or quasi-public entity that is

party to the contract. The request may not be made to the Chief Financial Officer, the Department of Financial Services, or an officer, employee, or contractor thereof, unless the Chief Financial Officer or the department is a party to the contract.

3. A subpoena for a copy of a contract or procurement document or certified copy of a contract or procurement document must be served on the state entity or quasi-public entity that is a party to the contract and that maintains the original documents. The Chief Financial Officer, the Department of Financial Services, or an officer, employee, or contractor thereof, may not be served a subpoena for those records unless the Chief Financial Officer or the department is a party to the contract.

(f) The Chief Financial Officer may regulate and prohibit the posting of records that could facilitate identity theft or fraud, such as signatures; compromise or reveal an agency investigation; reveal the identity of undercover personnel; reveal proprietary business information or trade secrets; reveal an individual's medical information; or reveal another record or information that the Chief Financial Officer believes may jeopardize the health, safety, or welfare of the public. However, such action by the Chief Financial Officer does not supersede the duty of a state entity or quasi-public entity to provide a copy of a public record upon request.

(g) The Chief Financial Officer may adopt rules to administer this subsection.

(h) For purposes of this subsection, the term:

1. "Procurement document" means any document or material provided to the public or any vendor as part of a formal

competitive solicitation of goods or services undertaken by a state entity or quasi-public entity, and a document or material submitted in response to a formal competitive solicitation by any vendor who is awarded the resulting contract.

2. "Quasi-public entity" means an entity established by law, regardless of form, for a public purpose or to effectuate a government program and which is not directly controlled by a governmental entity. This term does not include a citizen support organization or a direct-support organization.

3.~~2.~~ "State entity" means an official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; a state attorney, public defender, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission; the Public Service Commission; and any part of the judicial branch of state government.

(i) In lieu of posting in the contract tracking system administered by the Chief Financial Officer, the Department of Legal Affairs and the Department of Agriculture and Consumer Services may post the information described in paragraphs (a) through (c) to its own agency-managed website. The data posted on the agency-managed website must be downloadable in a format that allows offline analysis.

(j) The requirement under paragraphs (a) through (c) that each agency post information and documentation relating to contracts on the tracking system does not apply to any record that could reveal attorney work product or strategy.

Section 3. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #1570**, relating to Quasi-public Entities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1598
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Gruters
SUBJECT:	Consumer Protection
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Johnson	Knudson	BI	**Fav/CS**
2.	Sanders/Johnson	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1598 modifies provisions in several areas related to insurance that are regulated by the Department of Financial Services (DFS). The bill:

- Requires insurers to include information regarding the DFS's free financial literacy programs in its notice that a consumer's credit report or score is being requested.
- Requires an entity that is licensed or issued a certificate of authority by the DFS to respond to document requests from the DFS Division of Consumer Services.
- Eliminates the $60 fee for a new or renewal adjusting firm license.
- Specifies that entities must comply with section 626.8696, Florida Statutes, with respect to possessing an adjusting firm license, but provides that an adjusting firm's branch place of business does not require licensure if it meets specified requirements.
- Revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.
- Authorizes the DFS to suspend, revoke, or refuse to issue the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent that makes a consumer's personal financial or medical information available to the public, or initiates in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

- Prohibits the sale of industrial life insurance policies, effective July 1, 2021.
- Increases to 10 days, the cooling-off period during which a consumer may cancel his or her contract with a public adjuster.
- Requires that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs. The public adjuster must provide the estimate to the claimant or insured within 60 days after the execution of the public adjuster contract.
- Prohibits a licensed contractor or subcontractor from advertising, soliciting, offering to handle, handling, or performing public adjuster services unless licensed and compliant as a public adjuster.
- Prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate on behalf of an insured or advertising services which require a public adjuster license.
- Requires disclosure that surplus lines insurance is not covered by the Florida Insurance Guaranty Association (FIGA) prior to placing coverage with a surplus lines insurer.
- Expands the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:
  - Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured.
  - Submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property; does not apply to renewals or collateral protection insurance.
- Applies the property insurance claim investigation and communication requirements of section 627.70131, Florida Statutes, to surplus lines insurers.
- Requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days.
- Requires insurers to provide to policyholders the adjuster's name and state adjuster license number when a claim investigation involves a physical inspection of the property and maintain a record of each adjuster who communicates with the policyholder.
- Requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate or making a claim payment that is not the full and final payment for the claim.
- Prohibits the inclusion of a foreign venue clause within any personal residential property insurance policy sold in Florida that insures only property located in this state. This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.
- Requires insurers to provide the Homeowner Claims Bill of Rights pursuant to any personal lines residential property insurance claim and adds notice regarding the right to receive interest and the utility of taking video of damages and repairs.
- Encourages insureds, under the Homeowner Claims Bill of Rights, to file all claims directly with their insurance company and to be aware of contractors or repair vendors offering incentives free inspections or no out-of-pocket expenses.
- Removes the insured's obligation to pay a $100 deductible to the FIGA in order to receive payment on their claim through the FIGA.
- Revises the definition of a "covered claim" for purposes of the Florida Workers' Compensation Insurance Guaranty Association, to exclude the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Further, the bill prohibits a credit reporting agency from charging any fee to reissue a personal identifier or provide a new unique personal identifier to a consumer.

The bill has an insignificant indeterminate impact on state funds and expenditures. *See* V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective upon becoming a law.

II. Present Situation:

Department of Financial Services

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[1] The DFS has a number of regulatory responsibilities over the Florida insurance market. The DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters under Part VI, ch. 626, F.S. The DFS conducts insurance-related consumer outreach through its Division of Consumer Services. The Division of Workers' Compensation within the DFS administers ch. 440, F.S., through enforcement of coverage requirements,[2] administration of workers' compensation health care delivery system,[3] data collection,[4] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.[5] The DFS also administers insurer rehabilitation and liquidation in Florida under part I of ch. 631, F.S.

DFS Division of Consumer Services

The Division of Consumer Services (division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.[6] The divisions' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.[7]

Section 624.307(10)(b), F.S., permits the division to impose an administrative penalty on a person who holds a license or certificate of authority from the DFS if that person fails to respond

[1] *See, e.g.*, Department of Financial Services (DFS), *What DFS Can Do For You*, https://www.myfloridacfo.com/division/CFO/DFS.htm (last visited March 18, 2021).
[2] Section 440.107(3), F.S.
[3] Section 440.13, F.S.
[4] Sections 440.185 and 440.593, F.S.
[5] Section 440.191, F.S.
[6] DFS, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited March 18, 2021). *See also*, DFS, *Consumer Guides*, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm (last visited March 18, 2021).
[7] Section 624.307(10)(a), F.S.

to the division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records[8] that are required to be kept by law, but is not required to produce those not within the purview of statutes.[9] Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.[10]

Discretion of the DFS to Act against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, engaging in unfair and deceptive trade practices.[11]

DFS Licensure of Adjusting Firms

Current law authorizes, but does not require, licensure of adjusting firms.[12] The DFS does not currently license any adjusting firms.[13] An adjusting firm license must be renewed every three years and requires a $60 application fee.[14] An adjusting firm license application must include:[15]

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.[16]

Chapter 626, F.S., provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.[17]

DFS Authority Regarding Misleading Insurance Agency Names

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states

[8] Pursuant to s. 624.23, F.S., any personal financial and health information held by the DFS or the Office of Insurance Regulation relating to a consumer complaint or inquiry is confidential and exempt from public records.
[9] *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).
[10] *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).
[11] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code."
[12] Section 626.8696, F.S.
[13] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, DFS, to Michelle Sanders, Legislative Analyst Senate Appropriations Subcommittee on Agriculture, Environment and General Government (March 18, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment and General Government)
[14] Section 624.501(20), F.S.
[15] Section 626.8696, F.S.
[16] Section 626.8695, F.S.
[17] Section 626.8697, F.S.

or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.[18]

The Social Security Act prohibits any person from using the terms "Medicare" or "Medicaid" in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.[19]

Industrial Life Insurance

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than $5,000.[20] Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.[21]

Public Adjuster Contracts and Estimates of Damages

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.[22]As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policyholder to cancel the contract within three business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to five business days from the date the contract was executed, if it was entered into during a state of emergency or during the one-year period after the date of loss.

The adjuster must disclose, in all of his or her contracts, the consumer's right to cancel the contract, and the methods by which the consumer may send a cancellation.

Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of the insurance claim. The public adjuster must retain the estimate for at least five years and make it available to the claimant, insured, an insurer, or the DFS upon request.

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[18] Section 626.602(1)-(3), F.S.
[19] 42 U.S. Code s.1320b-10(a)(1). Upheld by *United Seniors Ass'n Inc. v. SSA*, 423 F. 3d 397, 399 (4th Cir. 2005).
[20] Section 627.502, F.S. *See also*, DFS, *Life Insurance Overview: Types of Policies*, https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (last visited March 18, 2021).
[21] DFS, *HB 717 Agency Analysis*, (Feb. 24, 2021) (on file with the Senate Committee on Banking and Insurance).
[22] Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters. Rule 69B-220.201(4) and (5), F.A.C.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[23] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks (which are risks where an insured needs higher coverage limits than those that are available in the admitted market).

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[24] which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.[25] Rather, surplus lines insurers are "unauthorized" insurers,[26] but may transact surplus lines insurance if they are made eligible by the OIR.

An insurance agent[27] may "export," or place a policy with an unauthorized insurer under the Surplus Lines Law[28], with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[29] A "diligent effort" requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:[30]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks, [31] the policyholder must be advised in writing coverage may be available and less expensive from Citizens Property Insurance Corporation.

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[23] The admitted market is comprised of insurance companies authorized to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S. *See also*, Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, https://www.fslso.com/AboutGroup/about/surplus-lines-insurance (last visited March 17, 2021).
[24] Section 626.914(2), F.S.
[25] Section 624.09(1), F.S.
[26] Section 624.09(2), F.S.
[27] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See* s. 626.914(1), F.S.
[28] Sections 626.913-626.937, F.S., constitute the "Surplus Lines Law," pursuant to s. 626.913(1), F.S.
[29] Section 626.916(1)(a), F.S.
[30] Section 626.916(1), F.S.
[31] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

Certain types of insurance, deemed "commercial risks," including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

> You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[32]

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act[33] prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,[34] including:

- Misrepresenting the benefits, advantages, or terms of any insurance policy;
- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional ("sliding").[35]

A person who commits an act prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $20,000 for nonwillful violations, and up to $200,000 total for willful violations.[36] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[37]

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than $75,000 per violation.[38]

Property Insurance Claim Communications and Investigations

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer that has notified the insurer of a possible claim. Generally, the residential property insurer must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements

[32] Section 626.916(3)(b), F.S.
[33] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[34] Section 626.9541, F.S.
[35] Section 626.9541(1)(z), F.S. *See also*, *Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1st DCA).
[36] Each count of a nonwillful violation is limited to a fine of no more than $5,000, and each count of a willful violation is limited to a fine of no more than $20,000. Section 626.9521(2), F.S.
[37] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.
[38] Section 626.9521(3)(b), F.S.

from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90 days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.[39]

The Homeowner Claims Bill of Rights

The Homeowner Claims Bill of Rights outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.[40] An insurance company must provide a consumer with a copy of the Homeowner Claims Bill of Rights within 14 days of receiving any communication about a claim.[41] Florida law provides form language that the insurer must include in the Homeowner Claims Bill of Rights, which gives notice of the consumer's right to:[42]

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;
- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;
- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the DFS for assistance.

The Homeowner Claims Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

Forum Venue Clauses

A forum selection clause is a contractual provision in which the parties agree upon the venue for possible future litigation between them.[43] Generally, ch. 47, F.S., provides civil actions must be brought in the Florida county where the defendant resides, where the cause accrued, or where the property in question is located.[44] If the defendant is an out-of-state (foreign) corporation, venue resides where the corporation has a representative, the action accrued, or where the property is located.[45] However, "a mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust."[46] In 2014, the Legislature codified case law on the matter, holding that a court could refuse to enforce a forum selection clause if it contravenes public policy, or is unjust and unreasonable.[47]

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[39] See further discussion of the Homeowner Claims Bill of Rights, *infra*.
[40] DFS, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2020), *available at* https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf (last visited March 17, 2021).
[41] Section 627.70131, F.S.
[42] Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in s. 627.70131, F.S.
[43] Black's Law Dictionary (11th ed. 2019).
[44] Section 47.011, F.S.
[45] Section 47.051, F.S.
[46] *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.3d 820, 821 (Fla. 1st DCA 2014) (*citing Land O'Sun Mgmt. Corp. v. Commerce and Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla 1st DCA 2007). Internal citations omitted.
[47] Section 61.0401, F.S. *See also, Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986) and *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 571 U.S. 49, 134 S. Ct. 568 (2013).

Several states, including Florida, have attempted to limit forum selection clauses in specific instances. Florida voids, as contrary to public policy, any contract that requires litigation against Florida contractors and related professions to be filed in non-Florida jurisdictions.[48]

Federal and State Requirements Regarding Disclosure of Personal Medical Information

The federal Health Insurance Portability and Accountability Act of 1996 (HIPPA)[49] requires health care providers, health plans, and health care clearinghouses[50] (covered entities) to protect the privacy of personal health information. The HIPAA Privacy rules cover protected health information that is created or received by a covered entity and requires covered entities to implement safeguards to protect health information from unauthorized access, use, or disclosure.[51] The term, "protected health information," (PHI) is broadly defined as individually identifiable information in any form or format—oral, paper-based, electronic—that "[r]elates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.[52]

The HIPAA Privacy rules prohibit a covered entity from using or disclosing PHI except as expressly permitted or required by the rule.[53] For all uses or disclosures of PHI that are not otherwise permitted or required by the rule, covered entities must obtain a patient's written authorization.[54] Generally, third parties (business associates[55]) of covered entities provide services and will need access to at least some patient information in order to perform those functions. Covered entities are required to obtain written agreements with their business associates that they will use PHI only for the purposes permitted or required by the contract; and implement appropriate safeguards to prevent misuse of PHI.[56]

The Insurance Code requires health insurers to maintain strict confidentiality against unauthorized disclosure of confidential information regarding claims and records relating to the payment of psychiatric and psychotherapeutic services.[57] Additionally, s. 456.057, F.S., provides patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative.

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[48] Section 47.025, F.S.
[49] P.L. 104-191, 110 Stat. 1936, August 21, 1996.
[50] 42 U.S.C. s. 1320d–1(a). A health plan is an individual or group plan that provides, or pays the cost of, medical care and includes private and government plans. A health care clearinghouse is an entity (e.g., billing service) that (1) receives nonstandard health information and processes, or facilitates the processing of, the information into a standard format required for electronic transaction; or (2) receives a standard transaction and processes, or facilitates the processing of, the information into nonstandard format for the recipient. A health care provider is a person (e.g., physician, nurse) or entity (e.g., hospital, clinic) who "furnishes, bills, or is paid for health care in the normal course of business and conducts one or more HIPAA-specified standard electronic transactions. 45 C.F.R. s. 160.103.
[51] 45 CFR Part 164 Subparts A and E.
[52] 45 CFR 160.103. The Privacy Rule implementing HIPAA creates standards for the protection of person health information.
[53] 45 CFR 164.502(a).
[54] 45 C.F.R. §164.508(a).
[55] 45 CFR 160.103.
[56] 45 C.F.R. 164.502(e), 164.504(e).
[57] Sections 627.4195, F.S., and 627.688, F.S.

Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information, date of birth, and court judgments.[58] Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in determining (i.e., whether to extend credit), set insurance rates, or employ the consumer.[59] A consumer may also review his or her credit report at no charge once every 12 months, from each of the credit bureaus.

Generally, the federal Fair Credit Reporting Act (FCRA)[60] regulates the activities of Credit Reporting Agencies (CRAs), the users of consumer reports, and those who furnish information to CRAs. In 2003, the FCRA was amended by the Fair and Accurate Credit Transactions Act (FACTA) to address identity theft, improve the accuracy of consumer records, and to increase consumer access to credit information.[61] The FCRA includes several provisions preempting state laws. For example, the FCRA provides no requirement or prohibition may be imposed under the laws of any state with respect to any subject manner regulated under subsections (i) and (j) of Section 605A, which relates to a national security freeze and national protection for files and credit records of protected consumers, respectively.[62]

In May 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act.[63] The law creates a national, free credit freeze and a national credit freeze for protected persons (for persons under 16 years of age and incapacitated adults). The law also establishes further requirements to protect minors. The "adult" freeze and the protected consumer freeze went into effect September 2018.[64]

Security Freezes and the Keeping I.D. Safe (KIDS) Act

In Florida, The Keeping I.D. Safe (KIDS) Act[65] allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from

[58] 15 U.S. Code s. 1681 defines a "credit report" as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, … general reputation, [or] personal characteristics… which is used…for the purpose of…establishing the consumer's eligibility for credit or employment purposes…. The Florida KIDS Act adopts this definition of a "credit report" in s. 501.0051(1)(a), F.S.
[59] Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, *available at* https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf (last visited March 17, 2021).
[60] Fair Credit Reporting Act, Pub. L. No. 91-508, codified as amended at 15 U.S.C. s. 1681-1681x.
[61] Fair and Accurate Credit Transactions Act, Pub. L. No. 108-159 (2003).
[62] 15 U.S.C. s. 1681t(b)(1)(J).
[63] Pub. L. No. 115-174, Title III.
[64] These changes created subsections (i) and (j) of Section 605A of the FCRA. 15 U.S.C. ss. 1681c-1(i) and 1681c-1(j).
[65] Section 501.0051, F.S.

charging any fee to place or remove a security freeze, they may charge up to $10 to reissue a PIN.[66]

Florida Telemarketer Act

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.[67] Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.[68]

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.[69]

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty claims[70] that would otherwise be left unpaid.[71] FIGA does not offer a replacement policy, and coverage offered by FIGA is generally limited to a $300,000 payment. A consumer may receive additional FIGA coverage of up to $200,000 for damages to their home's structure or the contents thereof.[72] Condominium and homeowner's association claims have a coverage cap of $100,000 multiplied by the number of units in the association.[73] All claims filed with FIGA are subject to a $100 deductible in addition to any deductible identified in the consumer's policy.[74]

III. Effect of Proposed Changes:

Consumer Protections Related to Credit Reports

Section 1 amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a personal identification number (PIN) or provide a new unique PIN to a consumer.

Section 13 amends s. 626.9741(3), F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

> The Department of Financial Services offers free financial literacy

[66] Section 501.0051(9), F.S.
[67] Section 501.604(7), F.S.
[68] Federal Trade Commission, *The Telemarketing Sales Rule*, https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule (last visited March 17, 2021).
[69] Section 626.854(5), F.S.
[70] A "covered claim" is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy." Section 631.54, F.S.
[71] *See generally*, Part II, ch. 631, F.S., "Florida Insurance Guaranty Association Act." *See also*, Florida Insurance Guaranty Association, *Home*, https://figafacts.com/ (last visited March 17, 2021).
[72] Section 631.57(2), F.S.
[73] Section 631.57(3), F.S.
[74] Section 631.57(2), F.S., *see also*, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, https://figafacts.com/frequently-asked-questions/ (last visited March 17, 2021).

programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com.

Insurer Reponses to Requests from the Division of Consumer Services

Section 2 amends s. 624.307(10)(b), F.S., to create a duty for an entity that is licensed or issued a certificate of authority by the Department of Financial Services (DFS) to respond to the DFS' requests for documents. The response must include any requested documents not subject to attorney-client or work product privilege.

Claims Adjusting

Section 3 amends s. 624.501, F.S., to eliminate the $60 fee for a new, or the renewal of an existing, adjusting firm license.

This section necessitates **Section 14,** which conforms a cross reference in s. 626.9953, F.S.

Section 4 amends s. 626.112, F.S., to specify entities that must comply with s. 626.8696, F.S., with respect to possessing an adjusting firm license for each place of business at which it performs activity for which it is necessary to be licensed as a claims adjuster.

The section provides that an adjusting firm's branch place of business is classified as a branch firm, and does not require licensure, if the branch:

- Transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- Designates with the DFS a primary adjuster operating the location as required by s. 626.8965, F.S.; and
- Submits the address and telephone number of the branch location to the DFS within 30 days after insurance transactions begin at the branch location.

The section requires the DFS to impose an administrative fine of up to $10,000 if an adjusting firm is required to be licensed pursuant to this section but fails to apply for such licensure.

The bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.

Presently, s. 777.011, F.S., includes as a "principal in the first degree" a person who aids, abets, counsels, hires, or otherwise procures a criminal office to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, the bill merely clarifies or restates existing law.

This section necessitates **Section 15**, which conforms a cross reference in s. 626.9957, F.S.

Prohibiting Misleading Insurance Agency Names

Section 5 amends s. 626.602, F.S., to authorize the DFS to disapprove an insurance agency's proposed use of a name which includes the words "Medicare" or "Medicaid." Insurance agencies that operate under such a name as of July 1, 2021, may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.[75]

Taking Administrative Action against Applicants for Licensure and Licensees for Engaging in Prohibited Actions

Section 6 amends s. 626.621, F.S., to add two bases under which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; and
- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

Prohibiting the Sale of Industrial Life Insurance

Sections 7, 8, and 17 respectively amend ss. 626.782, 626.783, and 627.502, F.S., and **Section 9** repeals s. 626.796, F.S., to prohibit the sale of industrial life insurance policies, after July 1, 2021. Insurers may continue to service and collect premiums on industrial life policies written before that date. According to the DFS, industrial life insurance is not currently being sold in this state, and less than 10 percent of active life insurers maintain existing policies.

Expanding the Cancellation Period for Public Adjuster Contracts; Prohibiting Contractors from Soliciting an Insured to File a Claim

Section 10 amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with a public adjuster to 10 calendar days. Currently, the contract may generally be canceled within three business days after the contract is executed or the insurer is informed of the claim, whichever is later. Current law provides a cancellation period of five business days during, and for one year thereafter, a state of emergency declared by the Governor.

The bill also specifies the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies created in accordance with accepted industry standards. The public adjuster must provide the detailed written estimate to the claimant or insured within 60 days after the date of the contract.

The bill prohibits a licensed contractor or subcontractor from soliciting, advertising, offering to handle, handling, or performing public-adjuster services unless licensed and compliant as a

[75] Insurance agency licenses are indefinite. Section 626.382, F.S.

public adjuster. The prohibition does not preclude a contractor from suggesting or recommending the insured contact their insurer to determine if proposed repairs are covered under the insured's insurance policy.

The bill prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant. The bill retains current law which prevents persons other than a public adjuster or attorney from soliciting, investigating, or adjusting a claim on behalf of a public adjuster, insured, or third-party claimant.

The bill authorizes the DFS to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

Notice to Insureds that Surplus Lines Insurers Are Not Protected by the Florida Insurance Guaranty Association

Section 11 amends s. 626.916, F.S., to provide that insurance coverage is not eligible for export to a surplus lines insurer, unless the insured signs or provides documented acknowledgement of the following disclosure:

> "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

The bill deletes a disclosure that was required to export certain types of commercial lines insurance[76] to a surplus lines carrier without meeting the generally applicable requirements[77] to export a commercial policy. The deleted disclosure is similar to the one created by the bill, except the deleted disclosure states, "superior coverage may be available in the admitted market and at a lesser cost."

This section is effective January 1, 2022.

Unfair Insurance Trade Practices

Section 12 amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and
- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent of the owner of the property that will be insured. However, it does not

[76] Those identified in s. 627.062(3)(d)1.
[77] Section 626.916(1)(a)-(d), F.S.

include cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

Residential Property Insurance Claim Investigations; Application to Surplus Lines

Section 18 amends s. 627.70131, F.S., to impose new requirements on residential property insurers during their claim investigations, and to apply the section's requirements to surplus lines insurers and policies providing personal residential property insurance coverage.

The bill clarifies the communication standards of the statue by referring to "representatives" of an insurer, rather than "an agent" of the insured. The term "representative" is defined in the same way the term "agent" is currently defined by this statute: "any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer." The current use of "agent" could confuse readers of the statute regarding whether the requirements of the section only apply to licensed agents.

The bill requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days. As under current law, the statutory time frame for beginning an investigation does not apply if any law or the insurance policy provides otherwise, if a claim investigation is not reasonably necessary, or if circumstances beyond the insurer's control reasonably prevent the investigation from commencing.

If the claim investigation involves a physical inspection of the property, the bill requires that the insurer's licensed adjuster must provide the policyholder a printed or electronic document containing the adjuster's name and state adjuster license number. All subsequent communications by an adjuster must include the adjuster's name and license number. The insurer must maintain a record of each adjuster who engages in the foregoing communications, and provide that list to the insured, the OIR, or the DFS upon request.

The bill requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate, or making a claim payment that is not the full and final payment for the claim. The insurer must include with any preliminary or partial estimate of damages, the following notice in 12-point bold, uppercase type:

> THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROEPRTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR

> ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE TO CONTACT US.

The insurer must include with any claim payment which is not the full and final payment for the claim, the following notice in 12-point bold, uppercase type:

> WE ARE CONTINUING TO EVALUATE YOUR CLAIM NVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

The bill creates a new subsection (8) that applies the section to surplus lines insurers and authorized surplus lines insurance providing personal residential property insurance coverage.

This section is effective January 1, 2022.

Section 16 amends s. 627.062, F.S., to correct a cross reference to s. 627.70131(7), F.S., relating to insurer's rate standards. The insurer may not include any interest paid pursuant to s. 627.7013(7), F.S., in their rate base and many not be used to justify a rate or rate change.

Prohibition on Foreign Venue Clauses

Section 19 creates s. 627.7031, F.S., which prohibits the inclusion within any personal residential property insurance policy any clause that would require an insured to pursue litigation, arbitration, or mediation outside of Florida, if such policy was sold after July 1, 2021, in Florida, and insures only property located in this state.

This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.

Homeowner Claims Bill of Rights

Section 20 amends s. 627.7142, F.S., which contains the Homeowner Claims Bill of Rights which the insurer must provide the homeowner after receiving the initial communication regarding a personal lines residential property insurance claim. Currently, the Homeowner Claims Bill of Rights must be provided within 14 days after an insurer receives an initial communication on any personal lines residential property insurance claim. Additionally, the Homeowner Claims Bill of Rights currently include notice the consumer has the right to receive interest payments; these payments begin accruing when a consumer files a claim if the insurer does not deny the claim or pay the full settlement of the claim, or the undisputed portion of the claim, within 90 calendar days after a claim is filed.[78] Any payable interest must be paid when the claim, or undisputed portion of the claim, is paid.

The Homeowner Claims Bill of Rights is also amended to encourage insureds to take video of damage before and after any repairs, and specify the purpose of such videos or photographs is so

[78] *See* s. 627.70131(5)(a), F.S.

they can be provided to the insurer. In addition, insureds are encouraged to file claims directly with their insurance company and to be aware of contractors or repair vendors who offer incentives for free inspections or promise to coordinate with insured's insurance company to repair the insured's home with no out-of-pocket expense paid by the insured.

This section is effective January 1, 2022.

Elimination of the $100 Florida Insurance Guaranty Fund Deductible

Section 21 amends s. 631.57, F.S., to remove the insured's obligation to pay a $100 deductible to FIGA in order to receive payment on their claim through FIGA. The insured remains obligated to pay their original insurer's deductible.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) Covered Claims

Section 22 amends s. 631.904(2), F.S., to revise the definition of a "covered claim" for purposes of the FWCIGA, to exclude from the definition the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Effective Date

Section 23 provides the bill, except as otherwise provided, is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit Bureaus will no longer be permitted to charge a fee to re-issue a personal identification number to consumers. *See* **Section VII, Related Issues**.

Consumers who seek to have their claims covered by Florida Insurance Guaranty Association (FIGA) will no longer be required to pay the $100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the Department of Financial Services (DFS) and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

C. Government Sector Impact:

The bill has an insignificant indeterminate impact to state funds and expenditures.

The elimination of the $60 fee for a new or renewal adjusting firm license may have an insignificant impact on future state revenues. In addition, eliminating the $100 FIGA deductible may have an insignificant financial impact on FIGA.

Sections 4, 10 and 12 increase the DFS's authority to take administrative action and impose administrative fines, which may result in an insignificant indeterminate increase in administrative fines collected.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. Section 5 of the bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly and abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license. A person who does so

commits a third degree felony. **Section 12** of the bill amends the Unfair Insurance Trade Practices Act (Act). The new violations under **Section 12** are punishable as administrative violations under the general provisions of the Act. However, the underlying acts which give rise to the administrative violations may give rise to charges under s. 626.9541(1)(ee), F.S., which is punishable as a third degree felony.

VI. Technical Deficiencies:

Section 6 of the bill amends s. 626.621, F.S., to authorize the Department of Financial Services (DFS) to suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant for taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; however, it is unclear what information would be considered financial or medical information. These terms are undefined. For purposes of HIPAA, protected health information is defined. Further, s. 624.23, F.S., defines the term, "personal financial and health information," as it relates to consumer complaints and inquiries received by the DFS.

Section 10 of the bill amending s. 626.854(19), F.S., appears intended to prohibit a person that is not an attorney or licensed public adjuster from, on behalf of a public adjuster, advertising, providing advice regarding a claim, or assisting in the adjustment of a claim. This bill section also creates a new subsection (20) to s. 626.854, F.S., to authorize the DFS to take administrative actions and impose fines for unlicensed public adjusting or claims adjusting activity; however, DFS will have difficulty enforcing such a fine or taking administrative action when the violator is not a licensee of the DFS.

VII. Related Issues:

Section 1 of the bill may be federally preempted pursuant to 15 U.S.C. s. 1681t. This federal law prohibits states from imposing laws with respect to any subject matter regulated under subsections (i) and (j) of section 605A relating to security freezes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 624.501, 626.015, 626.112, 626.602, 626.621, 626.7315, 626.782, 626.783, 626.7845, 626.8305, 626.854, 626.916, 626.9541, 626.9741, 626.9953, 626.9957, 627.062, 627.502, 627.70131, 627.7142, 631.57, and 631.904.

This bill creates section 627.7031 of the Florida Statutes.

This bill repeals section 626.796 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on March 24, 2021:
The committee substitute:

- Clarifies contractors may recommend that policyholders contact their insurance company, but may not initiate, manage, or handle the claim for the policyholder; but does not prohibit or preclude a contractor from recommending the policyholder contact the insurer to determine if proposed repair is covered under the insured's insurance policy;
- Clarifies the surplus lines 90-day provision would apply only to personal residential properties;
- Clarifies no person other than an attorney at law or a licensed public adjuster, may offer to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant
- Includes a provision in the Homeowner Claims Bill of Rights encouraging a consumer to file claims directly with their insurer and to be aware of incentives offered by contractors or repair vendors for free inspections or promises to coordinate repairs; and
- Removes the definition of claims adjusting and the respective cross-references.

CS by Banking and Insurance on March 16, 2021:
The committee substitute:

- Prohibits persons other than a public adjuster or attorney from advertising, providing advice, or assisting the adjustment of a claim on behalf of a public adjuster, insured, or third-party claimant.
- Authorizes the Department of Financial Services to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

205350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 303 - 691

and insert:

impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section without the licensure required under this section or s. 626.112.

(21) A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant

pursuant to paragraph (10)(a) may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

Section 11. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are~~

~~agreeing to place coverage in the surplus lines market~~. ~~Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.”~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage

applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases in which the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2022, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone

number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records

checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 15. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 16. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life

insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 18. Effective January 1, 2022, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative"

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~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment must ~~shall~~ be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment must ~~shall~~ provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 14 ~~10 working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included with other information provided to the policyholder.

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(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (c) and provide a list of such adjusters to the insured, office, or department upon request.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after

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the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937 providing residential coverage.

Section 19. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

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HOMEOWNER CLAIMS

BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your

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claim.

4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or the undisputed portion of your claim is paid.

5. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

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1. File all claims directly with your insurance company.

2. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

3.~~2.~~ Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

4.~~3.~~ Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

5.~~4.~~ Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor’s license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

6.~~5.~~ Require all contractors to provide proof of insurance before beginning repairs.

7.~~6.~~ Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone

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number where you can be reached.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 231 - 232
and insert:
section 626.854, Florida Statutes, are amended, and subsections (20) and (21) are added to that section, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 50 - 79
and insert:
licensure; prohibiting specified persons from charging insureds or third-party claimants or receiving payments under certain circumstances; amending s. 626.916, F.S.; revising disclosure requirements for certain classes of insurance before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9953, 626.9957, and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; making technical changes; amending s.

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627.70131, F.S.; providing that a communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; defining the term "representative", rather than "agent"; revising the timeframe for insurers to begin certain investigations; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring insurers to maintain certain records and provide certain lists upon request; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; conforming provisions to changes made by the act;

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576-03360-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to consumer protection; amending 501.0051, F.S.; deleting authorization for consumer reporting agencies to charge a fee for reissuing or providing a new unique personal identifier to a consumer; amending s. 624.307, F.S.; revising a requirement for persons licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; amending s. 624.501, F.S.; deleting a fee for adjusting firm licenses; amending s. 626.112, F.S.; deleting an obsolete provision; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the word "Medicare" or "Medicaid"; providing an exception for certain insurance agencies for a certain period; providing for expiration of certain licenses on a certain date; amending s. 626.621, F.S.; adding grounds on which the department

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576-03360-21

may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.854, F.S.; revising the timeframes in which an insured or a claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; requiring that a public adjuster's contract include a specified disclosure; specifying requirements for written estimates of loss provided by public adjusters to claimants or insureds; revising a prohibition against certain contractors or subcontractors providing insureds with specified services; providing an exception; revising services a person is prohibited from performing unless the person meets specified requirements; authorizing the department to take administrative actions and impose fines against persons performing specified activities without licensure; amending s. 626.916, F.S.; revising disclosure requirements for certain classes of insurance before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an

insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending s. 626.9953, F.S.; correcting a cross-reference; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; making technical changes; amending s. 627.70131, F.S.; providing that a communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; revising the timeframe for insurers to begin certain investigations; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring insurers to maintain certain records and provide certain lists upon request; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the obligation of the Florida Insurance Guaranty

Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of the term "covered claim"; deleting a requirement that a policy be in force on the date of the final order of liquidation; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9) ~~(a)~~ A consumer reporting agency may not charge any fee to place or remove a security freeze.

~~(b) A consumer reporting agency may charge a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.~~

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the

issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office.

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license.....$60.00~~

Section 4. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10) and amended, a new subsection (9) is added to that section, and paragraph (d) of subsection (7) of that section is amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must~~

~~automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, a firm, a partnership, a corporation, an association, or any other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed but fails to apply for licensure in accordance with this subsection, the department must impose an administrative penalty of up to $10,000 on the firm.

(10)~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 6. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue

the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking an action that allows the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 7. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 8. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance as defined by s. 627.502.

Section 9. Section 626.796, Florida Statutes, is repealed.

Section 10. Subsections (6), (11), (15), and (19) of section 626.854, Florida Statutes, are amended, and subsection (20) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to ...(name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract ~~disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(15) A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in s. 626.854(1) ~~adjust a claim on behalf of an insured~~ unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy. In addition ~~However~~, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(19) Except as otherwise provided in this chapter, no

person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license ~~for employment~~ as a public adjuster; or

(e)~~(d)~~ Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(20) The department may take administrative actions and impose fines against any persons performing claims adjusting as defined in s. 626.015(6) or any other services as described in this section without the licensure required under this section and s. 626.112.

Section 11. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market.

Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or

deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases in which the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2022, subsection (3) of

section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the

requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 15. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the

solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 16. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 18. Effective January 1, 2022, section 627.70131,

Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment must ~~shall~~ be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment must ~~shall~~ provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance

or by law, within 14 ~~10 working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included with other information provided to the policyholder.

(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (c) and provide a list of such adjusters to the insured, office, or department upon request.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937 providing personal residential coverage.

Section 19. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2021, a personal residential property insurance policy sold in this state, insuring only real property located in this state, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 20. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to

a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also

exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay

full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or the undisputed portion of your claim is paid.

5. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are

necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

7. File all claims directly with your insurance company and be aware of contractors or repair vendors that offer incentives for free inspections or promise to coordinate with your insurance company to repair your home with no out-of-pocket expenses to you.

Section 21. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance must ~~shall~~ provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, includes ~~shall include~~ that amount of each covered property insurance claim which is less than $200,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the

proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. ~~In no event shall~~ The association may not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines it is ~~that either or both such actions are~~ necessary to facilitate the bulk assumption of obligations.

Section 22. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes

unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; or any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth, except this exclusion from the definition of covered claim does not apply to employers who, prior to April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1598
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Gruters
SUBJECT:	Consumer Protection
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Johnson	Knudson	BI	**Fav/CS**
2.	Sanders/Johnson	Betta	AEG	**Recommend: Fav/CS**
3.	Sanders	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1598 modifies provisions in several areas related to insurance that are regulated by the Department of Financial Services (DFS). The bill:

- Requires insurers to include information regarding the DFS's free financial literacy programs in its notice that a consumer's credit report or score is being requested.
- Requires an entity that is licensed or issued a certificate of authority by the DFS to respond to document requests from the DFS Division of Consumer Services.
- Eliminates the $60 fee for a new or renewal adjusting firm license.
- Specifies that entities must comply with section 626.8696, Florida Statutes, with respect to possessing an adjusting firm license, but provides that an adjusting firm's branch place of business does not require licensure if it meets specified requirements.
- Revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.
- Authorizes the DFS to suspend, revoke, or refuse to issue the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent that makes a consumer's personal financial or medical information available to the public, or initiates in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

- Prohibits the sale of industrial life insurance policies, effective July 1, 2021.
- Increases to 10 days, the cooling-off period during which a consumer may cancel his or her contract with a public adjuster.
- Requires that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs. The public adjuster must provide the estimate to the claimant or insured within 60 days after the execution of the public adjuster contract.
- Prohibits a licensed contractor or subcontractor from advertising, soliciting, offering to handle, handling, or performing public adjuster services unless licensed and compliant as a public adjuster.
- Prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate on behalf of an insured or advertising services which require a public adjuster license.
- Prohibits a public adjustor, public adjustor apprentice, or public adjusting firm, who solicits a claim and does not enter into a contract with an insured or third party claimant, from charging or receiving payment from an insured or a third-party claimant.
- Requires disclosure that surplus lines insurance is not covered by the Florida Insurance Guaranty Association (FIGA) prior to placing coverage with a surplus lines insurer.
- Expands the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:
  - Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured.
  - Submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property; does not apply to renewals or collateral protection insurance.
- Applies the property insurance claim investigation and communication requirements of section 627.70131, Florida Statutes, to surplus lines insurers.
- Requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days.
- Requires insurers to provide to policyholders the adjuster's name and state adjuster license number when a claim investigation involves a physical inspection of the property and maintain a record of each adjuster who communicates with the policyholder.
- Requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate or making a claim payment that is not the full and final payment for the claim.
- Requires insurers to provide the Homeowner Claims Bill of Rights pursuant to any personal lines residential property insurance claim and adds notice regarding the right to receive interest and the utility of taking video of damages and repairs.
- Encourages insureds, under the Homeowner Claims Bill of Rights, to file all claims directly with their insurance company.
- Removes the insured's obligation to pay a $100 deductible to the FIGA in order to receive payment on their claim through the FIGA.
- Revises the definition of a "covered claim" for purposes of the Florida Workers' Compensation Insurance Guaranty Association, to exclude the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Further, the bill prohibits a credit reporting agency from charging any fee to reissue a personal identifier or provide a new unique personal identifier to a consumer.

The bill has an insignificant indeterminate impact on state funds and expenditures. *See* V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective upon becoming a law.

II. Present Situation:

Department of Financial Services

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[1] The DFS has a number of regulatory responsibilities over the Florida insurance market. The DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters under Part VI, ch. 626, F.S. The DFS conducts insurance-related consumer outreach through its Division of Consumer Services. The Division of Workers' Compensation within the DFS administers ch. 440, F.S., through enforcement of coverage requirements,[2] administration of workers' compensation health care delivery system,[3] data collection,[4] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.[5] The DFS also administers insurer rehabilitation and liquidation in Florida under part I of ch. 631, F.S.

DFS Division of Consumer Services

The Division of Consumer Services (division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.[6] The divisions' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.[7]

Section 624.307(10)(b), F.S., permits the division to impose an administrative penalty on a person who holds a license or certificate of authority from the DFS if that person fails to respond

[1] *See, e.g.*, Department of Financial Services (DFS), *What DFS Can Do For You*, https://www.myfloridacfo.com/division/CFO/DFS.htm (last visited March 18, 2021).
[2] Section 440.107(3), F.S.
[3] Section 440.13, F.S.
[4] Sections 440.185 and 440.593, F.S.
[5] Section 440.191, F.S.
[6] DFS, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited March 18, 2021). *See also*, DFS, *Consumer Guides*, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm (last visited March 18, 2021).
[7] Section 624.307(10)(a), F.S.

to the division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records[8] that are required to be kept by law, but is not required to produce those not within the purview of statutes.[9] Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.[10]

Discretion of the DFS to Act against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, engaging in unfair and deceptive trade practices.[11]

DFS Licensure of Adjusting Firms

Current law authorizes, but does not require, licensure of adjusting firms.[12] The DFS does not currently license any adjusting firms.[13] An adjusting firm license must be renewed every three years and requires a $60 application fee.[14] An adjusting firm license application must include:[15]

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.[16]

Chapter 626, F.S., provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.[17]

DFS Authority Regarding Misleading Insurance Agency Names

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states

[8] Pursuant to s. 624.23, F.S., any personal financial and health information held by the DFS or the Office of Insurance Regulation relating to a consumer complaint or inquiry is confidential and exempt from public records.
[9] *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).
[10] *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).
[11] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code."
[12] Section 626.8696, F.S.
[13] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, DFS, to Michelle Sanders, Legislative Analyst Senate Appropriations Subcommittee on Agriculture, Environment and General Government (March 18, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment and General Government)
[14] Section 624.501(20), F.S.
[15] Section 626.8696, F.S.
[16] Section 626.8695, F.S.
[17] Section 626.8697, F.S.

or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.[18]

The Social Security Act prohibits any person from using the terms "Medicare" or "Medicaid" in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.[19]

Industrial Life Insurance

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than $5,000.[20] Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.[21]

Public Adjuster Contracts and Estimates of Damages

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.[22]As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policyholder to cancel the contract within three business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to five business days from the date the contract was executed, if it was entered into during a state of emergency or during the one-year period after the date of loss.

The adjuster must disclose, in all of his or her contracts, the consumer's right to cancel the contract, and the methods by which the consumer may send a cancellation.

Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of the insurance claim. The public adjuster must retain the estimate for at least five years and make it available to the claimant, insured, an insurer, or the DFS upon request.

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[18] Section 626.602(1)-(3), F.S.
[19] 42 U.S. Code s.1320b-10(a)(1). Upheld by *United Seniors Ass'n Inc. v. SSA*, 423 F. 3d 397, 399 (4th Cir. 2005).
[20] Section 627.502, F.S. *See also*, DFS, *Life Insurance Overview: Types of Policies*, https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (last visited March 18, 2021).
[21] DFS, *HB 717 Agency Analysis*, (Feb. 24, 2021) (on file with the Senate Committee on Banking and Insurance).
[22] Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters. Rule 69B-220.201(4) and (5), F.A.C.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[23] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks (which are risks where an insured needs higher coverage limits than those that are available in the admitted market).

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[24] which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.[25] Rather, surplus lines insurers are "unauthorized" insurers,[26] but may transact surplus lines insurance if they are made eligible by the OIR.

An insurance agent[27] may "export," or place a policy with an unauthorized insurer under the Surplus Lines Law[28], with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[29] A "diligent effort" requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:[30]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks, [31] the policyholder must be advised in writing coverage may be available and less expensive from Citizens Property Insurance Corporation.

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[23] The admitted market is comprised of insurance companies authorized to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S. *See also*, Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, https://www.fslso.com/AboutGroup/about/surplus-lines-insurance (last visited March 17, 2021).
[24] Section 626.914(2), F.S.
[25] Section 624.09(1), F.S.
[26] Section 624.09(2), F.S.
[27] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See* s. 626.914(1), F.S.
[28] Sections 626.913-626.937, F.S., constitute the "Surplus Lines Law," pursuant to s. 626.913(1), F.S.
[29] Section 626.916(1)(a), F.S.
[30] Section 626.916(1), F.S.
[31] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

Certain types of insurance, deemed "commercial risks," including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

> You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[32]

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act[33] prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,[34] including:

- Misrepresenting the benefits, advantages, or terms of any insurance policy;
- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional ("sliding").[35]

A person who commits an act prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $20,000 for nonwillful violations, and up to $200,000 total for willful violations.[36] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[37]

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than $75,000 per violation.[38]

Property Insurance Claim Communications and Investigations

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer that has notified the insurer of a possible claim. Generally, the residential property insurer must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements

[32] Section 626.916(3)(b), F.S.
[33] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[34] Section 626.9541, F.S.
[35] Section 626.9541(1)(z), F.S. *See also*, *Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1st DCA).
[36] Each count of a nonwillful violation is limited to a fine of no more than $5,000, and each count of a willful violation is limited to a fine of no more than $20,000. Section 626.9521(2), F.S.
[37] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.
[38] Section 626.9521(3)(b), F.S.

from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90 days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.[39]

The Homeowner Claims Bill of Rights

The Homeowner Claims Bill of Rights outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.[40] An insurance company must provide a consumer with a copy of the Homeowner Claims Bill of Rights within 14 days of receiving any communication about a claim.[41] Florida law provides form language that the insurer must include in the Homeowner Claims Bill of Rights, which gives notice of the consumer's right to:[42]

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;
- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;
- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the DFS for assistance.

The Homeowner Claims Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

Federal and State Requirements Regarding Disclosure of Personal Medical Information

The federal Health Insurance Portability and Accountability Act of 1996 (HIPPA)[43] requires health care providers, health plans, and health care clearinghouses[44] (covered entities) to protect the privacy of personal health information. The HIPAA Privacy rules cover protected health information that is created or received by a covered entity and requires covered entities to implement safeguards to protect health information from unauthorized access, use, or disclosure.[45] The term, "protected health information," (PHI) is broadly defined as individually identifiable information in any form or format—oral, paper-based, electronic—that "[r]elates to

[39] See further discussion of the Homeowner Claims Bill of Rights, *infra*.
[40] DFS, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2020), *available at* https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf (last visited March 17, 2021).
[41] Section 627.70131, F.S.
[42] Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in s. 627.70131, F.S.
[43] P.L. 104-191, 110 Stat. 1936, August 21, 1996.
[44] 42 U.S.C. s. 1320d–1(a). A health plan is an individual or group plan that provides, or pays the cost of, medical care and includes private and government plans. A health care clearinghouse is an entity (e.g., billing service) that (1) receives nonstandard health information and processes, or facilitates the processing of, the information into a standard format required for electronic transaction; or (2) receives a standard transaction and processes, or facilitates the processing of, the information into nonstandard format for the recipient. A health care provider is a person (e.g., physician, nurse) or entity (e.g., hospital, clinic) who "furnishes, bills, or is paid for health care in the normal course of business and conducts one or more HIPAA-specified standard electronic transactions. 45 C.F.R. s. 160.103.
[45] 45 CFR Part 164 Subparts A and E.

the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.[46]

The HIPAA Privacy rules prohibit a covered entity from using or disclosing PHI except as expressly permitted or required by the rule.[47] For all uses or disclosures of PHI that are not otherwise permitted or required by the rule, covered entities must obtain a patient's written authorization.[48] Generally, third parties (business associates[49]) of covered entities provide services and will need access to at least some patient information in order to perform those functions. Covered entities are required to obtain written agreements with their business associates that they will use PHI only for the purposes permitted or required by the contract; and implement appropriate safeguards to prevent misuse of PHI.[50]

The Insurance Code requires health insurers to maintain strict confidentiality against unauthorized disclosure of confidential information regarding claims and records relating to the payment of psychiatric and psychotherapeutic services.[51] Additionally, s. 456.057, F.S., provides patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative.

Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information, date of birth, and court judgments.[52] Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in determining (i.e., whether to extend credit), set insurance rates, or employ the consumer.[53] A consumer may also review his or her credit report at no charge once every 12 months, from each of the credit bureaus.

Generally, the federal Fair Credit Reporting Act (FCRA)[54] regulates the activities of Credit Reporting Agencies (CRAs), the users of consumer reports, and those who furnish information to CRAs. In 2003, the FCRA was amended by the Fair and Accurate Credit Transactions Act (FACTA) to address identity theft, improve the accuracy of consumer records, and to increase

[46] 45 CFR 160.103. The Privacy Rule implementing HIPAA creates standards for the protection of person health information.
[47] 45 CFR 164.502(a).
[48] 45 C.F.R. §164.508(a).
[49] 45 CFR 160.103.
[50] 45 C.F.R. 164.502(e), 164.504(e).
[51] Sections 627.4195, F.S., and 627.688, F.S.
[52] 15 U.S. Code s. 1681 defines a "credit report" as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, … general reputation, [or] personal characteristics… which is used…for the purpose of…establishing the consumer's eligibility for credit or employment purposes…. The Florida KIDS Act adopts this definition of a "credit report" in s. 501.0051(1)(a), F.S.
[53] Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, *available at* https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf (last visited March 17, 2021).
[54] Fair Credit Reporting Act, Pub. L. No. 91-508, codified as amended at 15 U.S.C. s. 1681-1681x.

consumer access to credit information.[55] The FCRA includes several provisions preempting state laws. For example, the FCRA provides no requirement or prohibition may be imposed under the laws of any state with respect to any subject manner regulated under subsections (i) and (j) of Section 605A, which relates to a national security freeze and national protection for files and credit records of protected consumers, respectively.[56]

In May 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act.[57] The law creates a national, free credit freeze and a national credit freeze for protected persons (for persons under 16 years of age and incapacitated adults). The law also establishes further requirements to protect minors. The "adult" freeze and the protected consumer freeze went into effect September 2018.[58]

Security Freezes and the Keeping I.D. Safe (KIDS) Act

In Florida, The Keeping I.D. Safe (KIDS) Act[59] allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from charging any fee to place or remove a security freeze, they may charge up to $10 to reissue a PIN.[60]

Florida Telemarketer Act

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.[61] Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.[62]

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.[63]

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty

[55] Fair and Accurate Credit Transactions Act, Pub. L. No. 108-159 (2003).
[56] 15 U.S.C. s. 1681t(b)(1)(J).
[57] Pub. L. No. 115-174, Title III.
[58] These changes created subsections (i) and (j) of Section 605A of the FCRA. 15 U.S.C. ss. 1681c-1(i) and 1681c-1(j).
[59] Section 501.0051, F.S.
[60] Section 501.0051(9), F.S.
[61] Section 501.604(7), F.S.
[62] Federal Trade Commission, *The Telemarketing Sales Rule*, https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule (last visited March 17, 2021).
[63] Section 626.854(5), F.S.

claims[64] that would otherwise be left unpaid.[65] FIGA does not offer a replacement policy, and coverage offered by FIGA is generally limited to a $300,000 payment. A consumer may receive additional FIGA coverage of up to $200,000 for damages to their home's structure or the contents thereof.[66] Condominium and homeowner's association claims have a coverage cap of $100,000 multiplied by the number of units in the association.[67] All claims filed with FIGA are subject to a $100 deductible in addition to any deductible identified in the consumer's policy.[68]

III. Effect of Proposed Changes:

Consumer Protections Related to Credit Reports

Section 1 amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a personal identification number (PIN) or provide a new unique PIN to a consumer.

Section 13 amends s. 626.9741(3), F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

> The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com.

Insurer Reponses to Requests from the Division of Consumer Services

Section 2 amends s. 624.307(10)(b), F.S., to create a duty for an entity that is licensed or issued a certificate of authority by the Department of Financial Services (DFS) to respond to the DFS' requests for documents. The response must include any requested documents not subject to attorney-client or work product privilege.

Claims Adjusting

Section 3 amends s. 624.501, F.S., to eliminate the $60 fee for a new, or the renewal of an existing, adjusting firm license.

This section necessitates **Section 14,** which conforms a cross reference in s. 626.9953, F.S.

Section 4 amends s. 626.112, F.S., to specify entities that must comply with s. 626.8696, F.S., with respect to possessing an adjusting firm license for each place of business at which it performs activity for which it is necessary to be licensed as a claims adjuster.

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[64] A "covered claim" is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy." Section 631.54, F.S.
[65] *See generally*, Part II, ch. 631, F.S., "Florida Insurance Guaranty Association Act." *See also*, Florida Insurance Guaranty Association, *Home*, https://figafacts.com/ (last visited March 17, 2021).
[66] Section 631.57(2), F.S.
[67] Section 631.57(3), F.S.
[68] Section 631.57(2), F.S., *see also*, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, https://figafacts.com/frequently-asked-questions/ (last visited March 17, 2021).

The section provides that an adjusting firm's branch place of business is classified as a branch firm, and does not require licensure, if the branch:

- Transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- Designates with the DFS a primary adjuster operating the location as required by s. 626.8965, F.S.; and
- Submits the address and telephone number of the branch location to the DFS within 30 days after insurance transactions begin at the branch location.

The section requires the DFS to impose an administrative fine of up to $10,000 if an adjusting firm is required to be licensed pursuant to this section but fails to apply for such licensure.

The bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.

Presently, s. 777.011, F.S., includes as a "principal in the first degree" a person who aids, abets, counsels, hires, or otherwise procures a criminal office to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, the bill merely clarifies or restates existing law.

This section necessitates **Section 15**, which conforms a cross reference in s. 626.9957, F.S.

Prohibiting Misleading Insurance Agency Names

Section 5 amends s. 626.602, F.S., to authorize the DFS to disapprove an insurance agency's proposed use of a name which includes the words "Medicare" or "Medicaid." Insurance agencies that operate under such a name as of July 1, 2021, may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.[69]

Taking Administrative Action against Applicants for Licensure and Licensees for Engaging in Prohibited Actions

Section 6 amends s. 626.621, F.S., to add two bases under which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; and
- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

[69] Insurance agency licenses are indefinite. Section 626.382, F.S.

Prohibiting the Sale of Industrial Life Insurance

Sections 7, 8, and 17 respectively amend ss. 626.782, 626.783, and 627.502, F.S., and **Section 9** repeals s. 626.796, F.S., to prohibit the sale of industrial life insurance policies, after July 1, 2021. Insurers may continue to service and collect premiums on industrial life policies written before that date. According to the DFS, industrial life insurance is not currently being sold in this state, and less than 10 percent of active life insurers maintain existing policies.

Expanding the Cancellation Period for Public Adjuster Contracts; Prohibiting Contractors from Soliciting an Insured to File a Claim

Section 10 amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with a public adjuster to 10 calendar days. Currently, the contract may generally be canceled within three business days after the contract is executed or the insurer is informed of the claim, whichever is later. Current law provides a cancellation period of five business days during, and for one year thereafter, a state of emergency declared by the Governor.

The bill also specifies the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies created in accordance with accepted industry standards. The public adjuster must provide the detailed written estimate to the claimant or insured within 60 days after the date of the contract.

The bill prohibits a licensed contractor or subcontractor from soliciting, advertising, offering to handle, handling, or performing public-adjuster services unless licensed and compliant as a public adjuster. The prohibition does not preclude a contractor from suggesting or recommending the insured contact their insurer to determine if proposed repairs are covered under the insured's insurance policy.

The bill prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant. The bill retains current law which prevents persons other than a public adjuster or attorney from soliciting, investigating, or adjusting a claim on behalf of a public adjuster, insured, or third-party claimant.

The bill authorizes the DFS to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

The bill prohibits a public adjustor, public adjustor apprentice, or public adjusting firm, who solicits a claim and does not enter into a contract with an insured or third party claimant, from charging or receiving payment from an insured or a third-party claimant.

Notice to Insureds that Surplus Lines Insurers Are Not Protected by the Florida Insurance Guaranty Association

Section 11 amends s. 626.916, F.S., to provide that insurance coverage is not eligible for export to a surplus lines insurer, unless the insured signs or provides documented acknowledgement of the following disclosure:

> "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

The bill deletes a disclosure that was required to export certain types of commercial lines insurance[70] to a surplus lines carrier without meeting the generally applicable requirements[71] to export a commercial policy. The deleted disclosure is similar to the one created by the bill, except the deleted disclosure states, "superior coverage may be available in the admitted market and at a lesser cost."

This section is effective January 1, 2022.

Unfair Insurance Trade Practices

Section 12 amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and
- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent of the owner of the property that will be insured. However, it does not include cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

[70] Those identified in s. 627.062(3)(d)1.
[71] Section 626.916(1)(a)-(d), F.S.

Residential Property Insurance Claim Investigations; Application to Surplus Lines

Section 18 amends s. 627.70131, F.S., to impose new requirements on residential property insurers during their claim investigations, and to apply the section's requirements to surplus lines insurers and policies providing personal residential property insurance coverage.

The bill clarifies the communication standards of the statue by referring to "representatives" of an insurer, rather than "an agent" of the insured. The term "representative" is defined in the same way the term "agent" is currently defined by this statute: "any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer." The current use of "agent" could confuse readers of the statute regarding whether the requirements of the section only apply to licensed agents.

The bill requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days. As under current law, the statutory time frame for beginning an investigation does not apply if any law or the insurance policy provides otherwise, if a claim investigation is not reasonably necessary, or if circumstances beyond the insurer's control reasonably prevent the investigation from commencing.

If the claim investigation involves a physical inspection of the property, the bill requires that the insurer's licensed adjuster must provide the policyholder a printed or electronic document containing the adjuster's name and state adjuster license number. All subsequent communications by an adjuster must include the adjuster's name and license number. The insurer must maintain a record of each adjuster who engages in the foregoing communications, and provide that list to the insured, the OIR, or the DFS upon request.

The bill requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate, or making a claim payment that is not the full and final payment for the claim. The insurer must include with any preliminary or partial estimate of damages, the following notice in 12-point bold, uppercase type:

> THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROEPRTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE TO CONTACT US.

The insurer must include with any claim payment which is not the full and final payment for the claim, the following notice in 12-point bold, uppercase type:

> WE ARE CONTINUING TO EVALUATE YOUR CLAIM NVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

The bill creates a new subsection (8) that applies the section to surplus lines insurers and authorized surplus lines insurance providing personal residential property insurance coverage.

This section is effective January 1, 2022.

Section 16 amends s. 627.062, F.S., to correct a cross reference to s. 627.70131(7), F.S., relating to insurer's rate standards. The insurer may not include any interest paid pursuant to s. 627.7013(7), F.S., in their rate base and many not be used to justify a rate or rate change.

Homeowner Claims Bill of Rights

Section 19 amends s. 627.7142, F.S., which contains the Homeowner Claims Bill of Rights which the insurer must provide the homeowner after receiving the initial communication regarding a personal lines residential property insurance claim. Currently, the Homeowner Claims Bill of Rights must be provided within 14 days after an insurer receives an initial communication on any personal lines residential property insurance claim. Additionally, the Homeowner Claims Bill of Rights currently include notice the consumer has the right to receive interest payments; these payments begin accruing when a consumer files a claim if the insurer does not deny the claim or pay the full settlement of the claim, or the undisputed portion of the claim, within 90 calendar days after a claim is filed.[72] Any payable interest must be paid when the claim, or undisputed portion of the claim, is paid.

The Homeowner Claims Bill of Rights is also amended to encourage insureds to take video of damage before and after any repairs, and specify the purpose of such videos or photographs is so they can be provided to the insurer. In addition, insureds are encouraged to file claims directly with their insurance company.

This section is effective January 1, 2022.

Elimination of the $100 Florida Insurance Guaranty Fund Deductible

Section 20 amends s. 631.57, F.S., to remove the insured's obligation to pay a $100 deductible to FIGA in order to receive payment on their claim through FIGA. The insured remains obligated to pay their original insurer's deductible.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) Covered Claims

Section 21 amends s. 631.904(2), F.S., to revise the definition of a "covered claim" for purposes of the FWCIGA, to exclude from the definition the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Effective Date

Section 22 provides the bill, except as otherwise provided, is effective upon becoming a law.

[72] *See* s. 627.70131(5)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit Bureaus will no longer be permitted to charge a fee to re-issue a personal identification number to consumers. *See* **Section VII, Related Issues**.

Consumers who seek to have their claims covered by Florida Insurance Guaranty Association (FIGA) will no longer be required to pay the $100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the Department of Financial Services (DFS) and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

C. Government Sector Impact:

The bill has an insignificant indeterminate impact to state funds and expenditures.

The elimination of the $60 fee for a new or renewal adjusting firm license may have an insignificant impact on future state revenues. In addition, eliminating the $100 FIGA deductible may have an insignificant financial impact on FIGA.

Sections 4, 10 and 12 increase the DFS's authority to take administrative action and impose administrative fines, which may result in an insignificant indeterminate increase in administrative fines collected.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. Section 5 of the bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly and abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license. A person who does so commits a third degree felony. **Section 12** of the bill amends the Unfair Insurance Trade Practices Act (Act). The new violations under **Section 12** are punishable as administrative violations under the general provisions of the Act. However, the underlying acts which give rise to the administrative violations may give rise to charges under s. 626.9541(1)(ee), F.S., which is punishable as a third degree felony.

VI. Technical Deficiencies:

Section 6 of the bill amends s. 626.621, F.S., to authorize the Department of Financial Services (DFS) to suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant for taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; however, it is unclear what information would be considered financial or medical information. These terms are undefined. For purposes of HIPAA, protected health information is defined. Further, s. 624.23, F.S., defines the term, "personal financial and health information," as it relates to consumer complaints and inquiries received by the DFS.

Section 10 of the bill amending s. 626.854(19), F.S., appears intended to prohibit a person that is not an attorney or licensed public adjuster from, on behalf of a public adjuster, advertising, providing advice regarding a claim, or assisting in the adjustment of a claim. This bill section also creates a new subsection (20) to s. 626.854, F.S., to authorize the DFS to take administrative actions and impose fines for unlicensed public adjusting or claims adjusting activity; however, DFS will have difficulty enforcing such a fine or taking administrative action when the violator is not a licensee of the DFS.

VII. Related Issues:

Section 1 of the bill may be federally preempted pursuant to 15 U.S.C. s. 1681t. This federal law prohibits states from imposing laws with respect to any subject matter regulated under subsections (i) and (j) of section 605A relating to security freezes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 624.501, 626.015, 626.112, 626.602, 626.621, 626.7315, 626.782, 626.783, 626.7845, 626.8305, 626.854, 626.916, 626.9541, 626.9741, 626.9953, 626.9957, 627.062, 627.502, 627.70131, 627.7142, 631.57, and 631.904.

This bill repeals section 626.796 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Clarifies contractors may recommend that policyholders contact their insurance company, but may not initiate, manage, or handle the claim for the policyholder; but does not prohibit or preclude a contractor from recommending the policyholder contact the insurer to determine if proposed repair is covered under the insured's insurance policy;
- Clarifies the surplus lines 90-day provision would apply only to personal residential properties;
- Clarifies no person other than an attorney at law or a licensed public adjuster, may offer to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant
- Removes the definition of claims adjusting and the respective cross-references.
- Authorizes the Department of Financial Services to take administrative action and impose fines against persons performing claims adjusting, soliciting, or any other services described in the section, without licensure required under the bill and s. 626.112, F.S.
- Prohibits a public adjustor, public adjustor apprentice, or public adjusting firm, who solicits a claim and does not enter into a contract with an insured or third party claimant, from charging or receiving payment from an insured or a third-party claimant.
- Removes the prohibition against foreign venue clauses.
- Revises the Homeowner Claims Bill of Rights.

CS by Banking and Insurance on March 16, 2021:
The committee substitute:

- Prohibits persons other than a public adjuster or attorney from advertising, providing advice, or assisting the adjustment of a claim on behalf of a public adjuster, insured, or third-party claimant.
- Authorizes the Department of Financial Services to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Gruters

597-02952-21 20211598c1

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for persons licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; amending s. 624.501, F.S.; deleting a fee for adjusting firm licenses; amending s. 626.015, F.S.; defining the term "claims adjusting"; amending s. 626.112, F.S.; deleting an obsolete provision; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies for a certain period; providing for expiration of certain licenses on a certain date; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance

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representatives; amending s. 626.7315, F.S.; conforming a cross-reference; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; amending s. 626.7845, F.S.; conforming a cross-reference; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8305, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; revising the timeframes in which an insured or a claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; requiring that public adjuster's contracts include a specified disclosure; specifying requirements for written estimates of loss provided by public adjusters to claimants or insureds; prohibiting certain contractors from soliciting insureds to file insurance claims under certain circumstances; revising services a person is prohibited from performing unless the person meets specified requirements; authorizing the department to take administrative actions and impose fines against persons performing specified activities without licensure; amending s. 626.916, F.S.; revising disclosure requirements for certain classes of insurance before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of

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sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending s. 626.9953, F.S.; correcting a cross-reference; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; making technical changes; amending s. 627.70131, F.S.; providing that a communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; revising the timeframe for insurers to begin certain investigations; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring insurers to maintain certain records and provide certain lists upon request; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the

obligation of the Florida Insurance Guaranty Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of the term "covered claim"; deleting a requirement that a policy be in force on the date of the final order of liquidation; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge a fee to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or to provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the

issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office.

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license.....$60.00~~

Section 4. Present subsections (6) through (21) of section 626.015, Florida Statutes, are redesignated as subsections (7) through (22), respectively, and a new subsection (6) is added to that section, to read:

626.015 Definitions.—As used in this part:

(6) "Claims adjusting" means directly or indirectly attempting or undertaking to ascertain and determine the amount of a claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any

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other thing of value by the party or parties rendering such service or persons affiliated with such party or parties. Claims adjusting also includes soliciting claims adjusting services as described in this chapter or soliciting an insured or policyholder to file an insurance claim. Claims adjusting does not include:

(a) Paid services as a spokesperson used as part of a written or an electronic advertisement;

(b) Paid services as a photographer or videographer used to capture images of damage;

(c) Paid services to inventory personal property or business personal property; or

(d) Discussion or explanation of a bid for construction or repair services with a property owner or the insurer of such property by a contractor licensed pursuant to part I of chapter 489 or a subcontractor for a licensed contractor.

Section 5. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10) and amended, a new subsection (9) is added to that section, and paragraph (d) of subsection (7) of that section is amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

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(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed but fails to apply for licensure in accordance with this section, the department must impose an administrative penalty of up to $10,000 on the firm.

(10)~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or

abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word “Medicare” or “Medicaid.” An insurance agency whose name contains the word “Medicare” or “Medicaid” but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency’s license remains valid. If the agency’s license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 7. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent’s, adjuster’s, customer representative’s, service representative’s, or managing general agent’s license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to

hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking an action that allows the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 8. Section 626.7315, Florida Statutes, is amended to read:

626.7315 Prohibition against the unlicensed transaction of general lines insurance.—With respect to any line of authority as defined in s. 626.015(8) ~~s. 626.015(7)~~, no individual shall, unless licensed as a general lines agent:

(1) Solicit insurance or procure applications therefor;

(2) In this state, receive or issue a receipt for any money on account of or for any insurer, or receive or issue a receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, even though the policy, certificate, or contract is not signed by him or her as agent or representative of the insurer, except as provided in s. 626.0428(1);

(3) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect,

procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state;

(4) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his or her employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

(5) In any way, directly or indirectly, make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer;

(6) Solicit, negotiate, or in any way, directly or indirectly, effect insurance contracts, if a member of a partnership or association, or a stockholder, officer, or agent of a corporation which holds an agency appointment from any insurer; or

(7) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state or upon bonds given to persons in this state.

Section 9. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 10. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance as defined by s. 627.502.

Section 11. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(13) ~~s. 626.015(12)~~, an individual may not, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts, unless the individual is:

1. A consulting actuary advising insurers;

2. An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative

to their interests and those of their members or employees under insurance benefit plans; or

3. A trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust, relative to insurance benefit plans; or

(c) In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 12. Section 626.796, Florida Statutes, is repealed.

Section 13. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(9) ~~s. 626.015(8)~~, an individual may not, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts, unless the individual is:

(a) A consulting actuary advising insurers;

(b) An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative to their interests and those of their members or employees under insurance benefit plans; or

(c) A trustee advising a settlor, a beneficiary, or a

person regarding his or her interests in a trust, relative to insurance benefit plans.

Section 14. Subsections (6), (11), (15), and (19) of section 626.854, Florida Statutes, are amended, and subsection (20) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to ...(name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract ~~disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or~~

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~~claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(15) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured, or solicit an insured to file a claim, unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an

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insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, advertise, advise, assist, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(20) The department may take administrative actions and impose fines against any persons performing claims adjusting as defined in s. 626.015(6) or any other services as described in this section without the licensure required under this section and s. 626.112.

Section 15. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s.

626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 16. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases in which the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 17. Effective January 1, 2022, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes.

The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 18. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 19. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 20. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 21. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 22. Effective January 1, 2022, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless

payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment must ~~shall~~ be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment must ~~shall~~ provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 14 ~~10 working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included with other information provided to the policyholder.

(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (c) and provide a list of such adjusters to the insured, office, or department upon request.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL

INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937 providing residential coverage.

Section 23. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2021, a personal residential property insurance policy sold in this state, insuring only real property located in this state, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 24. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged

property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

5. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based

on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 25. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance must ~~shall~~ provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, includes ~~shall include~~ that amount of each covered property insurance claim which is less than $200,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. ~~In no event shall~~ The association may not be obligated to a policyholder or claimant in an amount in excess of the

obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines it is ~~that either or both such actions are~~ necessary to facilitate the bulk assumption of obligations.

Section 26. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; or any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth, except this

exclusion from the definition of covered claim does not apply to employers who, prior to April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 27. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2021

I respectfully request that **Senate Bill #1598**, relating to Consumer Protection, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

Joe Gruters

Joe Gruters

Cc: Tim Sadberry, Staff Director
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1728
INTRODUCER:	Education Committee and Senator Baxley and others
SUBJECT:	Out-of-state Fee Waiver for Nonresident Students
DATE:	April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Fav/CS**
2.	Underhill	Sadberry	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1728 establishes an interstate compact and provides an out-of-state fee waiver, applicable for up to 110 percent of the number of required credit hours of the enrolled degree program, for a nonresident student who:

- Is a United States citizen;
- Has a grandparent who is a legal resident;
- Earns the equivalent of a standard Florida high school diploma;
- Achieves an SAT combined score no lower than the 89th national percentile or appropriate concordant sore on the ACT or the Classic Learning Test; and
- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.

The interstate compact is intended to increase access to postsecondary education to students with families split across states, and to increase postsecondary educational choice, by providing a reciprocity agreement between states. The interstate compact fee waiver may be applied when the compact is enacted into law by two states. The bill also provides for state oversight of, withdrawal from, and amendment to the compact.

The bill does not require a state appropriation. However, state universities will have reduced revenues from out-of-state fees for each eligible student that enrolls at a Florida state university. See Section V.

The bill has an indeterminate fiscal impact.

The bill takes effect July 1, 2021.

II. Present Situation:

Tuition and Out-of-State Fees

Tuition is the basic fee a student is charged for instruction provided by a public postsecondary educational institution in Florida. An out-of-state fee is charged as an additional fee for a student who does not qualify for the in-state tuition rate.[1]

Residency for Tuition Purposes

A legal resident of Florida for tuition purposes means one who has maintained his or her residence in this state for the preceding year, has purchased and occupies a home as primary residence, or has established a domicile in this state.[2] For tuition purposes, a person who does not qualify for the in-state tuition rate is considered a nonresident.[3] Grandparents are unable to serve as family members who are able to provide residency documentation for residency for tuition purposes unless the grandparents are currently the student's legal guardian or have had daily supervision of the dependent student for the past three years.[4]

Unless costs are exempted or waived, residents for tuition purposes are charged the in-state rate for tuition while nonresident students pay the out-of-state fees in addition to tuition.[5] The in-state tuition rate for Florida residents for the State University System (SUS) is currently set at $105.07 per credit hour.[6] The average cost of resident and nonresident tuition and fees per credit is shown in the table below.[7]

[1] Section 1009.01(1) and (2), F.S. The in-state tuition rate is defined in s. 1009.21(1)(g), F.S.
[2] Section. 1009.21(1)(d), F.S. To qualify as a resident for tuition purposes, a person or, if that person is a dependent child, his or her parent or parents, must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education. Section 1009.21(2)(a)1., F.S.
[3] Section 1009.21(1)(e), F.S. In general, nonresidents are ineligible for state merit- and need-based financial aid and tuition assistance. Section 1009.40(1)(a)2., F.S. However, specified nonresident students may be eligible for a Benacquisto Scholarship. Section 1009.893(4)(b), F.S.
[4] Board of Governors, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).
[5] Section 1009.24(2), F.S.
[6] Section 1009.24(4)(a), F.S.
[7] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 4.

State University Tuition & Fees				
Undergraduate Baccalaureate	**Standard Tuition (Per Credit Hour)**	**Average Tuition & Fees (Per Credit Hour)**	**Standard Tuition (Per 30 Credit Hours)**	**Average Tuition & Fees (Per 30 Credit Hours)**
Resident	$105.07	$199.72	$3,152.10	$5,991.79
Nonresident[8]	$105.07	$690.63	$3,152.10	$20,719.07
Difference	-	$490.91	-	$14,727.28

The Board of Governors (BOG) of the SUS currently limits the systemwide enrollment of out-of-state students to ten percent.[9]

Fee Waivers

Florida law provides for waivers from specified fees to certain students who meet identified criteria.[10] Some waivers are mandatory,[11] while others are permissive.[12] Each university board of trustees is authorized to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university. All fees waived must be based on policies that are adopted by the university board of trustees pursuant to BOG regulations.[13] Each state university is required to report the purpose, number, authority, and value of all fee waivers and exemptions granted annually in a format prescribed by the BOG.[14]

Interstate Compacts

An interstate compact is an agreement between or among two or more states of the United States. To become effective, it must be approved by those states' respective legislatures and, depending on the subject matter of the compact, consented to by Congress.[15]

Florida currently partners in a number of interstate compacts, including the Interstate Compact on Mental Health,[16] the Southeastern Interstate Forest Fire Protection Compact,[17] the Interstate

[8] The BOG may establish out-of-state fees. Section 1009.24(4)(b), F.S.
[9] BOG Regulation 7.006. The total systemwide nonresident enrollment is currently at nine percent. Board of Governors, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).
[10] Section 1009.26, F.S.
[11] Section 1009.26 (5), (7)-(8), (12)-(14), F.S.
[12] Section 1009.26 (1)-(4), (6), (9)-(11), (15)-(16), F.S.
[13] Section 1009.26(9), F.S.
[14] Board of Governors Regulation 7.008(5).
[15] Library of Congress, *Interstate Compacts: United States* (June 2018), *available at* https://www.loc.gov/law/help/interstate-compacts/us-interstate-compacts.pdf, at 1. Although the U.S. Constitution contains an express requirement for approval by Congress of compacts between states, the U.S. Supreme Court has held that some agreements between states do not require such congressional consent. *Id.* at 2. The Court in 1893 stated in *Virginia v. Tennessee* that congressional consent is required only for a compact if it is "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893).
[16] *See* s. 394.479, F.S.
[17] *See* s. 590.31, F.S.

Insurance Product Regulation Compact,[18] the Interstate Corrections Compact,[19] The Regional Compact for Southern States,[20] and the Interstate Compact on Educational Opportunity for Military Children.[21]

In addition, Florida also participates in a reciprocity agreement with other states for the delivery of postsecondary distance education. Each member state or institution participating in a reciprocity agreement must accept each other's authorization of accredited institutions to operate in their state to offer distance educational services beyond state boundaries.[22]

High School Graduation and College Entrance Requirements

High School Diploma Requirements

Receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum. In order to graduate from a Florida high school with a standard high school diploma under a 24-credit option, a student must complete:

- Four credits in English Language Arts;
- Four credits in mathematics, including one credit in Algebra I and one credit in Geometry;
- Three credits in science, of which two credits must have a laboratory component;
- Three credits in social studies, comprised of one credit in United States History, one credit in World History, one-half credit in economics, and one-half credit in United States Government;
- One credit in fine or performing arts, speech and debate, or practical arts;
- One credit in physical education; and
- Eight credits in electives.[23]

Home Education Program

A home education program in Florida means the sequentially progressive instruction of a student directed by his or her parent in order to satisfy attendance requirements specified in law.[24] Students completing a home education program satisfy the state university admissions requirement that a student earn a high school diploma or equivalent, but each university may require additional documentation to verify eligibility.[25]

[18] *See* s. 626.9932, F.S.
[19] *See* s. 941.56, F.S.
[20] Sections 1000.31 and 1000.32, F.S. The Regional Compact created the Southern Regional Education Board.
[21] Section 100.39, F.S. The Interstate Compact on Educational Opportunity for Military Children is scheduled for repeal on July 1, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. Section 1000.40, F.S.
[22] Section 1000.35, F.S.
[23] Section 1003.4282(1)(a) and (3), F.S. A student who completes the Career and Technical Education Pathway is not required to complete one credit in fine or performing arts, speech and debate, or practical arts; one credit in physical education, and eight credits in electives. Section 1002.4282(11), F.S. A student who completes the 18-credit Academically Challenging Curriculum to Enhance Learning (ACCEL) option under s. 1002.3105, F.S., is not required to complete the physical education or elective requirements. A student with a disability may satisfy standard high school diploma options as specified in the students individual education plan. Section 1003.4282(10), F.S.
[24] Section 1002.01(1), F.S.
[25] Board of Governors Regulation 6.002(1)(d).

College Entrance Exams

College entrance exams accepted by institutions of higher education in Florida include the SAT, the ACT, and the Classic Learning Test (CLT).[26]

The SAT is comprised of sections that assess skills in reading, writing and language, math, and analysis in science.[27] Income-eligible SAT takers receive college application fee waivers and all students can select to receive free information about admission and financial aid from colleges, universities, and scholarship programs.[28] Nationally, close to 2.2 million students in the class of 2020 took the SAT.[29]

The ACT contains multiple-choice tests in four areas: English, mathematics, reading, and science.[30] Nearly 1.8 million graduates in the United States took the ACT during high school.[31]

The CLT is an online college entrance exam that assesses English, mathematical, and critical reasoning skills.[32] The CLT is taken online and offers scoring within 24 hours.[33] As of 2019, about 21,000 students took the CLT.[34]

III. Effect of Proposed Changes:

The bill modifies s. 1009.26, F.S., to specify that a state university must waive the out-of-state fee for a nonresident student who meets all of the following criteria:

- Is a United States citizen.
- Has a grandparent who is a legal resident.
- Earns a high school diploma comparable to a standard Florida high school diploma, or its equivalency, or completes a home education program.
- Achieves an SAT combined score no lower than the 89th national percentile on the SAT; achieves an ACT score concordant to the required SAT score as specified, using the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or if a state university accepts the Classic Learning Test (CLT) for admission purposes, achieves a CLT score concordant to the required SAT score as specified, using the latest published scoring comparison developed by Classic Learning Initiatives.[35]

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[26] Board of Governors Regulation 6.002 requires first-time, degree-seeking students to provide an ACT, Inc. or SAT score for admission purposes.
[27] CollegeBoard, *SAT Test Description*, https://collegereadiness.collegeboard.org/sat/inside-the-test/sat-test-description (last visited March 10, 2021).
[28] CollegeBoard, *Benefits*, https://collegereadiness.collegeboard.org/about/benefits (last visited March 10, 2021).
[29] CollegeBoard *SAT Suite of Assessments Annual Report* (2020), *available at* https://reports.collegeboard.org/pdf/2020-total-group-sat-suite-assessments-annual-report.pdf, at 3.
[30] ACT, *The ACT Test*, http://www.act.org/content/act/en/products-and-services/the-act.html (last visited March 10, 2021).
[31] ACT, *About ACT*, https://www.act.org/content/act/en/about-act.html (last visited March 10, 2021).
[32] CLT, *Products*, https://www.cltexam.com/products (last visited March 10, 2021).
[33] CLT, *CLT vs. SAT vs. ACT*, https://www.cltexam.com/comparison (last visited March 19, 2021).
[34] Scott Jaschik, *The Classical Alternative to the SAT*, Inside Higher Ed, Oct. 21, 2019, *available at* https://www.insidehighered.com/admissions/article/2019/10/21/classic-learning-test-aims-challenge-sat#:~:text=The%20test%20had%20more%20than,the%20same%20took%20the%20ACT.
[35] The 89th percentile for the SAT is 1330. CollegeBoard, *SAT: Understanding Scores* (2020), *available at* https://collegereadiness.collegeboard.org/pdf/understanding-sat-scores.pdf, at 5. This could be compared with the grade of 85 on the CLT. CLT, *CLT vs. SAT vs. ACT*, https://www.cltexam.com/comparison (last visited March 19, 2021). The ACT

- Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.[36]

For the fee waiver, the bill specifies that:

- This waiver is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.[37] Most SUS baccalaureate degree programs are set at 120 credit hours, which would authorize the tuition discount for up to 132 credit hours.
- Prior to waiving the out-of-state fee, the state university must require the student, or the student's parent if the student is a dependent child, to provide a written declaration pursuant to law[38] verifying the student's familial relationship to a grandparent who is a legal resident.[39]
- Each state university must report to the Board of Governors (BOG) the number and value of all fee waivers granted annually.
- A nonresident student granted an out-of-state fee waiver under this subsection must be excluded from the limitation on systemwide total enrollment of nonresident students established by regulation of the BOG, currently set at 10 percent.[40]
- The BOG adopt regulations to administer the fee waiver.

The bill creates s. 1009.261, F.S., to establish an interstate compact specifying the purposes of the grandchild out-of-state fees waiver compact are to:

- Increase access to postsecondary education to students whose families are split between two or more states by reducing costs associated with out-of-state fees.
- Encourage students to exercise their rights to travel and to choose the postsecondary education that best suits their needs.
- Increase postsecondary educational choices.
- Decrease the economic burden posed by postsecondary out-of-state fees.

The interstate compact applies the criteria from the fee waiver, with a modification to the assessment provision, to authorize postsecondary educational institutions located within each member state to waive out-of-state fees for a nonresident student who:

- Is a United States citizen;
- Has a grandparent who is a legal resident under the applicable laws of the member state;

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concordant score to an SAT score of 1330 is 29. CollegeBoard, ACT, *Guide to the 2018 ACT/SAT Concordance*, *available at* https://collegereadiness.collegeboard.org/pdf/guide-2018-act-sat-concordance.pdf.

[36] The BOG has noted that the bill does not specify whether students currently enrolled might qualify for the waiver if they meet the specified qualifications. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

[37] The BOG has noted that the bill should clarify that the waiver applies only to the initial undergraduate degree in which the student enrolls, and is not applicable to subsequent baccalaureate or graduate or professional degrees. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

[38] A written declaration is a statement declaring, under penalty of perjury, that one has read and verifies the specified document, followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law. Section 92.525(2), F.S.

[39] The bill does not stipulate the documentation required to verify residency beyond the student's written declaration, or, if the student is a dependent, that of the parent. BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

[40] Board of Governors Regulation 7.006.

- Achieves an SAT combined score no lower than the 89th national percentile on the SAT, or a concordant ACT score or concordant CLT score, as designated in the latest published national concordance table developed jointly by the College Board and ACT, Inc. or designated in the latest published scoring comparison developed by Classic Learning Initiatives, but only if the member state postsecondary institution accepts the CLT for admission purposes; and
- Enrolls as a full-time undergraduate student at a member state postsecondary institution in the fall academic term immediately following high school graduation.

In addition, in an identical manner to the fee waiver, the interstate compact waiver is applicable for up to 110 percent of the number of required credit hours of the degree program in which the student is enrolled, and prior to waiving any out-of-state fees, a member state postsecondary educational institution must require the student, or the student's parent if the student is a dependent child, to provide a written declaration verifying the student's familial relationship to a grandparent who is a legal resident of the member state.

For the interstate compact, the bill further specifies that:

- The executive, legislative, and judicial branches of state government in each member state are to enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact have standing as statutory law.
- The compact takes effect on the date on which it is enacted into law by two states. Thereafter, it is effective as to any state upon its enactment by that state.
- A member state may withdraw from this compact by repealing the statute in which it is enacted. A member state's withdrawal may not take effect until 6 months after enactment of the repeal.
- This compact may not be construed to invalidate or prohibit any law of a member state that does not conflict with the provisions of this compact.
- This compact may be amended by the member states. An amendment to this compact is effective and binding after it is enacted into the laws of all member states.
- The provisions of this compact are severable, and if any phrase, clause, sentence, or provision thereof is declared to be contrary to the constitution of any state or to the Constitution of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby.

For the interstate compact, the bill includes the following definitions:

- "Grandparent" means a person who has a legal relationship to a student's parent as the natural or adopted parent or legal guardian of the student's parent.
- "Member state" means a state that has enacted this compact.
- "Out-of-state fees" means any additional fee for instruction, which is charged to a student who does not qualify for the in-state tuition rate pursuant to the laws of a member state, imposed by a public postsecondary educational institution located within the member state. A charge for any other purpose may not be included within this fee.
- "Postsecondary educational institution" means a public university or college located within a member state.

- "State" includes the District of Columbia and any state, territory, or possession of the United States that oversees one or more public postsecondary educational institutions.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providing in-state tuition for out-of-state high-school graduates who meet specified criteria, including having a grandparent who is a Florida resident, may increase the number of students residing and enrolled in postsecondary institutions in Florida. Ensuring interstate compacts exists between states regarding which students qualify for fee waivers may enable Florida students to enroll in out-of-state postsecondary institutions in member states at reduced cost.

C. Government Sector Impact:

The bill does not require a state appropriation. However, state universities will have reduced revenues from out-of-state fees for each eligible student. The number of students who will qualify for and make use of the out-of-state fee waiver is unknown. For each student who participates in the waiver, a state university would collect only the resident undergraduate tuition and fees, which systemwide averages $199.72 per credit hour,

instead of nonresident undergraduate tuition and fees, which systemwide averages $690.63 per credit hour.[41] The Board of Governors (BOG) estimates that there could be a $1.7 million fiscal impact to the State University System.[42]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.26 of the Florida Statutes.

This bill creates section 1009.261 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 23, 2021:
The committee substitute creates a new section of law, in addition to the waiver program created by the original bill, to establish a new interstate compact. Specifically, the committee substitute declares the purposes of the grandchild out-of-state fees waiver compact to:

- Increase access to postsecondary education to students whose families are split between two or more states by reducing costs associated with out-of-state fees.
- Encourage students to exercise their rights to travel and to choose the postsecondary education that best suits their needs.
- Increase postsecondary educational choices.
- Decrease the economic burden posed by postsecondary out-of-state fees.

Additionally, the committee substitute specifies that:

- The executive, legislative, and judicial branches of state government in each member state are to enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent.
- The compact takes effect on the date on which it is enacted into law by two states. Thereafter it is effective as to any state upon its enactment by that state.
- A member state may withdraw from this compact by repealing the statute in which it is enacted. A member state's withdrawal may not take effect until 6 months after enactment of the repeal.

[41] State University System of Florida, *Tuition and Required Fees, 2020-2021, available at* https://www.flbog.edu/wp-content/uploads/2020-2021-SUS-Tuition-and-Fees-Report-1.pdf, at 1.
[42] BOG, *Senate Bill 1728 Agency Bill Analysis* (March 4, 2021).

- This compact may not be construed to invalidate or prohibit any law of a member state that does not conflict with the provisions of this compact.
- This compact may be amended by the member states. An amendment to this compact is effective and binding after it is enacted into the laws of all member states.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Education; and Senators Baxley and Garcia

581-03260-21 20211728c1

A bill to be entitled

An act relating to an out-of-state fee waiver for nonresident students; amending s. 1009.26, F.S.; requiring a state university to waive the out-of-state fee for a nonresident student who meets certain requirements; providing applicability; requiring each state university to report specified information regarding such out-of-state fee waivers to the Board of Governors annually; requiring that a student who is granted such out-of-state fee waiver be excluded from the limitation on the systemwide total enrollment of nonresident students; requiring the Board of Governors to adopt regulations; creating s. 1009.261, F.S.; enacting the Grandchild Out-of-State Fees Waiver Compact; providing the purposes of the compact; defining terms; requiring postsecondary educational institutions located within member states to waive out-of-state fees for students who meet specified criteria; providing that the waiver is applicable for up to a specified amount of credits; requiring member-state postsecondary educational institutions to require a student, or the student's parent if the student is a dependent child, to provide a written declaration verifying eligibility; requiring the executive, legislative, and judicial branches of member state governments to enforce the compact; providing that the provisions of the compact have standing as statutory law; providing for the implementation, withdrawal, and amendment of the

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compact; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (18) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(18)(a) A state university shall waive the out-of-state fee for a nonresident student who:

1. Is a United States citizen.

2. Has a grandparent who is a legal resident as defined in s. 1009.21(1).

3. Earns a high school diploma comparable to a standard Florida high school diploma, or its equivalency, or completes a home education program.

4.a. Achieves an SAT combined score no lower than the 89th national percentile on the SAT;

b. Achieves an ACT score concordant to the required SAT score in sub-subparagraph a., using the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or

c. If a state university accepts the Classic Learning Test (CLT) for admission purposes, achieves a CLT score concordant to the required SAT score in sub-subparagraph a., using the latest published scoring comparison developed by Classic Learning Initiatives.

5. Enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high

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school graduation.

(b) The waiver under this subsection is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

(c) Prior to waiving the out-of-state fee, the state university shall require the student, or the student's parent if the student is a dependent child, to provide a written declaration pursuant to s. 92.525(2) verifying the student's familial relationship to a grandparent who is a legal resident.

(d) Each state university shall report to the Board of Governors the number and value of all fee waivers granted annually under this subsection.

(e) A nonresident student granted an out-of-state fee waiver under this subsection shall be excluded from the limitation on systemwide total enrollment of nonresident students established by regulation of the Board of Governors.

(f) The Board of Governors shall adopt regulations to administer this subsection.

Section 2. Section 1009.261, Florida Statutes, is created to read:

1009.261 Grandchild Out-of-State Fees Waiver Compact.—The Grandchild Out-of-State Fees Waiver Compact is enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

GRANDCHILD OUT-OF-STATE
FEES WAIVER COMPACT

ARTICLE I

DECLARATION OF PURPOSE

The general purposes of this compact are to:

(1) Increase access to postsecondary education to students whose families are split between two or more states by reducing costs associated with out-of-state fees.

(2) Encourage students to exercise their rights to travel and to choose the postsecondary education that best suits their needs.

(3) Increase postsecondary educational choices.

(4) Decrease the economic burden posed by postsecondary out-of-state fees.

ARTICLE II
DEFINITIONS

As used in this compact, the term:

(1) "Grandparent" means a person who has a legal relationship to a student's parent as the natural or adopted parent or legal guardian of the student's parent.

(2) "Member state" means a state that has enacted this compact.

(3) "Out-of-state fees" means any additional fee for instruction, which is charged to a student who does not qualify for the in-state tuition rate pursuant to the laws of a member state, imposed by a public postsecondary educational institution located within the member state. A charge for any other purpose may not be included within this fee.

(4) "Postsecondary educational institution" means a public

university or college located within a member state.

(5) "State" includes the District of Columbia and any state, territory, or possession of the United States which oversees one or more public postsecondary educational institutions.

(6) "Student's parent" means a person who has a legal relationship to a student as the natural or adopted parent or legal guardian of the student.

ARTICLE III

OUT-OF-STATE FEES WAIVER

(1) Postsecondary educational institutions located within each member state shall waive out-of-state fees for a nonresident student who:

(a) Is a United States citizen.

(b) Has a grandparent who is a legal resident under the applicable laws of the member state.

(c)1. Achieves an SAT combined score no lower than the 89th national percentile on the SAT;

2. Achieves an ACT score concordant to the SAT score required in subparagraph 1., as designated in the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or

3. Achieves a Classic Learning Test (CLT) score concordant to the required SAT score in subparagraph 1., as designated in the latest published scoring comparison developed by Classic Learning Initiatives, but only if the member state postsecondary institution accepts the CLT for admission purposes.

(d) Enrolls as a full-time undergraduate student at a member state postsecondary institution in the fall academic term immediately following high school graduation.

(2) The waiver under this compact is applicable for up to 110 percent of the number of required credit hours of the degree program in which the student is enrolled.

(3) Prior to waiving any out-of-state fees, a member state postsecondary educational institution shall require the student, or the student's parent if the student is a dependent child, to provide a written declaration verifying the student's familial relationship to a grandparent who is a legal resident of the member state.

ARTICLE IV

OVERSIGHT

The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact have standing as statutory law.

ARTICLE V

DATE OF IMPLEMENTATION, WITHDRAWAL, AND AMENDMENT

(1) The compact shall take effect on the date on which it is enacted into law by two states. Thereafter it is effective as to any state upon its enactment by that state.

(2) A member state may withdraw from this compact by

repealing the statute in which it is enacted. A member state's withdrawal may not take effect until 6 months after enactment of the repeal.

(3) This compact may not be construed to invalidate or prohibit any law of a member state that does not conflict with the provisions of this compact.

(4) This compact may be amended by the member states. An amendment to this compact is effective and binding after it is enacted into the laws of all member states.

ARTICLE VI

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision thereof is declared to be contrary to the constitution of any state or to the Constitution of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is held to be contrary to the constitution of any state participating therein, it remains in full force and effect as to the state affected as to all severable provisions.

Section 3. This act shall take effect July 1, 2021.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1864
INTRODUCER:	Appropriations Committee; and Senators Perry and Diaz
SUBJECT:	Education
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1864 requires the Department of Education (DOE) to maintain a list of persons permanently disqualified from employment in a public school or a private school that participates in a state educational scholarship program (private scholarship school). The bill requires this disqualification list to include the identities of persons who were terminated or resigned from employment as a result of sexual misconduct with a student and prohibits public schools and private scholarship schools, from employing a person in a position with direct contact with students if the person is included on the disqualification list. The bill also:

- Requires that educational support employees be included to the same extent required for instructional personnel and school administrators in policies establishing standards of ethical conduct and procedures for investigating, reporting, and terminating personnel.
- Requires the complete investigation of complaints of misconduct by public school personnel and provides authority for the DOE to place a person on the disqualification list.
- Provides that a person on the disqualification list commits a felony of the third degree for serving or applying for employment in a public or private scholarship school.
- Provides authority for the DOE to remove a person from the disqualification list.

The bill has a state fiscal impact and may increase cost for school districts and for private schools that participate in state school choice scholarship programs. DOE projects needing a total of three additional staff to perform administrative activities outlined in this bill, at a projected recurring cost of $262,522. In addition, the DOE estimates needing between $200,000

and $500,000 to modify the administrative and instructional staff database to meet the requirements of the bill. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Education (DOE) is required to provide technical assistance to school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program (private scholarship schools) in the development of policies, procedures, and training related to employment practices and standards of ethical conduct for instructional personnel and school administrators. In addition, the DOE is required to provide authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools with access to:

- The Professional Practices' Database of Disciplinary Actions Against Educators;
- The DOE's Teacher Certification Database; and
- Data necessary for performing employment history checks of the instructional personnel and school administrators included in the databases.[1]

Disqualification from Employment

Before employing a person in any position that requires direct contact with students in a district school, charter school, or private scholarship school, the employer must conduct employment history checks of each of the person's previous employers, screen instructional personnel and school administrators using the Professional Practices' Database of Disciplinary Actions Against Educators and the DOE's Teacher Certification Database, and document the findings.[2]

A person is ineligible for an educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private scholarship school if the person has been convicted of certain offenses specified in law.[3] District school boards and charter school governing boards must disqualify instructional personnel and school administrators from employment in any position that requires direct contact with students if the person is ineligible for employment due to a conviction of any of the specified offenses.

A school district or private scholarship school may not enter into a confidentiality agreement regarding terminated or dismissed instructional personnel or school administrators, or personnel or administrators who resign in lieu of termination. School districts and private scholarship schools must disclose misconduct that affects the health, safety, or welfare of a student when discussing performance with prospective employers in another educational setting. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by instructional personnel or school administrators that affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.[4]

[1] Section 1001.10(4) and (5), F.S.
[2] Sections 1002.33(12), 1002.421(1), and 1012.27(6), F.S.
[3] Section 1012.315, F.S.
[4] *Id.*

Criminal History Background Screening

Public Schools

Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any public school, including a charter school, must file with the district school board a complete set of fingerprints, which are submitted to the Florida Department of Law Enforcement (FDLE), for statewide criminal and juvenile records checks, and to the Federal Bureau of Investigation (FBI), for national criminal records checks.[5] The screening cost is borne by the district school board, the charter school, the employee, the contractor, or other person subject to the screening requirements.[6] FBI criminal history record information may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.[7] The FDLE must retain the fingerprints and report any arrest record of a person that is identified with the retained fingerprints to the employing or contracting school district or the school district with which the person is affiliated.[8] Employees and contracted personnel subject to these fingerprinting requirements must be rescreened every five years.[9]

Private Schools Accepting State Scholarship Students

A private scholarship school must require each employee, contracted personnel, and owner or operator with direct student contact to undergo a state and national background screening by electronically filing a complete set of fingerprints with the FDLE. The FDLE must retain the fingerprints and report any arrest record of a person that is identified with the retained fingerprints to the employing or contracting private scholarship school. Employees and contracted personnel subject to these fingerprinting requirements must be rescreened every five years.[10]

Standards of Ethical Conduct for Education Personnel

District school boards, charter school governing boards, and private scholarship schools are required to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators. The policies must require all instructional personnel and school administrators to complete training on the standards of ethical conduct, establish the duty of, and procedures for, instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators that affects the health, safety, or welfare of a student.[11] These policies must also include an explanation of liability protections for reporting child abuse and disclosing information concerning former employees.[12]

[5] Section 1012.32(2), F.S. This requirement is subject to limited exceptions for noninstructional contractors who meet the requirements specified in s. 1012.468, F.S.
[6] Section 1012.32(2), F.S.
[7] 28 C.F.R. s. 50.12(b).
[8] Section 1012.32(3), F.S.
[9] Sections 1012.465 and 1012.56(10), F.S.
[10] Section 1002.421(1)(m) and (p), F.S.
[11] Sections 1001.42(6), 1002.33(12)(g), 1002.421(1)(n), and 1012.796(1)(d), F.S.
[12] Section 1006.061, F.S.

District school board policies must require the superintendent to report to law enforcement misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment.[13]

District school board officials and superintendents, charter schools, and private scholarship schools are subject to penalties for failing to adopt policies establishing standards of ethical conduct. Specifically:

- If a school board member knowingly fails to adopt policies that require instructional personnel and school administrators to report misconduct, the member forfeits his or her salary for one year.[14]
- A district school superintendent who knowingly fails to investigate or report such misconduct, or knowingly files a false report of misconduct, also forfeits his or her salary for one year.[15]
- The sponsor[16] of the charter school must terminate the charter.[17]
- The DOE must suspend the payment of funds to a private scholarship school and shall prohibit the school from enrolling new scholarship students for one fiscal year and until the school complies. In the event the private scholarship school consistently fails to comply, the commissioner may determine that the private scholarship school is ineligible to participate in a scholarship program.

The commissioner may deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that:

- An owner or operator of the private scholarship school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to health, safety or welfare of the public; or
- The owner or operator has exhibited a previous pattern of failure to comply with the relevant law or specific requirements identified within respective scholarship program laws.[18]

Complaints against Teachers and Administrators

A person seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must hold a certificate issued by the DOE.[19] If allegations arise against an employee who possesses an educator certificate and is employed in an educator-certificated position in any public school, charter school, or private scholarship school, the school must file a legally sufficient complaint

[13] Section 1001.42(6), F.S.
[14] Section 1001.42(7)(b), F.S.
[15] Section 1001.51(12), F.S.
[16] The local district school board or a state university may sponsor a charter school. Section 1002.33(5), F.S.
[17] Section 1002.33(12)(g)5., F.S.
[18] Section 1002.421(3), F.S.
[19] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

with the DOE within 30 days from the date the school had notice of the incident, regardless of whether the subject of the allegations is still employed by the school.[20]

The DOE is tasked with investigating any legally sufficient complaint filed before it or otherwise called to its attention which contains grounds for sanctions against an educator certificate and must immediately investigate any legally sufficient complaint that involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student, giving the complaint priority over other pending complaints–even if the complainant withdraws the complaint. The DOE may investigate a complaint filed against a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly committed while that person possessed an educator certificate.[21]

A school district superintendent must report to the DOE an arrest or conviction of any administrative or instructional personnel for certain offenses specified by the DOE within twenty-four hours of a matter coming to the attention of a school district. The same reporting requirements apply to substantiated allegations of misconduct by any administrative or instructional personnel that would constitute any of offenses specified by the DOE, regardless of whether there has been an arrest or conviction.[22]

The Education Practices Commission

The Education Practices Commission (EPC) is a quasi-judicial body of peers, law enforcement, and lay persons, which interprets and applies the standards of professional practice established by the SBE.[23] The EPC is assigned to the DOE for administrative purposes but is not subject to control, supervision, or direction by the DOE.[24]

The EPC may impose one or more of the following penalties against a person with an educator certificate:

- Suspend the educator certificate of any instructional personnel or school administrator, for up to five years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person may return to teaching.
- Revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to law.
- Permanently revoke the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students.
- Suspend an educator's certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or impose any other penalty provided by law.[25]

[20] Section 1012.796(1)(e), F.S.
[21] Section 1012.796(1), F.S.
[22] Rule 6A-10.082, F.A.C.
[23] Section 1012.79, F.S.
[24] Section 1012.79(6)(a), F.S.
[25] Section 1012.795(1), F.S.

III. Effect of Proposed Changes:

The Florida Department of Education

The bill requires the DOE to maintain a list of persons permanently disqualified from employment in a public school or a private scholarship school. The bill requires this disqualification list to include the identity of any person who has been: [26]

- Permanently denied an educator certificate or whose educator certificate has been permanently revoked and has been placed on the list by the Education Practices Commission (EPC);
- Permanently disqualified by the commissioner from owning or operating a private scholarship school;
- Terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student; or
- Disqualified from employment due to a conviction of any of the offenses specified in law.

The DOE is authorized to remove a person from the disqualification list if the person demonstrates that:

- A completed law enforcement investigation resulted in an exoneration or no conviction or finding of guilt, and a completed investigation and proceeding, as applicable, by the responsible education agency resulted in a finding that the person did not commit the disqualifying conduct;
- The person was not the subject of the report of disqualifying conduct and was included on the disqualification list in error or as a result of mistaken identity; or
- The employer that submitted the person for inclusion on the disqualification list requests that the person be removed and submits documentation to support the request.

The bill authorizes the EPC to direct the DOE to place employees or contractual personnel of any public school, charter school, charter school governing board, or private scholarship school on the disqualification list for conduct that would render the person ineligible for employment.

The bill requires the State Board of Education (SBE) to adopt rules to implement the disqualification list.

Disqualification from Employment

The bill requires that staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools conduct employment history checks on educational support employees to the same extent currently required for instructional personnel and school administrators. The bill also adds the disqualification list to the employment screening tools provided by the DOE to staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private scholarship schools.

[26] A person has a liberty interest to pursue employment and must be afforded notice and an opportunity to be heard when that interest is adversely affected by state action. Florida Department of Education, *2021 Agency Legislative Bill Analysis for CS/CS/HB 131*, at 9. The Florida Administrative Procedure Act sets forth the procedures for persons adversely affected by agency action to be given notice and an opportunity to be heard. *See s.* 120.569, F.S.

The bill prohibits a person included on the disqualification list from educator certification or employment in a position that requires direct contact with students[27] in a district school system, charter school, or private scholarship school.

The bill provides that a person commits a felony of the third degree if the person is included on the disqualification list and serves or applies to serve as an employee or contractual personnel at any public school or private scholarship school.

The bill requires a law enforcement agency to make certain notifications to the appropriate employer regarding the arrest of public school contractors and private school employees and contractors. This notification is in addition to the existing requirement that a law enforcement agency must, within 48 hours, notify the appropriate district school superintendent of the name and address of any employee of the school district who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. The bill additionally requires, within 24 hours after such notification, the school principal or designee to notify parents of enrolled students who had direct contact with the employee and include, at a minimum, the name and specific charges against the employee.

Standards of Ethical Conduct for Education Personnel

Educational Support Employees

The bill requires district school boards, charter schools, and private scholarship schools to include educational support employees to the same extent required for instructional personnel and school administrators in policies establishing standards of ethical conduct and procedures for investigating, reporting, and terminating personnel.

Public Schools

The bill adds to existing requirements that subject a school board official to penalties for failing to adopt policies to investigate misconduct and report misconduct to the DOE. Specifically, the bill subjects a school board official to existing penalties if the school board official knowingly fails to adopt policies that require:

- The investigation of all reports of misconduct of specified personnel, regardless of whether the personnel resigned or was terminated before the conclusion of the investigation.
- The superintendent to notify the DOE of the result of the investigation and whether the misconduct warranted termination, regardless of whether the person resigned or was terminated prior to the conclusion of the investigation.

The bill requires, in cases of separation due to termination or resignation in lieu of termination, a person to execute and maintain an affidavit of separation, on a form adopted by the Department of Education, setting forth in detail the facts and reasons for such separation. The affidavit must expressly disclose when separation is due to a report of sexual misconduct with a student. The affidavit of separation must be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit of separation must include conspicuous language that intentional false execution of the affidavit constitutes a misdemeanor of the second degree.

[27] Section 1012.315, F.S

Public school superintendents are required by the bill to review each affidavit of separation from previous employers before employing a person in a position that requires direct contact with students.

The bill provides that a district school superintendent forfeits his salary for 1 year if the superintendent knowingly:

- Signs and transmits to any state official a report that the superintendent knows to be false or incorrect;
- Fails to investigate any allegation of misconduct that affects the health, safety, or welfare of a student;
- Fails to report alleged misconduct to the DOE; or
- Fails to report misconduct to the law enforcement agencies with jurisdiction over the conduct.

Private Schools

The bill authorizes the Commissioner of Education (commissioner) to permanently revoke or deny the authority of an owner or operator to establish or operate a private scholarship school if the commissioner decides that the owner or operator is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public. That owner or operator must be included on the disqualification list.

Complaints against Educational Personnel

The bill requires district school boards and charter school governing boards to report an investigation that results in termination, or the accused person's resignation in lieu of termination, to the DOE for inclusion on the disqualification list.

The bill requires the commissioner to make a determination of probable cause within 90 days after receipt of any complaint involving sexual misconduct with a student. Upon the written request of a state attorney, this deadline may be held in abeyance during criminal proceedings related to the sexual misconduct with a student.

The bill clarifies that the duty of:

- School districts to maintain confidentiality of employee personnel files does not absolve the school district of any legally required notifications or duties to report allegations of misconduct to the DOE.
- District school boards to investigate complaints of misconduct and report findings and conclusions to the DOE is not limited by the district school board's notification to the DOE of the resignation or termination of the subject of a legally sufficient complaint prior to the conclusion of the school district's investigation.
- The DOE to maintain reports of misconduct as a public record in personnel's' certification files does not limit or restrict the power and duty of the DOE to investigate complaints regarding certificated personnel, nor does it create a duty for the DOE to investigate complaints regarding noncertified personnel.

The bill requires a complete investigation before the DOE may issue a new certificate to a person whose educator certificate has expired if the person is the subject of a complaint for which the act or acts that were the basis for the complaint were allegedly committed while that person possessed an educator certificate.

The bill requires school district investigations and proceedings to be completed by a school district within one year after submission of the legally sufficient complaint and requires the suspension to continue throughout the proceedings.

The bill requires private scholarship schools and public schools to post in a prominent place in a clearly visible location and public area of the school which is readily accessible to and widely used by students a sign in English and Spanish that contains directions for accessing the Department of Education's website for more information on offenses against students by authority figures.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private schools that participate in an educational scholarship program may incur additional costs associated with the addition of educational support personnel relating to

establishing ethical standards, employment, and inclusion of individuals on the disqualification list.

C. Government Sector Impact:

School districts may incur costs associated with the provisions of the bill addressing the investigation of complaints of misconduct; these costs are indeterminable but may be significant.

The Office of Professional Practices Services within the DOE projects two additional staff members will be needed to maintain the Disqualification List and perform related administrative activities outlined in this bill. In addition, the department's Office of General Counsel also requires an attorney to review the additional legal challenges. The projected recurring cost for the three positions is $262,522.

In addition, DOE may incur costs to develop or update databases related to maintaining the disqualification list. The DOE estimates costs between $200,000 and $500,000 to modify the administrative and instructional staff database to meet the requirements of the bill.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.10, 1001.42, 1001.51, 1002.33, 1002.421, 1006.061, 1012.27, 1012.31, 1012.315, 1012.795, 1012.796, and 1012.797.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute:

- Narrows to sexual misconduct with a student the misconduct that results in the placement of terminated or resigned school district personnel on the disqualification list.

[28] Department of Education, House Bill 131 Agency Bill Analysis (January 5, 2021) (on file with the Senate Appropriations Committee).

- Authorizes the state board of education to remove someone from the disqualification list if the applicable employer requests that the person be removed and submits documentation to support the request.
- Requires charter school policies to establish the duty to report, and procedures for reporting, alleged misconduct by any charter school employee with direct student contact.
- Extends to all private schools the commissioner's authority to terminate an owner or operator's eligibility to operate a private school.
- Expands requirements for school districts to provide information about reporting child abuse or lewd acts.
- Requires a supervisor, instead of indicating the facts regarding termination or resignation in a personnel file, to complete an affidavit of separation setting forth specified details in the personnel file.
- Adds registration as a sex offender as described in 42 USC s. 9858f(c)(1)(c) to the list of offenses that renders a person ineligible for employment in a position with direct student contact.
- Narrows to certificated personnel the individuals which the Education Practices Commission may place on the disqualification list.
- Requires the commissioner to determine probable cause within 90 days of receiving complaint, unless state attorney requests abeyance.
- Removes requirement to suspend with pay and investigate alleged misconduct by educational support personnel.
- Additionally requires DOE to place persons on the disqualification list if they resign or are terminated before the conclusion of a complaint involving the health, safety, or welfare of a student.
- Removes felony penalty for an employer who knowingly hires a person in violation of the prohibitions required by the disqualification list.
- Adds the Florida School for the Deaf and Blind and university lab schools to the list of institutions a law enforcement agency must notify concerning an arrest of one of the institution's employees but removes the requirement to report the person's name and address. The amendment additionally requires school principals or designees to notify parents whose children had direct contact with the person.
- Removes provisions addressing approved virtual instruction providers.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
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04/17/2021	.	
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The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (4) and (5) of section 1001.10, Florida Statutes, are amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(4) The Department of Education shall:

(a) Provide technical assistance to school districts,

charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program under chapter 1002 in the development of policies, procedures, and training related to employment practices and standards of ethical conduct for instructional personnel and school administrators, as defined in s. 1012.01.

(b) Maintain a disqualification list that includes all of the following:

1. The identity of each person who has been permanently denied an educator certificate or whose educator certificate has been permanently revoked and has been placed on the list as directed by the Education Practices Commission pursuant to s. 1012.795(1) or s. 1012.796(7).

2. The identity of each person who has been permanently disqualified by the commissioner from owning or operating a private school that participates in state scholarship programs under s. 1002.421.

3. The identity of each person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.

4. The identity of each person who is ineligible for educator certification or employment pursuant to s. 1012.315.

(c) The department may remove a person from the disqualification list if the person demonstrates that:

1. A completed law enforcement investigation resulted in an exoneration or no conviction or finding of guilt and a completed investigation and proceeding, as applicable, by the responsible education agency resulted in a finding that the person did not

commit disqualifying conduct;

2. The person was not the subject of the report of disqualifying conduct and was included on the disqualification list in error or as a result of mistaken identity; or

3. The employer that submitted the person for inclusion on the disqualification list requests that the person be removed and submits documentation to support the request.

(d) The State Board of Education shall adopt rules to implement this subsection.

(5) The Department of Education shall provide authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program under chapter 1002 with access to electronic verification of information from the following employment screening tools:

(a) The Professional Practices' Database of Disciplinary Actions Against Educators.~~; and~~

(b) The department's ~~Department of Education's~~ Teacher Certification Database.

(c) The department's disqualification list under paragraph (4)(b).

This subsection does not require the department to provide these staff with unlimited access to the databases. However, the department shall provide the staff with access to the data necessary for performing employment history checks of the persons ~~instructional personnel and school administrators~~ included in the databases.

Section 2. Subsections (6) and (7) of section 1001.42, Florida Statutes, are amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(6) STANDARDS OF ETHICAL CONDUCT ~~FOR INSTRUCTIONAL PERSONNEL, ADMINISTRATIVE PERSONNEL, AND SCHOOL OFFICERS~~.—Adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, administrative personnel, and school officers. The policies must require all educational support employees, instructional personnel, administrative personnel, and school officers, as defined in s. 1012.01, to complete training on the standards; establish the duty of educational support employees, instructional personnel, administrative personnel, and school officers to report, and procedures for reporting, alleged misconduct by other educational support employees, instructional or administrative personnel, and school officers which affects the health, safety, or welfare of a student, including misconduct that involves engaging in or soliciting sexual, romantic, or lewd conduct with a student; require the district school superintendent to report to law enforcement misconduct by educational support employees, instructional personnel, or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A district school board, or any of its employees or personnel, may not enter into a confidentiality agreement regarding terminated or dismissed educational support

employees, instructional or administrative personnel, or school officers who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide educational support employees, instructional personnel, administrative personnel, or school officers with employment references or discuss the employees', personnel's, or officers' performance with prospective employers in another educational setting, without disclosing the employees', personnel's, or officers' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, administrative personnel, or school officers which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

(7) PROHIBITION ~~DISQUALIFICATION~~ FROM EMPLOYMENT.—Prohibit educational support employees, ~~Disqualify~~ instructional personnel, and administrative personnel, as defined in s. 1012.01, from employment in any position that requires direct contact with students if the employees or personnel are ineligible for such employment under s. 1012.315 or have been terminated or resigned in lieu of termination for sexual misconduct with a student. If the prohibited conduct occurs while employed, the district school board must report the employees or personnel and the disqualifying circumstances to the department for inclusion on the disqualification list maintained by the department pursuant s. 1001.10(4)(b). An elected or appointed school board official forfeits his or her salary for 1 year if:

(a) The school board official knowingly signs and transmits to any state official a report of alleged misconduct by educational support employees, instructional personnel, or administrative personnel which ~~affects the health, safety, or welfare of a student and~~ the school board official knows ~~the report~~ to be false or incorrect; or

(b) The school board official knowingly fails to adopt policies that require:

1. Educational support employees, instructional personnel, and administrative personnel to report alleged misconduct by other educational support employees, instructional personnel, and administrative personnel;

2. The district school superintendent to report misconduct by educational support employees, instructional personnel, or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315 to the law enforcement agencies with jurisdiction over the conduct; or

3. The investigation of all reports of alleged misconduct by educational support employees, instructional personnel, and administrative personnel, if the misconduct affects the health, safety, or welfare of a student, regardless of whether the person resigned or was terminated before the conclusion of the investigation. The policies must require the district school superintendent to notify the department of the result of the investigation and whether the misconduct warranted termination, regardless of whether the person resigned or was terminated before the conclusion of the investigation.

Section 3. Subsection (12) of section 1001.51, Florida

Statutes, is amended to read:

1001.51 Duties and responsibilities of district school superintendent.—The district school superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law, provided that, in so doing, he or she shall advise and counsel with the district school board. The district school superintendent shall perform all tasks necessary to make sound recommendations, nominations, proposals, and reports required by law to be acted upon by the district school board. All such recommendations, nominations, proposals, and reports by the district school superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes, and filed in the public records of the district school board. It shall be presumed that, in the absence of the record required in this section, the recommendations, nominations, and proposals required of the district school superintendent were not contrary to the action taken by the district school board in such matters.

(12) RECORDS AND REPORTS.—Recommend such records as should be kept in addition to those prescribed by rules of the State Board of Education; prepare forms for keeping such records as are approved by the district school board; ensure that such records are properly kept; and make all reports that are needed or required, as follows:

(a) *Forms, blanks, and reports.*—Require that all employees accurately keep all records and promptly make in proper form all reports required by the education code or by rules of the State Board of Education; recommend the keeping of such additional records and the making of such additional reports as may be

deemed necessary to provide data essential for the operation of the school system; and prepare such forms and blanks as may be required and ensure that these records and reports are properly prepared.

(b) *Reports to the department.*—Prepare, for the approval of the district school board, all reports required by law or rules of the State Board of Education to be made to the department and transmit promptly all such reports, when approved, to the department, as required by law. If any reports are not transmitted at the time and in the manner prescribed by law or by State Board of Education rules, the salary of the district school superintendent must be withheld until the report has been properly submitted. Unless otherwise provided by rules of the State Board of Education, the annual report on attendance and personnel is due on or before July 1, and the annual school budget and the report on finance are due on the date prescribed by the commissioner.

Any district school superintendent who knowingly signs and transmits to any state official a report that the superintendent knows to be false or incorrect; who knowingly fails to complete the investigation of ~~investigate~~ any allegation of misconduct that ~~by instructional personnel or school administrators, as defined in s. 1012.01, which~~ affects the health, safety, or welfare of a student, that would be a violation of s. 800.101, or that would be a disqualifying offense under s. 1012.315, or any allegation of sexual misconduct with a student; who knowingly fails to report the alleged misconduct to the department as required in s. 1012.796; or who knowingly fails to

report misconduct to the law enforcement agencies with jurisdiction over the conduct pursuant to district school board policy under s. 1001.42(6), forfeits his or her salary for 1 year following the date of such act or failure to act.

Section 4. Paragraph (g) of subsection (12) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(12) EMPLOYEES OF CHARTER SCHOOLS.—

(g)1. A charter school shall employ or contract with employees who have undergone background screening as provided in s. 1012.32. Members of the governing board of the charter school shall also undergo background screening in a manner similar to that provided in s. 1012.32. An individual may not be employed as an employee or contract personnel of a charter school or serve as a member of a charter school governing board if the individual is on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

2. A charter school shall prohibit educational support employees, ~~disqualify~~ instructional personnel, and school administrators, as defined in s. 1012.01, from employment in any position that requires direct contact with students if the employees, personnel, or administrators are ineligible for such employment under s. 1012.315 or have been terminated or resigned in lieu of termination for sexual misconduct with a student. If the prohibited conduct occurs while employed, a charter school must report the individual and the disqualifying circumstances to the department for inclusion on the disqualification list maintained pursuant to s. 1001.10(4)(b).

3. The governing board of a charter school shall adopt

policies establishing standards of ethical conduct for educational support employees, instructional personnel, and school administrators. The policies must require all educational support employees, instructional personnel, and school administrators, as defined in s. 1012.01, to complete training on the standards; establish the duty of educational support employees, instructional personnel, and school administrators to report, and procedures for reporting, alleged misconduct that ~~by other instructional personnel and school administrators which~~ affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A charter school, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed educational support employees, instructional personnel, or school administrators, or employees, personnel, or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide employees, ~~instructional~~ personnel, or ~~school~~ administrators with employment references or discuss the employees', personnel's, or administrators' performance with prospective employers in another educational setting, without disclosing the employees', personnel's, or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

4. Before employing an individual ~~instructional personnel~~

~~or school administrators~~ in any position that requires direct contact with students, a charter school shall conduct employment history checks of each individual ~~of the personnel's or administrators' previous employers, screen the instructional personnel or school administrators~~ through use of the educator screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the charter school must document efforts to contact the employer.

5. The sponsor of a charter school that knowingly fails to comply with this paragraph shall terminate the charter under subsection (8).

Section 5. Paragraphs (n) and (o) of subsection (1) and subsection (3) of section 1002.421, Florida Statutes, are amended, and paragraph (r) is added to subsection (1) of that section, to read:

1002.421 State school choice scholarship program accountability and oversight.—

(1) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—A private school participating in an educational scholarship program established pursuant to this chapter must be a private school as defined in s. 1002.01(2) in this state, be registered, and be in compliance with all requirements of this section in addition to private school requirements outlined in s. 1002.42, specific requirements identified within respective scholarship program laws, and other provisions of Florida law that apply to private schools, and must:

(n) Adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, and school administrators. The policies must require

all educational support employees, instructional personnel, and school administrators, as defined in s. 1012.01, to complete training on the standards; establish the duty of educational support employees, instructional personnel, and school administrators to report, and procedures for reporting, alleged misconduct by other educational support employees, instructional personnel, and school administrators which affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A private school, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed educational support employees, instructional personnel, or school administrators, or employees, personnel, or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide the employees, ~~instructional~~ personnel, or ~~school~~ administrators with employment references or discuss the employees', personnel's, or administrators' performance with prospective employers in another educational setting, without disclosing the employees', personnel's, or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

(o) Before employing a person ~~instructional personnel or school administrators~~ in any position that requires direct contact with students, conduct employment history checks of ~~each~~

~~of the personnel's or administrators'~~ previous employers, screen the person ~~personnel or administrators~~ through use of the ~~educator~~ screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the private school must document efforts to contact the employer. The private school may not employ a person whose educator certificate is revoked, who is barred from reapplying for an educator certificate, or who is on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

(r) Prohibit education support employees, instructional personnel, and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment pursuant to this section or s. 1012.315, or have been terminated or resigned in lieu of termination for sexual misconduct with a student. If the prohibited conduct occurs subsequent to employment, the private school must report the person and the disqualifying circumstances to the department for inclusion on the disqualification list maintained pursuant to s. 1001.10(4)(b).

The department shall suspend the payment of funds to a private school that knowingly fails to comply with this subsection, and shall prohibit the school from enrolling new scholarship students, for 1 fiscal year and until the school complies. If a private school fails to meet the requirements of this subsection or has consecutive years of material exceptions listed in the report required under paragraph (q), the commissioner may determine that the private school is ineligible to participate

in a scholarship program.

(3) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—The Commissioner of Education:

(a) Shall deny, suspend, or revoke a private school's participation in a scholarship program if it is determined that the private school has failed to comply with this section or exhibits a previous pattern of failure to comply. However, if the noncompliance is correctable within a reasonable amount of time, not to exceed 45 days, and if the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance which provides the private school with a timeframe within which to provide evidence of compliance before taking action to suspend or revoke the private school's participation in the scholarship program.

(b) May deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public or if the owner or operator has exhibited a previous pattern of failure to comply with this section or specific requirements identified within respective scholarship program laws. For purposes of this subsection, the term "owner or operator" has the same meaning as provided in paragraph (1)(p).

(c) May permanently deny or revoke the authority of an owner or operator to establish or operate a private school in the state if the commissioner decides that the owner or operator is operating or has operated an educational institution in the

state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public, and shall include such individuals on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

(d)1.~~(c)1.~~ In making such a determination, may consider factors that include, but are not limited to, acts or omissions by an owner or operator which led to a previous denial, suspension, or revocation of participation in a state or federal education scholarship program; an owner's or operator's failure to reimburse the department or scholarship-funding organization for scholarship funds improperly received or retained by a school; the imposition of a prior criminal sanction related to an owner's or operator's management or operation of an educational institution; the imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution; or other types of criminal proceedings in which an owner or operator was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

2. The commissioner's determination is subject to the following:

a. If the commissioner intends to deny, suspend, or revoke a private school's participation in the scholarship program, the department shall notify the private school of such proposed action in writing by certified mail and regular mail to the private school's address of record with the department. The

notification shall include the reasons for the proposed action and notice of the timelines and procedures set forth in this paragraph.

b. The private school that is adversely affected by the proposed action shall have 15 days after receipt of the notice of proposed action to file with the department's agency clerk a request for a proceeding pursuant to ss. 120.569 and 120.57. If the private school is entitled to a hearing under s. 120.57(1), the department shall forward the request to the Division of Administrative Hearings.

c. Upon receipt of a request referred pursuant to this subparagraph, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written request by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days after the entry of a recommended order. The provisions of this sub-subparagraph may be waived upon stipulation by all parties.

(e) ~~(d)~~ May immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

1. An imminent threat to the health, safety, or welfare of the students;

2. A previous pattern of failure to comply with this section; or

3. Fraudulent activity on the part of the private school. Notwithstanding s. 1002.22, in incidents of alleged fraudulent activity pursuant to this section, the department's Office of Inspector General is authorized to release personally identifiable records or reports of students to the following persons or organizations:

a. A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

b. A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

c. Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

The commissioner's order suspending payment pursuant to this paragraph may be appealed pursuant to the same procedures and timelines as the notice of proposed action set forth in subparagraph (d)2 ~~(c)2~~.

Section 6. Subsection (2) and paragraph (a) of subsection (4) of section 1006.061, Florida Statutes, are amended to read:

1006.061 Child abuse, abandonment, and neglect policy.—Each

district school board, charter school, and private school that accepts scholarship students who participate in a state scholarship program under chapter 1002 shall:

(2) Post in a prominent place at each school site and on each school's ~~Internet~~ website, if available, the policies and procedures for reporting alleged misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student; the contact person to whom the report is made; and the penalties imposed on educational support employees, instructional personnel, or school administrators who fail to report suspected or actual child abuse or alleged misconduct by other educational support employees, instructional personnel, or school administrators.

(4)(a) Post in a prominent place in a clearly visible location and public area of the school which is readily accessible to and widely used by students a sign in English and Spanish that contains:

1. The statewide toll-free telephone number of the central abuse hotline as provided in chapter 39.~~;~~

2. Instructions to call 911 for emergencies.~~; and~~

3. Directions for accessing the Department of Children and Families Internet website for more information on reporting abuse, neglect, and exploitation.

4. Directions for accessing the Department of Education's website for more information on reporting acts that violate s. 800.101.

The Department of Education shall develop, and publish on the

department's Internet website, sample notices suitable for posting in accordance with subsections (1), (2), and (4).

Section 7. Subsection (6) of section 1012.27, Florida Statutes, is amended to read:

1012.27 Public school personnel; powers and duties of district school superintendent.—The district school superintendent is responsible for directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

(6) EMPLOYMENT HISTORY CHECKS.—Before employing a person in any position that requires direct contact with students, conduct employment history checks of each of the person's previous employers, review each affidavit of separation from previous employers pursuant to s. 1012.31, screen instructional personnel and school administrators, as defined in s. 1012.01, through use of the educator screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the district school superintendent shall document efforts to contact the employer.

Section 8. Paragraph (a) of subsection (2) of section 1012.31, Florida Statutes, is amended to read:

1012.31 Personnel files.—Public school system employee personnel files shall be maintained according to the following provisions:

(2)(a) Materials relating to work performance, discipline, suspension, or dismissal must be reduced to writing and signed by a person competent to know the facts or make the judgment. In cases of separation due to termination or resignation in lieu of

termination, the person shall execute and maintain an affidavit of separation, on the form adopted by the Department of Education, setting forth in detail the facts and reasons for such separation. The affidavit must expressly disclose when separation is due to a report of sexual misconduct with a student. The affidavit of separation must be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit of separation must include conspicuous language that intentional false execution of the affidavit constitutes a misdemeanor of the second degree ~~The resignation or termination of an employee before an investigation of alleged misconduct by the employee affecting the health, safety, or welfare of a student is concluded must be clearly indicated in the employee's personnel file~~.

Section 9. Section 1012.315, Florida Statutes, is amended to read:

1012.315 Screening standards ~~Disqualification from employment~~.~~—~~A person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or a private school that participates ~~accepts scholarship students who participate~~ in a state scholarship program under chapter 1002 if the person is on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b), is registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C), or has been convicted or found guilty of, has had adjudication withheld for, or has pled guilty or nolo contendere to ~~of~~:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section 784.021, relating to aggravated assault.

(g) Section 784.045, relating to aggravated battery.

(h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section 787.01, relating to kidnapping.

(j) Section 787.02, relating to false imprisonment.

(k) Section 787.025, relating to luring or enticing a child.

(l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or

concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

(n) Section 790.115(1), relating to exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of a school.

(o) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.

(p) Section 794.011, relating to sexual battery.

(q) Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

(r) Section 794.05, relating to unlawful sexual activity with certain minors.

(s) Section 794.08, relating to female genital mutilation.

(t) Chapter 796, relating to prostitution.

(u) Chapter 800, relating to lewdness and indecent exposure.

(v) Section 800.101, relating to offenses against students by authority figures.

(w) Section 806.01, relating to arson.

(x) Section 810.14, relating to voyeurism.

(y) Section 810.145, relating to video voyeurism.

(z) Section 812.014(6), relating to coordinating the commission of theft in excess of $3,000.

(aa) Section 812.0145, relating to theft from persons 65 years of age or older.

(bb) Section 812.019, relating to dealing in stolen

property.

(cc) Section 812.13, relating to robbery.

(dd) Section 812.131, relating to robbery by sudden snatching.

(ee) Section 812.133, relating to carjacking.

(ff) Section 812.135, relating to home-invasion robbery.

(gg) Section 817.563, relating to fraudulent sale of controlled substances.

(hh) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(ii) Section 825.103, relating to exploitation of an elderly person or disabled adult.

(jj) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(kk) Section 826.04, relating to incest.

(ll) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(mm) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(nn) Section 827.071, relating to sexual performance by a child.

(oo) Section 843.01, relating to resisting arrest with violence.

(pp) Chapter 847, relating to obscenity.

(qq) Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.

(rr) Chapter 893, relating to drug abuse prevention and

control, if the offense was a felony of the second degree or greater severity.

(ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(tt) Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.

(uu) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(vv) Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or commitment program.

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) Section 784.03, relating to battery, if the victim of the offense was a minor.

(b) Section 787.025, relating to luring or enticing a child.

(3) Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subsection (1) or subsection (2).

(4) Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(h)1.d.

Section 10. Subsection (1) of section 1012.795, Florida Statutes, is amended to read:

678 1012.795 Education Practices Commission; authority to
679 discipline.—
680 (1) The Education Practices Commission may suspend the
681 educator certificate of any instructional personnel or school
682 administrator, as defined in s. 1012.01(2) or (3), for up to 5
683 years, thereby denying that person the right to teach or
684 otherwise be employed by a district school board or public
685 school in any capacity requiring direct contact with students
686 for that period of time, after which the person may return to
687 teaching as provided in subsection (4); may revoke the educator
688 certificate of any person, thereby denying that person the right
689 to teach or otherwise be employed by a district school board or
690 public school in any capacity requiring direct contact with
691 students for up to 10 years, with reinstatement subject to
692 subsection (4); may permanently revoke the educator certificate
693 of any person thereby denying that person the right to teach or
694 otherwise be employed by a district school board or public
695 school in any capacity requiring direct contact with students;
696 may suspend a person's educator certificate, upon an order of
697 the court or notice by the Department of Revenue relating to the
698 payment of child support; may direct the department to place a
699 certificateholder employed by a public school, charter school,
700 charter school governing board, or private school that
701 participates in a state scholarship program under chapter 1002
702 on the disqualification list maintained by the department
703 pursuant to s. 1001.10(4)(b) for misconduct that would render
704 the person ineligible pursuant to s. 1012.315 or sexual
705 misconduct with a student; or may impose any other penalty
706 provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.

(e) Has had an educator certificate or other professional license sanctioned by this or any other state or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivisions. The licensing or certifying authority’s acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate. For purposes of this section, a sanction or action against a professional license, a certificate, or an authority to practice a regulated profession must relate to being an educator or the fitness of or ability to be an educator.

(f) Has been convicted or found guilty of, has had adjudication withheld for, or has pled guilty or nolo contendere to a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided

in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(p) Has violated test security as provided in s. 1008.24.

Section 11. Paragraphs (a), (b), (d), and (e) of subsection (1) and subsection (5) of section 1012.796, Florida Statutes, are amended, paragraph (i) is added to subsection (7), and subsection (10) is added to that section, to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(1)(a) The Department of Education shall cause to be investigated expeditiously any complaint filed before it or otherwise called to its attention which, if legally sufficient, contains grounds for the revocation or suspension of a certificate or any other appropriate penalty as set forth in subsection (7). The complaint is legally sufficient if it contains the ultimate facts which show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The department shall investigate or continue to investigate and take appropriate action on a complaint even though the original complainant withdraws the complaint or otherwise indicates a desire not to cause it to be investigated or prosecuted to completion. The department may investigate or continue to investigate and take action on a complaint filed against a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly

committed while that person possessed an educator certificate and may not issue a certificate to such a person unless an investigation has been completed.

(b) The department shall immediately investigate any legally sufficient complaint that involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student, giving the complaint priority over other pending complaints. The department must investigate or continue to investigate and take action on such a complaint filed against a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly committed while that person possessed an educator certificate. The Commissioner of Education shall make a determination of probable cause within 90 days after receipt of any complaint involving sexual misconduct with a student. Upon the written request of a state attorney, this deadline may be held in abeyance during criminal proceedings related to the sexual misconduct with a student.

(d)1. Each school district shall file in writing with the department all legally sufficient complaints within 30 days after the date on which subject matter of the complaint comes to the attention of the school district, regardless of whether the subject of the complaint is still an employee of the school district. A complaint is legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The school district shall include all information relating to the complaint which is known to the school district at the time of filing.

2. A school district shall immediately notify the department if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school district's investigation. Upon receipt of the notification, the department shall place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4). This subparagraph does not limit or restrict the duty of the district school board to investigate the complaint and report the findings and conclusion to the department.

3. Each district school board shall develop and adopt policies and procedures to comply with this reporting requirement. School board policies and procedures must include standards for screening, hiring, and terminating instructional personnel and school administrators, as defined in s. 1012.01; standards of ethical conduct for instructional personnel and school administrators; the duties of instructional personnel and school administrators for upholding the standards; detailed procedures for reporting alleged misconduct by instructional personnel and school administrators which affects the health, safety, or welfare of a student; requirements for the reassignment of instructional personnel and ~~or~~ school administrators pending the outcome of a misconduct investigation; and penalties for failing to comply with s.

1001.51 or s. 1012.795. The district school board policies and procedures must ~~shall~~ include appropriate penalties for all personnel of the district school board for nonreporting and procedures for promptly informing the district school superintendent of each legally sufficient complaint. The district school superintendent is charged with knowledge of these policies and procedures and is accountable for the training of all instructional personnel and school administrators of the school district on the standards of ethical conduct, policies, and procedures.

4. If the district school superintendent has knowledge of a legally sufficient complaint and does not report the complaint, or fails to enforce the policies and procedures of the district school board, and fails to comply with the requirements of this subsection, in addition to other actions against certificateholders authorized by law, the district school superintendent is subject to penalties as specified in s. 1001.51(12).

5. If the superintendent determines that misconduct by instructional personnel or school administrators who hold an educator certificate affects the health, safety, or welfare of a student and the misconduct warrants termination, the instructional personnel or school administrators may resign or be terminated, and the superintendent must report the misconduct to the department in the format prescribed by the department. The department shall maintain each report of misconduct as a public record in the instructional personnel's or school administrators' certification files. This paragraph does not limit or restrict the power and duty of the department to

881 investigate complaints regarding certificateholders, regardless
882 of the school district's untimely filing, or failure to file,
883 complaints and followup reports. This subparagraph does not
884 create a duty for the department to investigate complaints
885 regarding noncertificateholders.
886 (e) If allegations arise against an employee who is
887 certified under s. 1012.56 and employed in an educator-
888 certificated position in any public school, charter school or
889 governing board thereof, or private school that accepts
890 scholarship students who participate in a state scholarship
891 program under chapter 1002, the school shall file in writing
892 with the department a legally sufficient complaint within 30
893 days after the date on which the subject matter of the complaint
894 came to the attention of the school, regardless of whether the
895 subject of the allegations is still an employee of the school. A
896 complaint is legally sufficient if it contains ultimate facts
897 that show a violation has occurred as provided in s. 1012.795
898 and defined by rule of the State Board of Education. The school
899 shall include all known information relating to the complaint
900 with the filing of the complaint. This paragraph does not limit
901 or restrict the power and duty of the department to investigate
902 complaints, regardless of the school's untimely filing, or
903 failure to file, complaints and followup reports. A school
904 described in this paragraph shall immediately notify the
905 department if the subject of a legally sufficient complaint of
906 misconduct affecting the health, safety, or welfare of a student
907 resigns or is terminated before the conclusion of the school's
908 investigation. Upon receipt of the notification, the department
909 shall place an alert on the person's certification file

indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded and place the person on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b). In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4).

(5) When an allegation of misconduct by instructional personnel or school administrators, as defined in s. 1012.01, is received, if the alleged misconduct affects the health, safety, or welfare of a student, the district school superintendent in consultation with the school principal, or upon the request of the Commissioner of Education, must, at a minimum, immediately suspend the instructional personnel or school administrators from regularly assigned duties, with pay, and remove ~~reassign~~ the suspended personnel or administrators from ~~to~~ positions that may ~~do not~~ require direct contact with students in the district school system. Such suspension shall continue until submission of a legally sufficient complaint. The proceedings and determination of sanctions shall be completed by a school district within 1 year after submission of the legally sufficient complaint ~~the completion of the proceedings and the determination of sanctions, if any, pursuant to this section and s. 1012.795~~.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(i) Direct the department to place instructional personnel or school administrators on the disqualification list maintained

by the department pursuant to s. 1001.10(4)(b) for conduct that would render the person ineligible pursuant to s. 1012.315 or sexual misconduct with a student.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

(10) A person on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b) shall be notified that he or she may not serve or apply to serve as an employee or contracted personnel at a public school or private school that participates in a state scholarship program under chapter 1002. A person who knowingly violates this provision commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Section 1012.797, Florida Statutes, is amended to read:

1012.797 Notification of ~~district school superintendent of~~ certain charges against ~~or convictions of~~ employees.—

~~(1)~~ Notwithstanding the provisions of s. 985.04(7) or any other ~~provision of~~ law to the contrary, a law enforcement agency shall, within 48 hours, notify the appropriate district school superintendent, charter school governing board, private school owner or administrator, president of the Florida School for the Deaf and the Blind, or university lab schools director or principal, as applicable, when its ~~of the name and address of any~~ employee ~~of the school district who~~ is arrested for ~~charged with~~ a felony or ~~with~~ a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance.

The notification shall include the specific charge for which the employee of the school district was arrested. Notwithstanding ss. 1012.31(3)(a)1. and 1012.796(4), within 24 hours after such notification, the school principal or designee shall notify parents of enrolled students who had direct contact with the employee and include, at a minimum, the name and specific charges against the employee. ~~Such notification shall include other education providers such as the Florida School for the Deaf and the Blind, university lab schools, and private elementary and secondary schools~~.

~~(2) Except to the extent necessary to protect the health, safety, and welfare of other students, the information obtained by the district school superintendent pursuant to this section may be released only to appropriate school personnel or as otherwise provided by law.~~

Section 13. This act shall take effect July 1, 2021.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to educator conduct; amending s. 1001.10, F.S.; requiring the Department of Education to maintain a disqualification list of certain persons; providing for the removal of a person from the list under certain circumstances; requiring the State Board of Education to adopt rules; requiring the department to provide access to specified information

to certain staff for specified purposes; amending s. 1001.42, F.S.; providing that certain provisions relating to conduct and prohibition from employment apply to educational support employees; prohibiting certain employees and personnel from employment under certain circumstances; requiring district school boards to report specified persons to the department for inclusion on the list; providing that a school board official forfeits his or her salary for 1 year under additional circumstances; amending s. 1001.51, F.S.; providing that a district school superintendent forfeits his or her salary for 1 year under additional circumstances; amending s. 1002.33, F.S.; prohibiting certain individuals from employment at a charter school; providing requirements for charter schools relating to employing certain individuals; requiring the governing board of a charter school to establish the duty of instructional personnel and school administrators to report specified alleged misconduct by certain individuals; prohibiting an individual on the list from employment in specified positions; requiring a charter school to report specified individuals to the department for inclusion on a certain list; amending s. 1002.421, F.S.; requiring certain private schools to include educational support employees in specified policies; requiring certain private schools to deny employment to certain persons; prohibiting the employment of certain employees and personnel under circumstances; requiring private

schools to report specified persons to the department for inclusion on a certain list; authorizing the Commissioner of Education to permanently revoke an owner's or operator's authority to establish or operate a private school in the state under certain circumstances; amending s. 1006.061, F.S.; revising the contents of a sign certain educational entities are required to post to include information relating to reporting of certain criminal acts; amending s. 1012.27, F.S.; revising the requirements for certain employment history checks to include a specified affidavit; amending s. 1012.31, requiring certain persons to execute and maintain an affidavit of separation form for specified purposes; providing requirements for such affidavit; amending s. 1012.315, F.S.; providing that certain persons are ineligible for an educator certification or specified employment; amending s. 1012.795, F.S.; revising acts that warrant a disciplinary action by the commission; amending s. 1012.796, F.S.; prohibiting the department from issuing a certificate to certain persons; requiring the commissioner to make a determination of probable cause within a specified timeframe for complaints relating to sexual misconduct with a student; providing for such timeframe to be held in abeyance under certain circumstances; providing construction; requiring certain individuals to be placed on a disqualification list; requiring the commissioner to remove certain suspended personnel or administrators

from certain positions under specified circumstances; requiring a district school superintendent to immediately suspend certain individuals and take specified action as a results of alleged misconduct; prohibiting certain individuals from serving or applying to serve in specified positions at public schools and specified private schools; providing a timeframe for specified investigations; providing timeframe for administrative suspension; providing criminal penalties; amending s. 1012.797, F.S.; revising provisions relating to notification by law enforcement of certain charges against employees; expanding the entities who receive such notifications; requiring a school principal or designee to notify certain parents of such notifications within a specified timeframe; providing minimum requirements for parental notifications; providing an effective date.

By Senator Perry

8-01134-21 20211864__

A bill to be entitled

An act relating to education; amending s. 1001.10, F.S.; requiring the Department of Education to maintain a disqualification list that includes the identities of certain persons; providing requirements for the disqualification list; authorizing the department to remove a person from the disqualification list if certain conditions are met; requiring the State Board of Education to adopt rules; requiring the department to provide certain staff with access to information from the disqualification list; amending s. 1001.42, F.S.; requiring district school boards to investigate certain complaints and report certain results of such investigations to the department; requiring the department to place a person who is terminated, or resigns in lieu of termination, for a certain reason on the disqualification list; requiring district school boards to adopt policies establishing standards of ethical conduct for educational support employees; requiring district school boards to disqualify educational support employees from employment in certain circumstances; requiring district school boards to report a disqualified person to the department for inclusion on the disqualification list; revising the circumstances under which a school board official shall forfeit his or her salary for 1 year; amending s. 1002.33, F.S.; prohibiting an individual who is on the disqualification list from being employed by a charter

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school or serving as a member of a charter school governing board; requiring a charter school to disqualify certain persons and make a report to the department to include the person on the disqualification list; requiring charter school governing boards to adopt policies establishing standards of ethical conduct for certain employees; requiring charter schools to perform a certain screening before employing a person in any position that requires direct contact with students; requiring charter schools to comply with a specified provision; assigning duties to certain charter school administrative personnel and a charter school governing board; amending s. 1002.421, F.S.; requiring certain private schools to adopt policies establishing standards of ethical conduct for certain employees; revising requirements for certain private schools relating to employment; requiring certain private schools to disqualify certain persons and make a report to the department to include the person on the disqualification list; authorizing the Commissioner of Education to deny or revoke the authority of an owner or operator of a certain private school to establish or operate a private school under certain conditions; requiring the commissioner to include such person on the disqualification list; amending s. 1002.45, F.S.; revising virtual instruction program provider qualifications for department approval; expanding the screening requirements for employees and personnel of

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an approved virtual instruction program provider; requiring an approved virtual instruction program provider to disqualify certain persons and make a report to the department to include the persons on the disqualification list; requiring an approved virtual instruction program provider to comply with a specified provision; requiring an approved virtual instruction program provider to inform the district school board of a certain complaint; amending s. 1006.061, F.S.; requiring certain schools to include information related to certain employees in a required posting; amending s. 1012.31, F.S.; clarifying a school district reporting requirement; amending s. 1012.315, F.S.; expanding ineligibility for educator certification or employment to persons who are on the disqualification list; amending s. 1012.32, F.S.; expanding requirements for screening of certain personnel of a virtual instruction program; prohibiting district school boards from requiring additional background screening of certain employees and personnel; amending s. 1012.795, F.S.; expanding the authority of the Education Practices Commission to discipline certain employees and personnel; amending s. 1012.796, F.S.; requiring the department to complete an investigation before issuing a new educator certificate to certain persons; clarifying the duty of a district school board to perform certain investigations; requiring certain entities to report certain arrests and allegations of misconduct of

certain employees, personnel, and administrators to the department; requiring district school boards to adopt certain policies and procedures regarding educational support employees; requiring school superintendents to report certain misconduct of educational support employees to the department; requiring the department to include certain employees, personnel, and administrators on the disqualification list; requiring the department to maintain certain reports of misconduct; clarifying the department's duty to investigate certificated personnel; requiring a district school superintendent to suspend and reassign educational support employees for a certain allegation of misconduct; expanding penalties that may be imposed by the commission; authorizing the commission to direct the department to include a certain person on the disqualification list for certain conduct; prohibiting persons on the disqualification list from serving or applying to serve as employees or contract personnel at certain institutions; providing criminal penalties; amending s. 1012.797, F.S.; expanding the list of entities that law enforcement agencies must notify of certain charges; requiring law enforcement agencies to notify certain institutions of certain charges against employees or contractors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) and (5) of section 1001.10, Florida Statutes, are amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(4)(a) The Department of Education shall provide technical assistance to school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program under chapter 1002 in the development of policies, procedures, and training related to employment practices and standards of ethical conduct for instructional personnel and school administrators, as defined in s. 1012.01.

(b) The department shall maintain a disqualification list, which must include the following information:

1. The identity of any person who has been permanently denied an educator certificate or whose educator certificate has been permanently revoked and the person has been placed on the list as directed by the Education Practices Commission pursuant to s. 1012.795(1) or s. 1012.796(7);

2. The identity of any person who has been permanently disqualified by the commissioner to be an owner or operator of a private school participating in state scholarship programs pursuant to s. 1002.421 for a reason that reflects any risk of harm to the health, safety, or welfare of a student;

3. The identity of any person who has been terminated, or has resigned in lieu of termination, from employment with a district school board as a result of misconduct that affects the health, safety, or welfare of a student; and

4. The identity of any person who has been disqualified

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from employment pursuant to s. 1012.315.

(c) The department may remove a person from the disqualification list if the person demonstrates that:

1. A completed law enforcement investigation resulted in an exoneration or no conviction or finding of guilt, and a completed investigation and proceeding, as applicable, by the responsible education agency resulted in no finding that the person committed disqualifying conduct; or

2. The person was not the subject of the report of disqualifying conduct and was included on the disqualification list in error or as a result of mistaken identity.

(d) The State Board of Education shall adopt rules to implement the disqualification list.

(5) The Department of Education shall provide authorized staff of school districts, charter schools, the Florida School for the Deaf and the Blind, and private schools that accept scholarship students who participate in a state scholarship program under chapter 1002 with access to electronic verification of information from the following employment screening tools:

(a) The Professional Practices' Database of Disciplinary Actions Against Educators; ~~and~~

(b) The Department of Education's Teacher Certification Database; and

(c) The Department of Education's disqualification list maintained pursuant to paragraph (4)(b).

This subsection does not require the department to provide these staff with unlimited access to the databases. However, the

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department shall provide the staff with access to the data necessary for performing employment history checks of the educational support employees, instructional personnel, and school administrators included in the databases.

Section 2. Subsections (6) and (7) of section 1001.42, Florida Statutes, are amended, and paragraph (c) is added to subsection (5) of that section, to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(5) PERSONNEL.—

(c) Immediately investigate any legally sufficient complaint that involves misconduct by an educational support employee, instructional personnel, or administrative personnel which affects the health, safety, or welfare of a student and would result in termination. An investigation that results in termination, or the accused person's resignation in lieu of termination, must be reported to the department, and the department shall place the person on the disqualification list maintained pursuant to s. 1001.10(4)(b).

(6) STANDARDS OF ETHICAL CONDUCT FOR EDUCATIONAL SUPPORT EMPLOYEES, INSTRUCTIONAL PERSONNEL, ADMINISTRATIVE PERSONNEL, AND SCHOOL OFFICERS.—Adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, administrative personnel, and school officers. The policies must require all educational support employees, instructional personnel, administrative personnel, and school officers, as defined in s. 1012.01, to complete training on the standards; establish the duty of educational support employees,

instructional personnel, administrative personnel, and school officers to report, and procedures for reporting, alleged misconduct by other educational support employees, instructional or administrative personnel, and school officers which affects the health, safety, or welfare of a student, including misconduct that involves engaging in or soliciting sexual, romantic, or lewd conduct with a student; require the district school superintendent to report to law enforcement misconduct by educational support employees, instructional personnel, or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A district school board, or any of its employees or personnel, may not enter into a confidentiality agreement regarding terminated or dismissed educational support employees, instructional or administrative personnel, or school officers who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide educational support employees, instructional personnel, administrative personnel, or school officers with employment references or discuss the employees', personnel's, or officers' performance with prospective employers in another educational setting, without disclosing the employees', personnel's, or officers' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, administrative personnel, or school officers which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be

enforced.

(7) DISQUALIFICATION FROM EMPLOYMENT.—Disqualify educational support employees, instructional personnel, and administrative personnel, as defined in s. 1012.01, from employment in any position that requires direct contact with students if the employees or personnel are ineligible for such employment under s. 1012.315, and, if the disqualifying conduct occurs subsequent to employment, report the disqualified employees or personnel and the disqualifying circumstances to the department for inclusion on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b). An elected or appointed school board official forfeits his or her salary for 1 year if:

(a) The school board official knowingly signs and transmits to any state official a report of alleged misconduct by educational support employees, instructional personnel, or administrative personnel which ~~affects the health, safety, or welfare of a student and~~ the school board official knows ~~the report~~ to be false or incorrect; or

(b) The school board official knowingly fails to adopt policies that require:

1. Educational support employees, instructional personnel, and administrative personnel to report alleged misconduct by other educational support employees, instructional personnel, and administrative personnel;

2. The district school superintendent to report misconduct by educational support employees, instructional personnel, or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315

to the law enforcement agencies with jurisdiction over the conduct and the department as required by s. 1012.796; or

3. The complete investigation of all reports of alleged misconduct by educational support employees, instructional personnel, and administrative personnel, if the misconduct affects the health, safety, or welfare of a student, regardless of whether the educational support employees, instructional personnel, or administrative personnel resign or are terminated before the conclusion of the investigation. The policy must require the superintendent to notify the department of the result of the investigation and whether the misconduct warranted termination, regardless of whether the person resigned or was terminated before the conclusion of the investigation.

Section 3. Paragraph (g) of subsection (12) and paragraphs (b) and (c) of subsection (16) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(12) EMPLOYEES OF CHARTER SCHOOLS.—

(g)1. A charter school shall employ or contract with employees who have undergone background screening as provided in s. 1012.32. Members of the governing board of the charter school shall also undergo background screening in a manner similar to that provided in s. 1012.32. A person may not be employed by a charter school or serve as a member of a charter school governing board if the person is ineligible pursuant to s. 1012.315 or is included on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

2. A charter school shall disqualify educational support employees, instructional personnel, and school administrators,

as defined in s. 1012.01, from employment in any position that requires direct contact with students if the employees, personnel, or administrators are ineligible for such employment under s. 1012.315, and, if the disqualifying conduct occurs subsequent to employment, report the person and the disqualifying circumstances to the department for inclusion on the disqualification list maintained pursuant to s. 1001.10(4)(b).

3. The governing board of a charter school shall adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, and school administrators. The policies must require all educational support employees, instructional personnel, and school administrators, as defined in s. 1012.01, to complete training on the standards; establish the duty of educational support employees, instructional personnel, and school administrators to report, and procedures for reporting, alleged misconduct by other educational support employees, instructional personnel, and school administrators which affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A charter school, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed educational support employees, instructional personnel, or school administrators, or personnel or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide educational support employees, instructional personnel, or school administrators with employment references

or discuss the employees', personnel's, or administrators' performance with prospective employers in another educational setting, without disclosing the employees', personnel's or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

4. Before employing a person ~~instructional personnel or school administrators~~ in any position that requires direct contact with students, a charter school shall conduct employment history checks of each of the person's ~~personnel's or administrators'~~ previous employers, screen the person ~~instructional personnel or school administrators~~ through use of the ~~educator~~ screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the charter school must document efforts to contact the employer.

5. The sponsor of a charter school that knowingly fails to comply with this paragraph shall terminate the charter under subsection (8).

(16) EXEMPTION FROM STATUTES.—

(b) ~~Additionally,~~ A charter school also shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size,

except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

8. Section 1006.12, relating to safe-school officers.

9. Section 1006.07(7), relating to threat assessment teams.

10. Section 1006.07(9), relating to School Environmental Safety Incident Reporting.

11. Section 1006.1493, relating to the Florida Safe Schools Assessment Tool.

12. Section 1006.07(6)(c), relating to adopting an active assailant response plan.

13. Section 943.082(4)(b), relating to the mobile suspicious activity reporting tool.

14. Section 1012.584, relating to youth mental health awareness and assistance training.

15. Section 1012.796, relating to complaints against educational support employees, teachers, and administrators.

(c) For purposes of subparagraphs (b)4.-7. and 15.:

1. The duties assigned to a district school superintendent apply to charter school administrative personnel, as defined in s. 1012.01(3)(a) and (b), and the charter school governing board shall designate at least one administrative person to be

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responsible for such duties.

2. The duties assigned to a district school board apply to a charter school governing board.

3. A charter school may hire instructional personnel and other employees on an at-will basis.

4. Notwithstanding any provision to the contrary, instructional personnel and other employees on contract may be suspended or dismissed any time during the term of the contract without cause.

Section 4. Paragraphs (n) and (o) of subsection (1) and subsection (3) of section 1002.421, Florida Statutes, are amended, and paragraph (r) of subsection (1) is added to that section, to read:

1002.421 State school choice scholarship program accountability and oversight.—

(1) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—A private school participating in an educational scholarship program established pursuant to this chapter must be a private school as defined in s. 1002.01(2) in this state, be registered, and be in compliance with all requirements of this section in addition to private school requirements outlined in s. 1002.42, specific requirements identified within respective scholarship program laws, and other provisions of Florida law that apply to private schools, and must:

(n) Adopt policies establishing standards of ethical conduct for educational support employees, instructional personnel, and school administrators. The policies must require all educational support employees, instructional personnel, and school administrators, as defined in s. 1012.01, to complete

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training on the standards; establish the duty of educational support employees, instructional personnel, and school administrators to report, and procedures for reporting, alleged misconduct by other educational support employees, instructional personnel, and school administrators which affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A private school, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed educational support employees, instructional personnel, or school administrators, or personnel or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide the employees, ~~instructional~~ personnel, or school administrators with employment references or discuss the employees', personnel's, or administrators' performance with prospective employers in another educational setting, without disclosing the employees', personnel's, or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

(o) Before employing an individual ~~instructional personnel or school administrators~~ in any position that requires direct contact with students, conduct employment history checks of ~~each of the personnel's or administrators'~~ previous employers, screen the individual using the ~~personnel or administrators through use~~

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~~of the educator~~ screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the private school must document efforts to contact the employer. The private school must deny employment to any individual whose educator certificate is revoked, who is barred from reapplication for an educator certificate, or who is identified on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

(r) Disqualify educational support employees, instructional personnel, and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment pursuant to this section or s. 1012.315, and, if the disqualifying conduct occurs subsequent to employment, report the person and the disqualifying circumstances to the department for inclusion on the disqualification list maintained pursuant to s. 1001.10(4)(b).

The department shall suspend the payment of funds to a private school that knowingly fails to comply with this subsection, and shall prohibit the school from enrolling new scholarship students, for 1 fiscal year and until the school complies. If a private school fails to meet the requirements of this subsection or has consecutive years of material exceptions listed in the report required under paragraph (q), the commissioner may determine that the private school is ineligible to participate in a scholarship program.

(3) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—The Commissioner of Education:

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(a) Shall deny, suspend, or revoke a private school's participation in a scholarship program if it is determined that the private school has failed to comply with this section or exhibits a previous pattern of failure to comply. However, if the noncompliance is correctable within a reasonable amount of time, not to exceed 45 days, and if the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance which provides the private school with a timeframe within which to provide evidence of compliance before taking action to suspend or revoke the private school's participation in the scholarship program.

(b) May deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public or if the owner or operator has exhibited a previous pattern of failure to comply with this section or specific requirements identified within respective scholarship program laws. For purposes of this subsection, the term "owner or operator" has the same meaning as provided in paragraph (1)(p).

(c) May permanently deny or revoke the authority of an owner or operator to establish or operate a private school participating in an educational scholarship program pursuant to this chapter if the commissioner decides that the owner or operator is operating or has operated an educational institution in this state or another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public, and

shall include such person on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

(d)1.~~(c)1.~~ In making such a determination, may consider factors that include, but are not limited to, acts or omissions by an owner or operator which led to a previous denial, suspension, or revocation of participation in a state or federal education scholarship program; an owner's or operator's failure to reimburse the department or scholarship-funding organization for scholarship funds improperly received or retained by a school; the imposition of a prior criminal sanction related to an owner's or operator's management or operation of an educational institution; the imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution; or other types of criminal proceedings in which an owner or operator was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense involving fraud, deceit, dishonesty, or moral turpitude.

2. The commissioner's determination is subject to the following:

a. If the commissioner intends to deny, suspend, or revoke a private school's participation in the scholarship program, the department shall notify the private school of such proposed action in writing by certified mail and regular mail to the private school's address of record with the department. The notification shall include the reasons for the proposed action and notice of the timelines and procedures set forth in this

paragraph.

b. The private school that is adversely affected by the proposed action shall have 15 days after receipt of the notice of proposed action to file with the department's agency clerk a request for a proceeding pursuant to ss. 120.569 and 120.57. If the private school is entitled to a hearing under s. 120.57(1), the department shall forward the request to the Division of Administrative Hearings.

c. Upon receipt of a request referred pursuant to this subparagraph, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written request by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days after the entry of a recommended order. The provisions of this sub-subparagraph may be waived upon stipulation by all parties.

(e) ~~(d)~~ May immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

1. An imminent threat to the health, safety, or welfare of the students;

2. A previous pattern of failure to comply with this section; or

3. Fraudulent activity on the part of the private school. Notwithstanding s. 1002.22, in incidents of alleged fraudulent

activity pursuant to this section, the department's Office of Inspector General is authorized to release personally identifiable records or reports of students to the following persons or organizations:

a. A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

b. A person or entity authorized by a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

c. Any person, entity, or authority issuing a subpoena for law enforcement purposes when the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

The commissioner's order suspending payment pursuant to this paragraph may be appealed pursuant to the same procedures and timelines as the notice of proposed action set forth in subparagraph (d)2. ~~subparagraph (c)2.~~

Section 5. Paragraph (a) of subsection (2) of section 1002.45, Florida Statutes, is amended to read:

1002.45 Virtual instruction programs.—

(2) PROVIDER QUALIFICATIONS.—

(a) The department shall annually publish online a list of

providers approved to offer virtual instruction programs. To be approved by the department, a provider must document that it:

1. Is nonsectarian in its programs, admission policies, employment practices, and operations;

2. Complies with the antidiscrimination provisions of s. 1000.05;

3. Locates an administrative office or offices in this state, requires its administrative staff to be state residents, requires all instructional staff to be Florida-certified teachers under chapter 1012, and conducts background screenings and receives arrest reports for all employees or contracted personnel, as required by s. 1012.32, using state and national criminal history records, and designates at least one administrator to be responsible for the duties and requirements related to background screening assigned to a district school board and superintendent under ss. 1012.465 and 1012.56(10);

4. Disqualifies educational support employees, instructional personnel, and administrative personnel, as defined in s. 1012.01, from employment in any position that requires direct contact with students, if the employees or personnel are ineligible for such employment under s. 1012.315, and, if the disqualifying conduct occurs subsequent to employment, reports the disqualified employees or personnel and the disqualifying circumstances to the department for inclusion on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b).

5.~~4.~~ Provides to parents and students specific information posted and accessible online that includes, but is not limited to, the following teacher-parent and teacher-student contact

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information for each course:

a. How to contact the instructor via phone, e-mail, or online messaging tools.

b. How to contact technical support via phone, e-mail, or online messaging tools.

c. How to contact the administration office via phone, e-mail, or online messaging tools.

d. Any requirement for regular contact with the instructor for the course and clear expectations for meeting the requirement.

e. The requirement that the instructor in each course must, at a minimum, conduct one contact via phone with the parent and the student each month;

6.~~5.~~ Possesses prior, successful experience offering online courses to elementary, middle, or high school students as demonstrated by quantified student learning gains in each subject area and grade level provided for consideration as an instructional program option. However, for a provider without sufficient prior, successful experience offering online courses, the department may conditionally approve the provider to offer courses measured pursuant to subparagraph (8)(a)2. Conditional approval shall be valid for 1 school year only and, based on the provider's experience in offering the courses, the department shall determine whether to grant approval to offer a virtual instruction program;

7.~~6.~~ Is accredited by a regional accrediting association as defined by State Board of Education rule;

8.~~7.~~ Ensures instructional and curricular quality through a detailed curriculum and student performance accountability plan

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that addresses every subject and grade level it intends to provide through contract with the school district, including:

a. Courses and programs that meet the standards of the International Association for K-12 Online Learning and the Southern Regional Education Board.

b. Instructional content and services that align with, and measure student attainment of, student proficiency in the Next Generation Sunshine State Standards.

c. Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate;

9.~~8.~~ Publishes for the general public, in accordance with disclosure requirements adopted in rule by the State Board of Education, as part of its application as a provider and in all contracts negotiated pursuant to this section:

a. Information and data about the curriculum of each full-time and part-time program.

b. School policies and procedures.

c. Certification status and physical location of all administrative and instructional personnel.

d. Hours and times of availability of instructional personnel.

e. Student-teacher ratios.

f. Student completion and promotion rates.

g. Student, educator, and school performance accountability outcomes;

10.~~9.~~ If the provider is a Florida College System institution, employs instructors who meet the certification requirements for instructional staff under chapter 1012; and

11.~~10.~~ Performs an annual financial audit of its accounts and records conducted by an independent certified public accountant which is in accordance with rules adopted by the Auditor General, is conducted in compliance with generally accepted auditing standards, and includes a report on financial statements presented in accordance with generally accepted accounting principles.

12. Complies with s. 1012.796, relating to complaints against educational support employees, teachers, and administrators and designates at least one administrator to be responsible for the duties and requirements assigned to a district school board and superintendent pursuant to that section. A virtual instruction provider must inform the district school board of a complaint regarding misconduct or an arrest of instructional or noninstructional personnel.

Section 6. Subsection (2) of section 1006.061, Florida Statutes, is amended to read:

1006.061 Child abuse, abandonment, and neglect policy.—Each district school board, charter school, and private school that accepts scholarship students who participate in a state scholarship program under chapter 1002 shall:

(2) Post in a prominent place at each school site and on each school's Internet website, if available, the policies and procedures for reporting alleged misconduct by educational support employees, instructional personnel, or school administrators which affects the health, safety, or welfare of a student; the contact person to whom the report is made; and the penalties imposed on educational support employees, instructional personnel, or school administrators who fail to

report suspected or actual child abuse or alleged misconduct by other educational support employees, instructional personnel, or school administrators.

The Department of Education shall develop, and publish on the department's Internet website, sample notices suitable for posting in accordance with subsections (1), (2), and (4).

Section 7. Paragraph (a) of subsection (3) of section 1012.31, Florida Statutes, is amended to read:

1012.31 Personnel files.—Public school system employee personnel files shall be maintained according to the following provisions:

(3)(a) Public school system employee personnel files are subject to the provisions of s. 119.07(1), except as follows:

1. Any complaint and any material relating to the investigation of a complaint against an employee shall be confidential and exempt from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active. If the preliminary investigation is concluded with the finding that there is no probable cause to proceed further and with no disciplinary action taken or charges filed, a statement to that effect signed by the responsible investigating official shall be attached to the complaint, and the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation is concluded with the finding that there is probable cause to proceed further or with disciplinary action taken or charges filed, the complaint and all such materials shall be open thereafter to inspection

pursuant to s. 119.07(1). If the preliminary investigation ceases to be active, the complaint and all such materials shall be open thereafter to inspection pursuant to s. 119.07(1). For the purpose of this subsection, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made. This subparagraph does not absolve the school district of the duty to issue any legally required notifications, including the ~~its~~ duty to provide any legally sufficient complaint to the department in accordance with ~~within 30 days after the date on which the subject matter of the complaint comes to the attention of the school district pursuant to~~ s. 1012.796(1)(d)1. and 3., regardless of the status of the complaint.

2. An employee evaluation prepared pursuant to s. 1012.33, s. 1012.34, or s. 1012.56 or rules adopted by the State Board of Education or district school board under the authority of those sections shall be confidential and exempt from the provisions of s. 119.07(1) until the end of the school year immediately following the school year in which the evaluation was made. No evaluation prepared before July 1, 1983, shall be made public pursuant to this section.

3. No material derogatory to an employee shall be open to inspection until 10 days after the employee has been notified pursuant to paragraph (2)(c).

4. The payroll deduction records of an employee shall be confidential and exempt from the provisions of s. 119.07(1).

5. Employee medical records, including psychiatric and psychological records, shall be confidential and exempt from the provisions of s. 119.07(1); however, at any hearing relative to the competency or performance of an employee, the administrative law judge, hearing officer, or panel shall have access to such records.

Section 8. Section 1012.315, Florida Statutes, is amended to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students who participate in a state scholarship program under chapter 1002 if the person is included in the disqualification list maintained by the department pursuant to s. 1001.10(4)(b) or has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated

manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section 784.021, relating to aggravated assault.

(g) Section 784.045, relating to aggravated battery.

(h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section 787.01, relating to kidnapping.

(j) Section 787.02, relating to false imprisonment.

(k) Section 787.025, relating to luring or enticing a child.

(l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

(n) Section 790.115(1), relating to exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of a school.

(o) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.

(p) Section 794.011, relating to sexual battery.

(q) Former s. 794.041, relating to sexual activity with or

solicitation of a child by a person in familial or custodial authority.

(r) Section 794.05, relating to unlawful sexual activity with certain minors.

(s) Section 794.08, relating to female genital mutilation.

(t) Chapter 796, relating to prostitution.

(u) Chapter 800, relating to lewdness and indecent exposure.

(v) Section 800.101, relating to offenses against students by authority figures.

(w) Section 806.01, relating to arson.

(x) Section 810.14, relating to voyeurism.

(y) Section 810.145, relating to video voyeurism.

(z) Section 812.014(6), relating to coordinating the commission of theft in excess of $3,000.

(aa) Section 812.0145, relating to theft from persons 65 years of age or older.

(bb) Section 812.019, relating to dealing in stolen property.

(cc) Section 812.13, relating to robbery.

(dd) Section 812.131, relating to robbery by sudden snatching.

(ee) Section 812.133, relating to carjacking.

(ff) Section 812.135, relating to home-invasion robbery.

(gg) Section 817.563, relating to fraudulent sale of controlled substances.

(hh) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

(ii) Section 825.103, relating to exploitation of an

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elderly person or disabled adult.

(jj) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(kk) Section 826.04, relating to incest.

(ll) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(mm) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(nn) Section 827.071, relating to sexual performance by a child.

(oo) Section 843.01, relating to resisting arrest with violence.

(pp) Chapter 847, relating to obscenity.

(qq) Section 874.05, relating to causing, encouraging, soliciting, or recruiting another to join a criminal street gang.

(rr) Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

(ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(tt) Section 944.47, relating to introduction, removal, or possession of contraband at a correctional facility.

(uu) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(vv) Section 985.711, relating to introduction, removal, or possession of contraband at a juvenile detention facility or

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commitment program.

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) Section 784.03, relating to battery, if the victim of the offense was a minor.

(b) Section 787.025, relating to luring or enticing a child.

(3) Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subsection (1) or subsection (2).

(4) Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the Registered Juvenile Sex Offender List under s. 943.0435(1)(h)1.d.

Section 9. Paragraph (a) of subsection (2) and paragraph (b) of subsection (3) of section 1012.32, Florida Statutes, are amended to read:

1012.32 Qualifications of personnel.—

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system, virtual instruction program, or university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable. A district school board may not require employees or contractual personnel of a virtual instruction provider approved pursuant to s. 1002.45(2) to undergo additional

background screening.

Fingerprints shall be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection. A district school board shall reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the Florida Department of Law Enforcement or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional personnel.

(3)

(b) The Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (a). Any arrest record

that is identified with the retained fingerprints of a person subject to the background screening under this section shall be reported to the employing or contracting school district, virtual instruction provider approved pursuant to s. 1002.45(2), or the school district with which the person is affiliated. All school districts and approved virtual instruction providers are ~~Each school district is~~ required to participate in this search process by payment of an annual fee to the Department of Law Enforcement and by informing the Department of Law Enforcement of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of its instructional and noninstructional personnel whose fingerprints are retained under paragraph (a). The Department of Law Enforcement shall adopt a rule setting the amount of the annual fee to be imposed upon each school district and approved virtual instruction provider for performing these searches and establishing the procedures for the retention of instructional and noninstructional personnel fingerprints and the dissemination of search results. The fee may be borne by the district school board, the approved virtual instruction provider, the contractor, or the person fingerprinted.

Section 10. Subsection (1) of section 1012.795, Florida Statutes, is amended to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any instructional personnel or school administrator, as defined in s. 1012.01(2) or (3), for up to 5 years, thereby denying that person the right to teach or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to subsection (4); may permanently revoke the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend a person's educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; may direct the department to place employees or contractual personnel of any public school, charter school, charter school governing board, or private school that participates in a state scholarship program under chapter 1002 on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b) for misconduct that would render the person ineligible pursuant to s. 1012.315; or may impose any other penalty provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.

(e) Has had an educator certificate or other professional license sanctioned by this or any other state or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivisions. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate. For purposes of this section, a sanction or action against a professional license, a certificate, or an authority to practice a regulated profession must relate to being an educator or the fitness of or ability to be an educator.

(f) Has been convicted or found guilty of, has had adjudication withheld for, or has pled guilty or nolo contendere to a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(p) Has violated test security as provided in s. 1008.24.

Section 11. Section 1012.796, Florida Statutes, is amended to read:

1012.796 Complaints against educational support employees, teachers, and administrators; procedure; penalties.—

(1)(a) The Department of Education shall cause to be investigated expeditiously any complaint filed before it or otherwise called to its attention which, if legally sufficient, contains grounds for the revocation or suspension of a certificate or any other appropriate penalty as set forth in subsection (7). The complaint is legally sufficient if it contains the ultimate facts that ~~which~~ show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The department shall investigate or continue to investigate and take appropriate action on a complaint even though the original complainant withdraws the complaint or otherwise indicates a desire not to cause it to be investigated or prosecuted to completion. The department may investigate or continue to investigate and take action on a complaint filed against a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly committed while that person possessed an educator certificate and may not issue a new certificate to such person unless an investigation has been completed.

(b) The department shall immediately investigate any legally sufficient complaint that involves misconduct by any certificated personnel which affects the health, safety, or welfare of a student, giving the complaint priority over other pending complaints. The department must investigate or continue to investigate and take action on such a complaint filed against

a person whose educator certificate has expired if the act or acts that are the basis for the complaint were allegedly committed while that person possessed an educator certificate.

(c) When an investigation is undertaken, the department shall notify the certificateholder or applicant for certification and the district school superintendent or the university laboratory school, charter school, or private school in which the certificateholder or applicant for certification is employed or was employed at the time the alleged offense occurred. In addition, the department shall inform the certificateholder or applicant for certification of the substance of any complaint that ~~which~~ has been filed against that certificateholder or applicant, unless the department determines that such notification would be detrimental to the investigation, in which case the department may withhold notification.

(d)1. Each school district shall file in writing with the department all legally sufficient complaints within 30 days after the date on which subject matter of the complaint comes to the attention of the school district, regardless of whether the subject of the complaint is still an employee of the school district. A complaint is legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The school district shall include all information relating to the complaint which is known to the school district at the time of filing.

2. A school district shall immediately notify the department if the subject of a legally sufficient complaint of

misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school district's investigation. Upon receipt of the notification, the department shall place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4). This subparagraph does not limit or restrict the duty of the district school board to investigate the complaint and misconduct and report the findings and conclusion to the department.

3. Each district school board or superintendent, charter school governing board, approved virtual instruction provider, and private school that participates in a state scholarship program under chapter 1002 shall immediately report to the Department of Education an arrest or conviction of educational support employees, administrative or instructional personnel, or school officials for an offense that reflects a risk of harm to the health, safety, or welfare of a student or would render the person ineligible pursuant to s. 1012.315, as determined by state board rule adopted pursuant to this section. The same reporting requirements apply to a substantiated allegation of such misconduct by educational support employees, administrative or instructional personnel, or school officials, regardless of whether the accused person has been arrested or convicted in relation to the misconduct.

4.~~3.~~ Each district school board shall develop and adopt

policies and procedures to comply with this reporting requirement. School board policies and procedures must include standards for screening, hiring, and terminating educational support employees, instructional personnel, and school administrators, as defined in s. 1012.01; standards of ethical conduct for educational support employees, instructional personnel, and school administrators; the duties of educational support employees, instructional personnel, and school administrators for upholding the standards; detailed procedures for reporting alleged misconduct by educational support employees, instructional personnel, and school administrators which affects the health, safety, or welfare of a student; requirements for the reassignment of educational support employees, instructional personnel, and ~~or~~ school administrators pending the outcome of a misconduct investigation; and penalties for failing to comply with s. 1001.51 or s. 1012.795. The district school board policies and procedures must ~~shall~~ include appropriate penalties for all personnel of the district school board for nonreporting and procedures for promptly informing the district school superintendent of each legally sufficient complaint. The district school superintendent is charged with knowledge of these policies and procedures and is accountable for the training of all educational support employees, instructional personnel, and school administrators of the school district on the standards of ethical conduct, policies, and procedures.

5.~~4.~~ If the district school superintendent has knowledge of a legally sufficient complaint and does not report the complaint, or fails to enforce the policies and procedures of

the district school board, and fails to comply with the requirements of this subsection, in addition to other actions against certificateholders authorized by law, the district school superintendent is subject to penalties as specified in s. 1001.51(12).

6.~~5.~~ If the superintendent determines that misconduct by educational support employees, instructional personnel, or school administrators who hold an educator certificate affects the health, safety, or welfare of a student and the misconduct warrants termination, the educational support employees, instructional personnel, or school administrators may resign or be terminated, and the superintendent must report the misconduct to the department in the format prescribed by the department. The department shall place such educational support employees, instructional personnel, or school administrators on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b). The department shall maintain each report of misconduct as a public record in the educational support employees', instructional personnel's, or school administrators' certification files. This paragraph does not limit or restrict the power and duty of the department to investigate complaints regarding certificated personnel, regardless of the school district's untimely filing, or failure to file, complaints and followup reports. This subparagraph does not create a duty for the department to investigate complaints regarding noncertified personnel.

(e) If allegations arise against an employee who is certified under s. 1012.56 and employed in an educator-certificated position in any public school, charter school or

governing board thereof, or private school that accepts scholarship students who participate in a state scholarship program under chapter 1002, the school shall file in writing with the department a legally sufficient complaint within 30 days after the date on which the subject matter of the complaint came to the attention of the school, regardless of whether the subject of the allegations is still an employee of the school. A complaint is legally sufficient if it contains ultimate facts that show a violation has occurred as provided in s. 1012.795 and defined by rule of the State Board of Education. The school shall include all known information relating to the complaint with the filing of the complaint. This paragraph does not limit or restrict the power and duty of the department to investigate complaints, regardless of the school's untimely filing, or failure to file, complaints and followup reports. A school described in this paragraph shall immediately notify the department if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school's investigation. Upon receipt of the notification, the department shall place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until permitted by subsection (4).

(f) Notwithstanding any other law, all law enforcement agencies, state attorneys, social service agencies, district

school boards, and the Division of Administrative Hearings shall fully cooperate with and, upon request, shall provide unredacted documents to the Department of Education to further investigations and prosecutions conducted pursuant to this section. Any document received may not be redisclosed except as authorized by law.

(2) The Commissioner of Education shall develop job specifications for investigative personnel employed by the department. Such specifications shall be substantially equivalent to or greater than those job specifications of investigative personnel employed by the Department of Business and Professional Regulation. The department may contract with the Department of Business and Professional Regulation for investigations. No person who is responsible for conducting an investigation of a teacher or administrator may prosecute the same case. The department general counsel or members of that staff may conduct prosecutions under this section.

(3) The department staff shall advise the commissioner concerning the findings of the investigation and of all referrals by the Florida High School Athletic Association (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The department general counsel or members of that staff shall review the investigation or the referral and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in his or her judgment, such

agreements are in the best interests of the department, the certificateholder, and the public. Such deferred prosecution agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement may not be entered into if there is probable cause to believe that a felony or an act of moral turpitude, as defined by rule of the State Board of Education, has occurred, or for referrals by the FHSAA. Upon finding no probable cause, the commissioner shall dismiss the complaint and may issue a letter of guidance to the certificateholder.

(4) The complaint and all information obtained pursuant to the investigation by the department shall be confidential and exempt from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation of the complaint, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6). However, the complaint and all material assembled during the investigation may be inspected and copied by the certificateholder under investigation, or the certificateholder's designee, after the investigation is concluded, but prior to the determination of probable cause by the commissioner. If the preliminary investigation is concluded with the finding that there is no probable cause to proceed, the complaint and information shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation is concluded with the finding that there is probable cause to proceed and a complaint is filed pursuant to subsection (6), the complaint and information shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation

ceases to be active, the complaint and all such material shall be open thereafter to inspection pursuant to s. 119.07(1), except as otherwise provided pursuant to s. 1012.798(6). For the purpose of this subsection, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future.

(5) When an allegation of misconduct by educational support employees, instructional personnel, or school administrators, as defined in s. 1012.01, is received, if the alleged misconduct affects the health, safety, or welfare of a student, the district school superintendent in consultation with the school principal, or upon the request of the Commissioner of Education, must immediately suspend the educational support employees, instructional personnel, or school administrators from regularly assigned duties, with pay, and reassign the suspended employees, personnel, or administrators to positions that do not require direct contact with students in the district school system. Such suspension shall continue until the completion of the proceedings and the determination of sanctions, if any, pursuant to this section and s. 1012.795.

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the

appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed $2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or separation from employment in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

(i) Direct the department to place educational support employees, instructional personnel, or school administrators on

the disqualification list maintained by the department pursuant to s. 1001.10(4)(b) for conduct that would render the person ineligible pursuant to s. 1012.315.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

(8) Violations of the provisions of a final order shall result in an order to show cause issued by the clerk of the Education Practices Commission if requested by the Department of Education. Upon failure of the educator, at the time and place stated in the order, to show cause satisfactorily to the Education Practices Commission why a penalty for violating the provisions of a final order should not be imposed, the Education Practices Commission shall impose whatever penalty is appropriate as established in s. 1012.795(6). The Department of Education shall prosecute the individual ordered to show cause before the Education Practices Commission. The Department of Education and the individual may enter into a settlement agreement, which shall be presented to the Education Practices Commission for consideration. Any probation period will be tolled when an order to show cause has been issued until the issue is resolved by the Education Practices Commission; however, the other terms and conditions of the final order shall be in full force and effect until changed by the Education Practices Commission.

(9) All moneys collected by, or awarded to, the commission as fees, fines, penalties, or costs shall be deposited into the Educational Certification and Service Trust Fund pursuant to s.

1012.59.

(10) Persons included on the disqualification list maintained by the department pursuant to s. 1001.10(4)(b) may not serve or apply to serve as employees or contractual personnel at any public school or private school participating in a state scholarship program under chapter 1002. A person who knowingly violates this subsection, or an employer who knowingly hires a person in violation of this subsection, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Section 1012.797, Florida Statutes, is amended to read:

1012.797 Notification by law enforcement ~~of district school superintendent~~ of certain charges against or convictions of employees.—

(1) Notwithstanding ~~the provisions of~~ s. 985.04(7) or any other ~~provision of~~ law to the contrary, a law enforcement agency shall, within 48 hours, notify the appropriate district school superintendent, charter school governing board, or private school owner or administrator, as applicable, of the name and address of any employee or contractor of the school district, charter school, or private school, as applicable, who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. The notification shall include the specific charge for which the employee or contractor ~~of the school district~~ was arrested. Such notification shall include other education providers such as the Florida School for the Deaf and the Blind, university lab schools, and private elementary and secondary schools.

(2) Except to the extent necessary to protect the health, safety, and welfare of other students, the information obtained by the district school superintendent pursuant to this section may be released only to appropriate school personnel or as otherwise provided by law.

Section 13. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

1864
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Education

Name Dr. Danielle Thomas

Job Title VP of Education

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1898
INTRODUCER:	Senator Rodriguez
SUBJECT:	Student Literacy
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Underhill	Elwell	AED	**Recommend: Favorable**
3.	Underhill	Sadberry	AP	**Favorable**

I. Summary:

SB 1898 includes requirements to identify student deficiencies in literacy and intervene as early as prekindergarten, support students in transitioning to kindergarten, and monitor student progress. The bill establishes a coordinated screening and progress monitoring system for students enrolled in the Voluntary Prekindergarten Education Program and students enrolled in public schools in kindergarten through grade 8. The bill also requires:

- The Department of Education (DOE) to review the competencies for the reading endorsement and provide a new pathway for teachers to achieve the reading endorsement.
- The DOE to develop a handbook to provide to parents of students with a reading deficiency to support parental engagement in student learning.
- The Just Read, Florida! Office (JRFO) to identify instructional materials that implement evidence-based reading practices and streamlines the process by which school districts may adopt identified and approved instructional materials.
- The JRFO to work with the Office of Early Learning in the development of the emergent literacy training courses and specifies that the courses must be consistent with evidence-based reading instructional and intervention programs.
- Establishes the Reading Achievement Initiative for Scholastic Excellence (RAISE) Program to provide literacy supports statewide through at least 20 regional literacy support teams.
- Establishes a tutoring program that affords high school juniors and seniors the opportunity to satisfy community service requirements and earn a designation as a New Worlds Scholar by providing 500 verified tutoring hours to students with a substantial deficiency in reading in kindergarten through grade 3.
- Voluntary Prekindergarten Program (VPK) instructors to take a required emergent literacy training course every five years.
- VPK providers to be rated based on student performance during the VPK school year.

The bill will have a significant negative fiscal to the state to implement the new coordinated screening and progress monitoring program and to contract with an external entity to implement the new Reading Achievement Initiative for Scholastic Excellence (RAISE) within the department. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Educator Certification Requirements

Florida law specifies certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics; adequate pedagogical knowledge; and relevant subject matter competence so as to demonstrate an acceptable level of professional performance.[1]

In order to seek educator certification, a person must meet general eligibility requirements, which include receipt of a bachelor's or higher degree from an approved postsecondary institution.[2] Individuals must also demonstrate mastery of general knowledge, if the person serves as a classroom teacher; mastery of subject area knowledge; and mastery of professional preparation.[3]

Education Preparation Programs

Present Situation

In Florida, teacher preparation programs are accountable for producing individuals with the competencies and skills necessary to achieve state education goals.[4] State approved teacher preparation program uniform core curricula must include scientifically researched and evidence-based reading instructional strategies that improve reading performance for all students, including explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and multisensory intervention strategies.[5] Teacher preparation program completers are eligible for a Florida Professional Educator's Certification upon program completion.[6]

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[1] Section 1012.54, F.S.
[2] Section 1012.56(2)(c), F.S., and Rule 6A-4.003, F.A.C.
[3] Section 1012.56(2)(g)-(i), F.S.
[4] Section 1004.04(1)(b), F.S.
[5] Section 1004.04(2)(b)3., F.S.
[6] Florida Department of Education (DOE), *Educator Preparation*, http://www.fldoe.org/teaching/preparation/ (last visited Mar. 12, 2021), and Rule 6A-5.066(1)(p), F.A.C.

Each teacher preparation program must be approved by the Department of Education (DOE) based on criteria specified in law. In order to be admitted into an approved teacher preparation program, a student must, at a minimum:[7]

- Have a grade point average of at least 2.5 on a 4.0 scale for the general education component of undergraduate studies or have completed the requirements for a baccalaureate degree with a minimum grade point average of 2.5 on a 4.0 scale from an approved college or university.[8]
- Demonstrate mastery of general knowledge sufficient for entry into the program, including the ability to read, write, and perform in mathematics, by passing the General Knowledge Test of the Florida Teacher Certification Examination or, for a graduate level program, obtain a baccalaureate degree from an approved institution.[9]

Each teacher preparation program may waive these admissions requirements for up to ten percent of the students admitted. Programs must implement strategies to ensure that students admitted under a waiver receive assistance to demonstrate competencies to successfully meet requirements for certification, and must annually report to the DOE the status of each candidate admitted under such a waiver.[10]

Effect of Proposed Changes (Section 11)

The bill modifies s. 1004.04, F.S., to allow students in public postsecondary teacher preparation programs to meet grade point average and General Knowledge Test requirements as a condition to completing the program, instead of as a condition of admission to the program. Accordingly, the bill removes the authority for teacher preparation programs to waive admission requirements. These modifications may enable more people to enter teacher preparation programs and become certified teachers.

Teacher Professional Development

Present Situation

To renew a professional certificate, an applicant must earn a minimum of 6 college credits or 120 inservice points or a combination thereof. Florida provides subject area specialization requirements for college credits or inservice points.[11] An applicant for renewal of a professional certificate in any area of certification identified by SBE rule[12] which includes reading instruction or intervention for any students in kindergarten through grade 6 must earn a minimum of two college credits or forty inservice points in the use of explicit, systematic, and sequential approaches to reading instruction, developing phonemic awareness, and implementing

[7] Section 1004.04(3), F.S.
[8] An approved institution is one that is accredited by a specified regional accrediting association or an accrediting agency approved by the United States Department of Education. A qualifying non-accredited institution is one that is identified as having a quality program resulting in a bachelor's degree or higher by criteria specified in SBE rule. Rule 6A-4.003, F.A.C.
[9] Rule 6A-4.003, F.A.C.
[10] Section 1004.04(3), F.S.
[11] Section 1012.585(3), F.S.
[12] Rule 6A-4.0051, F.A.C., requires specialized training in reading instruction for certificate covering Elementary Education (K-6), Prekindergarten/Primary Education (age 3 through grade 3), Elementary Education (grades 1-6), Primary Education (grades K-3), English (grades 1-6), Middle Grades English (grades 5-9), Middle Grades Integrated Curriculum (grades 5-9), English (6-12), Reading (K-12), Reading (Endorsement), and English for Speakers of Other Languages (ESOL) (grades K-12).

multisensory intervention strategies. Such training must be provided by teacher preparation programs or school district professional development systems approved by the DOE.[13]

School District Professional Development

Each school district is required to establish a professional development system that provides training to reading coaches, classroom teachers, and school administrators in effective methods of identifying characteristics of conditions such as dyslexia and other causes of diminished phonological processing skills; incorporating instructional techniques into the general education setting which are proven to improve reading performance for all students; and using predictive and other data to make instructional decisions based on individual student needs. The training must help teachers integrate phonemic awareness; phonics, word study, and spelling; reading fluency; vocabulary, including academic vocabulary; and text comprehension strategies into an explicit, systematic, and sequential approach to reading instruction, including multisensory intervention strategies.[14]

Each district must provide all elementary grades instructional personnel access to training sufficient to meet the requirements for a certificate in an area of certification that includes reading instruction or intervention for students in kindergarten through grade 6.[15]

William Cecil Golden Professional Development Program for School Leaders

The William Cecil Golden Professional Development Program for School Leaders provides high standards and sustained support for principals as instructional leaders. The program consists of a collaborative network of state and national professional leadership organizations to respond to instructional leadership needs throughout the state. The goals of the network leadership program include:

- Providing resources to support and enhance the principal's role as the instructional leader.
- Maintaining a clearinghouse and disseminating data-supported information related to enhanced student achievement, based on educational research and best practices.
- Building the capacity to increase the quality of programs for preservice education for aspiring principals and inservice professional development for principals and principal leadership teams.
- Supporting best teaching and research-based instructional practices through dissemination and modeling at the preservice and inservice levels for both teachers and principals.[16]

Just Read, Florida! Office

The Just Read, Florida! Office (JRFO) within the DOE is generally directed to perform duties that relate to improving student literacy, and, accordingly, developing training for educational personnel to support student literacy.[17]

[13] Section 1012.585(3)(f), F.S.; Rule 6A-4.0051(7)(a), F.A.C.
[14] Section 1012.98(4)(b)11., F.S.
[15] *Id.*
[16] Section 1012.986(1), F.S.
[17] Section 1001.215, F.S.

The JRFO, in collaboration with the Lastinger Center for Learning at the University of Florida (Lastinger Center), is required to develop training for K-12 teachers, reading coaches, and school principals on effective content-area-specific reading strategies; the integration of content-rich curriculum from other core subject areas into reading instruction; and evidence-based reading strategies to improve student reading performance. For secondary teachers, emphasis must be on technical text. These strategies must be developed for all content areas in the K-12 curriculum.[18]

Effect of Proposed Changes (Sections 1, 17, 19, and 20)

The bill modifies s. 1012.98, F.S., to require the DOE to identify professional development opportunities that require a teacher to demonstrate proficiency in a specific classroom practice, with priority given to implementing evidence-based reading instructional and intervention strategies identified by the JRFO. The bill amends s. 1012.585, F.S., to provide that a teacher may earn inservice points only once during each 5-year validity period for any mandatory training topic that is not linked to student learning or professional growth.

The bill modifies s. 1012.986, F.S., to add to the goals of the William Cecil Golden Professional Development Program the support, through training on observation and evaluation practices aligned to the science of reading, the professional growth of instructional personnel who provide reading instruction and interventions.

The bill modifies s. 1001.215, F.S., to require the JRFO to provide evidence-based reading instruction training to school administrators. To fulfill this requirement, the JRFO must work with the Lastinger Center to modify the training that has been developed for K-12 teachers, reading coaches, and school principals. The bill also replaces the requirement to integrate social studies into the reading instruction curriculum with the requirement to integrate civic literacy into the reading instruction curriculum.

The additional opportunities for training in reading instruction for teachers may support teachers delivering reading instruction or interventions to students enrolled in public schools in kindergarten through grade 12.

Reading Certification and Endorsement

Present Situation

Teachers are able to earn a subject area certification or endorsement in reading. A teacher is required to be certified or endorsed in reading to:

- Teach summer reading camps.
- Provide instruction to a third grade student retained for failing the English Language Arts (ELA) assessment.
- Provide reading interventions to students with a substantial deficiency in reading, beginning July 1, 2021.
- Qualify as a literacy coach.[19]

[18] Section 1001.215(3), F.S.
[19] Rule 6A-6.053, F.A.C.

A teacher may earn a certification in reading by completing:
- A master's or higher degree with a graduate major in reading.
- A bachelor's or higher degree with thirty semester hours in reading.[20]

A certified teacher may earn an endorsement to a valid Florida certificate by completing the appropriate subject area testing requirements, the requirements of an approved school district program, or the inservice components for an endorsement.[21] There are four pathways to earn a reading endorsement:
- Completing 15 semester hours in college-level reading coursework rooted in scientifically based reading research with a focus on both preventions and remediation of reading difficulties.
- Completing the required competencies through a school district's approved reading endorsement add-on program.
- Obtaining a certificate from an approved internationally known organization with a reputation for setting reading standards.[22]
- Passing the K-12 Reading Certification Subject Area Exam administered by the DOE.[23]

Effect of Proposed Changes (Sections 11 and 18)

The bill modifies s. 1004.04, F.S., to require, beginning with the 2022-2023 school year, that school district personnel be certified or endorsed in reading if they supervise teacher preparation students during internships in kindergarten through grade 3 or during enrollment in a reading certificate program.

The bill also modifies s. 1012.586, F.S., to require the DOE to review the competencies for the reading endorsement for alignment with evidence-based instructional and intervention practices rooted in the science of reading and consistent with training developed by the Lastinger Center and the JRFO, and recommend improvements to the SBE, which must address identification of the characteristics of conditions such as dyslexia, implementation of evidence-based classroom instruction and interventions, and effective progress monitoring. Accordingly, each school district is required to resubmit its reading endorsement add-on program to the DOE for approval by July 1, 2023. The bill provides that, beginning July 1, 2024, instructional personnel may not earn a reading endorsement simply by passing the K-12 reading certification subject area assessment.

The bill requires the DOE to adopt at least one statewide, competency-based pathway, by which instructional personnel may earn a reading endorsement, by the beginning of the 2022-2023 school year. The pathway must be available for a participant to complete in person or remotely. The DOE is required by the bill to place a microcredential on a teacher certificate indicating each competency module the teacher successfully completes.

[20] Rule 6A-4.0291, F.A.C.
[21] Section 1012.586(1), F.S.
[22] Section 1012.586(1)(b), F.S. Reading Recovery Teacher of the National Louis University Reading Recovery Center is the only approved program. DOE, *Florida Internationally Recognized Organizations*, *available at* http://www.fldoe.org/core/fileparse.php/7539/urlt/FAIRO.pdf (last visited Mar. 12, 2021).
[23] Rule 6A-4.0292, F.A.C.

The additional pathway for teachers to earn a reading endorsement may assist district school boards in meeting state requirements for teachers delivering reading instruction or interventions to students enrolled in public schools in kindergarten through grade 12.

Student Literacy Supports

Present Situation

Student Progress Monitoring

State board rule provides criteria for determining whether a student has a substantial deficiency in reading. A student is identified as having a substantial deficiency in reading if the student:

- Scores the lowest level or benchmark on any assessment identified in the school district's reading plan;
- Scores the lowest achievement level during a progress monitoring assessment identified in the school district's K-12 comprehensive reading plan (reading plan); or
- Demonstrates, through consecutive formative assessments or teacher observation, skills that are below grade-level expectations in one or more areas of phonological awareness; phonics; vocabulary, including oral language skills; reading fluency; and reading comprehension.[24]

Students in kindergarten through grade 3 who are determined to have a substantial deficiency in reading based on any of these criteria must be given intensive reading interventions immediately following the identification of the deficiency.[25] Students who do not achieve a Level 3 or above on the statewide, standardized ELA assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.[26] District school boards are required to prioritize remedial and supplemental instructional resources first to students in kindergarten through grade 3 who have a substantial reading deficiency and then to students who fail to meet performance levels required for promotion under the district's student progression plan.[27]

School districts have a variety of intervention and progress monitoring options available to help students improve their academic performance. The law requires districts to develop and implement a multi-tiered system of supports, which utilizes a problem-solving process to identify and support student needs based upon available data, including attendance, behavior and discipline, statewide assessment, and progress monitoring data.[28] Retention is mandatory for 3rd grade students who score at Level 1 on the statewide, standardized ELA assessment.[29] Any student retained in 3rd grade because of his or her statewide, standardized ELA assessment score must receive intensive interventions and be taught by a "highly-effective" teacher with a reading endorsement or certification.[30] This intervention process must include parent involvement,

[24] Rule 6A-6.053(12), F.A.C.
[25] Section 1008.25(5)(a), F.S.
[26] Section 1008.25(4)(a), F.S.
[27] Section 1008.25(3), F.S.
[28] *See* Rules 6A-6.0331(1) and 6A-1.099811(2)(r), F.A.C.
[29] Section 1008.25(5)(b), F.S. A student may be promoted if he or she meets a "good cause" exception as provided in s. 1008.25(6)(b), F.S.
[30] *See* ss. 1008.25(5)(b) and (7) and 1012.34(2)(e), F.S.

student observation, review of data, vision and hearing screening to rule out sensory deficits, and evidence-based interventions implemented in the general education environment.[31]

Research-Based Reading Instruction Allocation

The state allocates funding to school districts for research-based reading instruction to students in kindergarten through grade 12. Funds must be used to provide a system of comprehensive reading instruction to students enrolled in kindergarten through grade 12, including:[32]

- An additional hour of intensive reading instruction beyond the normal school day for students in the 300 lowest-performing elementary schools.
- Reading intervention teachers and reading coaches.
- Professional development for teachers to earn a certification or an endorsement in reading.
- Summer reading camps for students in kindergarten through grade 5 who exhibit certain reading deficiencies, depending on grade level.[33]
- Supplemental instructional materials that are grounded in scientifically based reading research as identified by the JRFO.
- Intensive interventions for students in kindergarten through grade 12 who have been identified as having a reading deficiency or who are reading below grade level as determined by the statewide, standardized ELA assessment.

District school boards must develop reading plans that detail the specific uses of the research-based reading instruction allocation. The plans must be annually submitted to the DOE for approval and provide for intensive reading interventions through integrated curricula that incorporate strategies identified by the JRFO and are delivered by a teacher who is certified or endorsed in reading. The DOE monitors and tracks the implementation of each district plan and collects specific data on expenditures and reading improvement results. By February 1 of each year, the DOE reports its findings to the Legislature.[34]

Parental Notification and Supports

The parent of any student who exhibits a substantial deficiency in reading must be notified in writing of the deficiency and of all available services and proposed interventions, and be provided with a "read at home plan," which outlines strategies that parents can use to help their children improve in reading.[35]

Students enrolled in public school in grades 3 through 5 and score below grade level on the statewide, standardized ELA assessment in the prior school year may also be eligible for a reading scholarship account of $500. A total of 6,763 students received reading scholarship accounts in the 2019-2020 school year. The state appropriated $7.6 million for reading scholarship accounts for the 2020-2021 school year.

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[31] Rule 6A-6.0331(1), F.A.C.

[32] Section 1011.62(9), F.S. The state appropriated $130 million to school districts for the research-based reading instruction allocation for the 2020-2021 fiscal year. Specific Appropriations 8 and 92, ch. 2020-111, s. 2, Laws of Fla.

[33] All students in kindergarten through grade 2 who demonstrate a reading deficiency as determined by district and state assessments, and students in grades 3 through 5 who score at Level 1 on the statewide, standardized English Language Arts assessment. Section 1011.62(9)(c)5., F.S.

[34] Section 1011.62(9)(d)1., F.S.

[35] Section 1008.25(5)(c), F.S.

In the 2020-2021 school year, 112,295 students enrolled in public schools in kindergarten through grade 5 were identified as having substantial deficiencies in reading and receiving Tier III supports.[36]

Federally funded Department of Education Literacy Initiatives

As part of its plan for federal funding provided under the CARES Act,[37] the DOE has launched a statewide system of regional reading supports.[38] The program allocates $5 million from the CARES Act funds for the establishment of 20 regions in the state, each with a designated regional reading consultant that will lead a regional literacy support team. The reading consultants and their teams will be trained to monitor district-level, school-level and classroom-level data in order to identify and provide needed professional development and interventions.[39] The first year of the program will support implementation of reading plans in the early grades while overall the program focus will be on building capacity of the teams with an emphasis on updated standards, evidence-based[40] practices, and data-based decision making.[41] Implementation has been set to begin in 2021, during the second half of the 2020-2021 school year.

The DOE allocated $20 million from the CARES Act funds for progress monitoring and data informed supports.[42] From October 1, 2020, through February 19, 2021, the DOE made available to all public schools on a voluntary basis a new progress monitoring tool developed by Cambium Assessment, Inc., to serve as a connective support between the foundational skills that students seek to acquire and their progress through early education years and drive informed teaching practices and curriculum decisions. The progress monitoring tool was available for multiple administrations and was aligned to the state standards for grades 3 through 10 ELA Reading and grades 3 through 8 Mathematics.[43]
The DOE also used funds from the CARES Act to develop several other programs related to improving student literacy. Specifically, the DOE allocated:

- $5 million to upskill highly effective reading coaches.

[36] Email, DOE (Mar. 11, 2021) (on file with the Senate Committee on Education).
[37] Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).
[38] DOE, *Reopening Florida's Schools and the CARES Act*, *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf (last visited Mar. 12, 2021).
[39] *Id.* at 105. Each regional literacy director retains employment with the district with a salary of $80,000 plus benefits funded by the DOE.
[40] Federal law defines the term "evidence-based" as an activity, strategy, or intervention that demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on: strong evidence from at least 1 well-designed and well-implemented experimental study; moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes, and includes ongoing efforts to examine the effects of such activity, strategy, or intervention. 20 U.S.C. s. 7801(21)(a)(i).
[41] DOE, *Act with Urgency for Literacy*, available at https://www.fldoe.org/core/fileparse.php/7506/urlt/Act-with-Urgency-for-Literacy.pdf at 11, (last visited Mar. 13, 2021).
[42] DOE, *Reopening Florida's Schools and the CARES Act*, *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf at 102, (last visited Mar. 13, 2021).
[43] DOE, *Free Optional Progress Monitoring Tool Available to Public Schools* (Sept. 2, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/CambiumProgressMonitoring2020-21.pdf (last visited Mar. 13, 2021).

- $20 million, in addition to $4 million of the funds reserved under the CARES Act to the Governor, for strengthening K-3 reading instructional materials.
- $5 million for deploying professional development for teachers to attain a reading endorsement; training on how to use progress monitoring data to inform instruction; improving existing reading endorsement options; and improved resources for teachers and families.[44]

In addition, the DOE secured a Comprehensive Literacy State Development Grant (CLSD) of $21 million.[45] A CLSD is a discretionary federal grant to create a comprehensive literacy program to advance literacy skills, including pre- literacy skills, reading, and writing, for children from birth through grade 12, with an emphasis on disadvantaged children, including children living in poverty, English learners, and children with disabilities.[46]

Effect of Proposed Changes (Sections 2, 12, 14, 15)

Coordinated Screening and Progress Monitoring

The bill modifies s. 1008.25, F.S., to require the DOE, in collaboration with the OEL, to procure and require, and provide training and support for implementing, a statewide, standardized coordinated screening and progress monitoring (CSPM) for VPK program providers and for public schools serving kindergarten through grade 8 students, whom the bill requires to participate in the CSPM. The bill outlines requirements for the CSPM. Specifically, the CSPM must:

- Measure student progress in early literacy, ELA, and mathematics standards.
- Measure student performance in oral language, development, phonemic and phonological awareness, knowledge of print and letters, decoding, fluency, vocabulary, and comprehension.
- Be a valid, reliable and developmentally appropriate computer-adaptive direct instrument that provides screening and diagnostic capabilities for monitoring student progress; identifies students with a substantial deficiency in reading, including students with characteristics of dyslexia; and informs instruction.
- Provide data sufficient for VPK program accountability.
- Provide data and resources to enhance differentiated instruction.
- Provide information to the DOE to aid in the development of educational programs, policies, and supports for providers, districts, and schools.
- Beginning with the 2022-2023 school year, be administered at least three times within a program year or school year, as applicable, with the first administration occurring no later than the first 30 instructional days after the start of the program year or school year.

Results of the CSPM, including the number of students who demonstrate characteristics of dyslexia, must:

- Be reported to the DOE and maintained in the DOE's Educational Data Warehouse.

[44] DOE, *Act with Urgency for Literacy*, available at https://www.fldoe.org/core/fileparse.php/7506/urlt/Act-with-Urgency-for-Literacy.pdf at 15, (last visited Mar. 13, 2021).
[45] DOE, *Reopening Florida's Schools and the CARES Act*, *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf at 15, (last visited Mar. 13, 2021).
[46] 20 U.S.C. s. 6642.

- Be timely provided to a student's teachers and parents.
- Inform parents annually of their child's educational progress based on the CSPM.

Evidence-based Reading Instruction Allocation

The bill modifies s. 1011.62, F.S., to rename the "research-based reading instruction allocation" as the "evidence-based reading instruction allocation" to conform the reading instruction allocation to the other evidence-based initiatives. The bill aligns the definition of evidence-based with federal law, to provide that evidence-based means demonstrating a statistically significant effect on improving student outcomes or other relevant outcomes.

The bill also modifies the requirements and the authorized uses by school districts of the allocation. Specifically, the bill:

- Provides that funds may be used for supports to assist students identified with a substantial deficiency in early literacy transition from the Voluntary Prekindergarten Education Program (VPK) to kindergarten.
- Replaces the requirement to integrate social studies with the requirement for the coordinated integration of civic literacy in the curriculum for the extra hour of reading instruction for the 300 lowest performing elementary schools.
- Provides that a school district's reading plan will no longer be deemed approved if it is not approved by June 1 or if 100 percent of the funds are spent.
- Makes mandatory the withholding of funds by the DOE upon a determination that reading instruction allocation funds are not being used to implement the approved plan.
- Requires school district reading plans to include a root-cause analysis of student performance data and reflection tool developed by the DOE to evaluate the effectiveness of interventions implemented in the prior year.

The bill requires the annual report of the DOE to the Legislature on the evidence-based reading instruction allocation to also be submitted to the SBE and include recommendations for improving implementation of evidence-based reading and intervention strategies in classrooms.

Reading Achievement Initiative for Scholastic Excellence Program

The bill creates s. 1008.365, F.S., to establish within the DOE the Reading Achievement Initiative for Scholastic Excellence Program (RAISE Program) to provide instructional supports to school districts and their staff in implementing evidence-based reading instruction and interventions in order to improve student reading achievement. Under the RAISE Program, and similar to current federally funded initiatives of the DOE, the DOE must establish at least 20 literacy support regions and regional support teams, each at the direction of a regional literacy support director appointed by the commissioner, to assist school districts in improving low reading scores. Each regional literacy support director must be an employee of a school district and manage a regional support team. Directors and teams are required by the bill to consist of personnel who have completed the competency-based reading endorsement pathway and meet other specified requirements related to reading instruction and progress monitoring.
The bill requires the DOE to provide progress monitoring data to the regional literacy support teams to assist with providing designated schools with supports, which must include all of the following:

- Professional development aligned with evidence based strategies for reading instruction.
- Evaluating a school's improvement plan for alignment with the school district's reading plan.
- Assistance with implementing:
  - Data-informed instructional decision making.
  - The selection and consistent, coordinated use of high-quality instructional materials.
  - Reading instruction in other core subject area curricula, with an emphasis on civic literacy.
  - A multitiered system of supports in order to provide students effective interventions and identify students who may require an evaluation for special educational services, including identifying characteristics of conditions that affect phonological processing, such as dyslexia.

The bill authorizes the DOE to establish criteria to identify a school that must receive supports from a regional support team. The bill also modifies s. 1001.42, F.S., to require each school district to include in its school improvement plan schools identified for supports under the RAISE Program, but specifies that regardless of a school's grade, a school must receive supports if at least 50 percent of the school's students who take the statewide, standardized ELA assessment score below a Level 3 for any grade level, or, for students in kindergarten through grade 3, if results from the CSPM demonstrate that at least 50 percent of the students are not on track to pass the statewide, standardized grade 3 ELA assessment. If the regional support team determines that the school district's reading plan does not address the school's need to improve student outcomes, the regional literacy support director, the district school superintendent, or his or her designee, and the director of the JRFO are required by the bill to convene a meeting to rectify the deficiencies of the reading plan.

A school identified for supports is not required by the bill to implement a turnaround option or take other corrective action under the state's school improvement program. The bill authorizes a school to stop receiving supports and implementing a school improvement plan when the school's data reflects that it no longer meets the requirements to receive supports and implement a school improvement plan. The school may nevertheless continue to receive supports based on the availability of resources.

RAISE Program Tutors

The RAISE Program also requires the DOE to establish a tutoring program and develop training in effective reading tutoring practices and content, based on evidence-based practices, and aligned to the state ELA standards, to prepare eligible high school students to tutor students with a substantial deficiency in reading in kindergarten through grade 3. The bill requires the SBE to adopt rules to administer the program.

The bill requires school districts that wish to participate to recruit, train, and deploy eligible high school students. Tutoring must occur during the school day on school district property in the presence and under the supervision of instructional personnel who are school district employees. Under the bill, a student must obtain written permission from his or her parent before receiving tutoring services.

The bill prescribes eligibility requirements for tutors. Specifically, a tutor must:

- Be a rising junior or senior.
- Have a cumulative grade point average of 3.0 or higher.
- Have no history of out-of-school suspensions or expulsions.
- Be on track to complete all course requirements for graduation.
- Have written recommendations from at least two of his or her present or former high school teachers of record or extracurricular activity sponsors.

The bill authorizes a district school board to adopt a service-learning[47] course that includes a tutoring program and authorizes students to:

- Earn up to 3 elective credits for high school graduation based on the verified number of hours the student spends tutoring.
- Count hours devoted to tutoring toward meeting community service requirements for high school graduation[48] and participation in the Florida Bright Futures Scholarship Program.[49]
- Earn a New Worlds Scholar award from the DOE by providing at least 500 verified hours of tutoring.

The option for a high school student to tutor a K-3 student may support both students in their academic development.

Parental Notification and Supports

The bill requires a school to apprise in writing, at least monthly, the parent of a student who has a substantial deficiency in reading of the student's progress in response to intensive reading interventions and supports. The written apprisal must inform the parent of any additional interventions or supports to be provided to the student if the initial supports do not lead to improvement.

To further encourage parental participation in a student's reading progress, the bill requires the DOE to develop a handbook that schools must provide to the parent of a student who is identified as having a substantial reading deficiency. The handbook must be made available in an electronic format that is accessible online and must include:

- An overview of the types and frequency of assessments used to identify reading deficiencies and the requirements for interventions and supports that districts must provide to students who do not make adequate academic progress.

[47] The hours that high school students devote to course-based service-learning activities may be counted toward meeting community service requirements for high school graduation and community service requirements for participation in the Florida Bright Futures Scholarship Program. School districts are encouraged to include service learning as part of any course or activity required for high school graduation and to include and accept service-learning activities and hours in requirements for academic awards, especially those awards that currently include community service as a criterion or selection factor. Section 1003.497(3)(b), F.S.

[48] A student is not specifically required to complete a minimum number of community service hours to earn a standard high school diploma, but school districts are encouraged to include service learning as part of a course or activity required for high school graduation. *See* ss. 1003.4282 and 1003.497(3)(b), F.S.

[49] Scholarship awards for students under the Florida Bright Futures Scholarship Program have varying minimum service hour requirements, based on the amount of the award. For eligibility requirements, *see* DOE, Office of Student Financial Assistance, *2020-2021 Bright Futures Student Handbook, Chapter 1: Initial Eligibility Requirements*, *available at* https://www.floridastudentfinancialaidsg.org/PDF/BFHandbookChapter1.pdf (last visited Mar. 13, 2021).

- An overview of the process for initiating and conducting evaluations for exceptional education eligibility. The overview must include an explanation that a diagnosis of a medical condition alone is not sufficient to establish exceptional education eligibility but may be used to document how that condition relates to the student's eligibility determination and may be disclosed in an eligible student's individual education plan when necessary to inform school personnel responsible for implementing the plan.
- Characteristics of conditions associated with learning disorders, including dyslexia, dysgraphia, dyscalculia, and developmental aphasia.
- A list of resources that support informed parent involvement in decision making processes for students who have difficulty in learning.

The handbook may support parental awareness and involvement in the progress of a student's education.

Instructional Material Review Process

Present Situation

The DOE is authorized to allocate and distribute to each district an amount as prescribed annually by the Legislature for instructional materials for students in grades K-12.[50] Each district school superintendent is required to certify to the commissioner that the district school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials programs, including verification that training was provided; that the materials are being implemented as designed; and, beginning July 1, 2021, for core reading materials and reading intervention materials used in kindergarten through grade 5, that the materials have been identified by JRFO in collaboration with the Florida Center for Reading Research as scientifically researched and evidence-based reading instructional and intervention programs that incorporate explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and incorporate decodable or phonetic text instructional strategies.[51]

The term of adoption of any instructional materials must be a five-year period, beginning on April 1 following the adoption, except that the commissioner may approve terms of adoption of less than five years for materials in content areas that require more frequent revision.[52]

Prior to the purchase of any instructional material, whether from the state-adopted list or through a district-established instructional materials review process, the district school board must:

- Establish a process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the required school board hearing and public meeting. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.

[50] Section 1011.67(1), F.S. The state appropriated $236.6 million to school districts for instructional materials for the 2020-2021 fiscal year. Specific Appropriations 8 and 92, ch. 2020-111, s. 2, Laws of Fla.
[51] Sections 1011.67(2) and 1001.215(8), F.S.
[52] Section 1006.36(1), F.S.

- Conduct an open, noticed school board hearing to receive public comment on the recommended instructional materials.
- Conduct an open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased. This public meeting must be held on a different date than the school board hearing.
- Provide notice for the school board hearing and the public meeting that specifically states the instructional materials being reviewed and how the instructional materials can be accessed for public review.[53]

Effect of Proposed Changes

The bill modifies s. 1001.215, F.S., to require the JRFO, as part of the adoption cycle for ELA instructional materials, to:

- Assist in evaluating elementary grades instructional materials submitted for adoption consideration.
- Identify those materials that are closely aligned to the content and evidence-based strategies for reading instructional and intervention programs that have been identified in collaboration with the Florida Center for Reading Research.
- Incorporate professional development to implement such strategies.

The bill modifies s. 1011.67, F.S., to authorize instructional materials identified by JRFO to be purchased by a school district without undergoing the comprehensive process for adopting instructional materials at the local level.

The Voluntary Prekindergarten Education Program

Present Situation

The Florida Constitution requires the State of Florida to provide every four-year old child a high quality, pre-kindergarten learning opportunity, in the form of an early childhood development and education program, which must be voluntary, high quality, free, and delivered according to professionally accepted standards.[54] In 2004, the State established a free VPK program offered to eligible four-year-old children.[55] Parents may choose either a school-year or summer program offered by either a public or private school.[56]

VPK Administration

Early Learning Coalitions (ELCs) and district school boards administer the VPK program at the county or regional level. Each ELC is the single point of entry for VPK program registration and

[53] Sections 1006.40(4)(b) and 1006.283(2)(b)8., 9., and 11., F.S.
[54] Art. IX, s. 1(b), Fla. Const. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.
[55] Chapter 2004-484, s. 1, Laws of Fla.; part V, ch. 1002, F.S.; *see also* Art. IX, s. 1(b)-(c), Fla. Const.
[56] Section 1002.53(3), F.S.

enrollment in the coalition's county or multi-county service area.[57] A local ELC must coordinate with the local school district in the ELC's service area to develop procedures for enrolling children in public school VPK programs.[58]

The Office of Early Learning (OEL) adopts procedures governing the administration of the VPK program for ELCs and school districts, including procedures for:

- Child enrollment.
- Attendance reporting.
- Eligibility of VPK program providers.
- Regulating the compliance of VPK program providers.
- Reimbursing VPK program providers for the costs of the VPK program.[59]

VPK Instructor Requirements

A VPK provider offering a school-year VPK program must have, for each class, at least one instructor with the following credentials:

- A Child Development Associate (CDA) issued by the National Credentialing Program of the Council for Professional Recognition.
- A credential approved by the Department of Children and Families as being equivalent to or greater than the CDA.
- Five clock hours of training in emergent literacy and successful completion of a student performance standards training course.[60]

In lieu of the minimum credentials listed above, a private VPK program instructor may hold:

- An associate's or higher degree in child development;
- An associate's or higher degree in an unrelated field, at least six credit hours in early childhood education or child development, and at least 480 hours of teaching or providing child care services for children any age from birth through eight years of age;
- A bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;
- A bachelor's or higher degree in elementary education, if the instructor has been certified to teach children any age from birth through grade 6, regardless of whether the educator certificate is current; or
- An educational credential approved by the OEL as being equivalent to or greater than any of these educational credentials.[61]

[57] Section 1002.53(4), F.S. There are currently 30 ELCs. Florida's Office of Early Learning, *Early Learning Coalitions*, http://www.floridaearlylearning.com/family-resources/find-quality-child-care/locate-your-early-learning-coalition (last visited Mar. 13, 2021).

[58] Section 1002.53(4), F.S.

[59] Section 1002.75(2), F.S.

[60] Sections 1002.55(3)(c)1.a. and 2., 1002.59, and 1002.63(4), F.S. An active Birth Through Five Child Care Credential awarded as a Florida Child Care Professional Credential, Florida Department of Education Child Care Apprenticeship Certificate, or Early Childhood Professional Certificate satisfies the staff credential requirement. Florida Department of Children and Families, *Child Care Facility Handbook* (2019), *incorporated by reference in* Rule 65C-22.001(7), F.A.C.

[61] Section 1002.55(4), F.S.

VPK Instructor Training

The OEL sets minimum standards for emergent literacy training courses for VPK instructors. Each course must be at least five clock hours long and provide strategies and techniques regarding the age-appropriate progress of prekindergarten students in developing emergent literacy skills, including:

- Oral communication;
- Knowledge of print and letters;
- Phonemic and phonological awareness; and
- Vocabulary and comprehension.[62]

Each emergent literacy training course must also provide strategies for helping students with disabilities and other special needs maximize their benefit from the VPK program.[63] In addition, the OEL must adopt minimum standards for training courses on the VPK performance standards for students. Each course on performance standards must be at least three clock hours, provide instruction in strategies and techniques to address age-appropriate progress of each child in attaining the standards, and be available online.[64]

OEL outlines a 5-Tier career pathway with certifications that require different levels of foundational training up to a bachelor's degree or higher.[65]

Early Learning Florida, developed in partnership between the OEL and the Lastinger Center, is a statewide professional learning system designed to support the development of early childhood professionals' knowledge and skills in effectively educating and caring for young children.[66] Since 2015, Early Learning Florida has delivered over 400,000 hours of online and blended training to more than 30,000 early childhood practitioners in Florida, at no cost to educators. All Early Learning Florida courses and trainings provide teachers with Continuing Education Units that articulate to national and state credentials.[67]

The OEL has also developed early learning professional development and career pathways.[68] Professional development and teacher resources are available online, including courses developed by the OEL in collaboration with the Lastinger Center, to provide opportunities to earn educator credentials.[69]

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[62] Section 1002.59(1), F.S.
[63] *Id*.
[64] Section 1002.59(2), F.S.
[65] Office of Early Learning, *Florida Early Care and Education Career Pathway*, *available at* http://www.floridaearlylearning.com/Content/Uploads/floridaearlylearning.com/files/Career%20Pathway%20Revised_ADA.pdf.
[66] Early Learning Florida, *Who We Are*, https://www.earlylearningflorida.com/about (last visited Mar. 13, 2021).
[67] The Lastinger Center at the University of Florida, *Early Learning Florida*, https://lastinger.center.ufl.edu/early-learning/early-learning-florida/ (last visited Mar. 13, 2021).
[68] Section 1002.995, F.S., and Rule 6A-4.735, F.A.C.
[69] *See* Florida Office of Early Learning, *Professional Development*, http://www.floridaearlylearning.com/providers/professional-development/professional-development-training-resources (last visited Mar. 13, 2021). *See also* Early Learning Florida, *Courses*, https://www.earlylearningflorida.com/catalog (last visited Mar. 13, 2021).

VPK Accountability

The DOE developed a statewide kindergarten readiness screening[70] and requires each school district to administer the statewide kindergarten readiness screening within the first 30 days of each school year.[71] The screening must measure a child's readiness for kindergarten in the following eight domains: physical development; approaches to learning; social and emotional development; language and literacy; mathematical thinking; scientific inquiry; social studies; and creative expression through the arts.[72]

The OEL annually calculates a kindergarten readiness rate for each VPK provider based on results of the annual screening.[73] The readiness rates are expressed as the percentage of children whose scores demonstrate readiness for kindergarten.[74] The methodology for calculating the readiness rate must include student learning gains, when available, based on a VPK preassessment and postassessment, known as the "Florida VPK Assessment."[75] The OEL must determine learning gains using a value-added measure based on growth demonstrated by the results of the Florida VPK Assessment from at least two successive years of administration.[76]

At least 60 percent of a VPK provider's students must meet the "ready for kindergarten" score on the screening in order for the provider to avoid probationary status.[77] Providers that do not meet the minimum readiness rate are placed on probation. An ELC or school district must require a VPK provider that falls below the minimum kindergarten readiness rate to:

- Submit for approval and implement an improvement plan;
- Place the provider or school on probation; and
- Take certain corrective actions, including the use of an OEL-approved curriculum or an OEL approved staff development plan to strengthen instruction in language development and phonological awareness.[78]

Out of 126,238 students who completed the VPK program, 63 percent were "ready for kindergarten" in the fall of 2019. Of 6,611 rated VPK providers, 2,175 failed to meet the minimum rate.[79]Of these 2,175 providers, 2,203 remained on probation.[80]

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[70] The DOE selected the Star Early Literacy Assessment, developed by Renaissance Learning, Inc., as the Florida Kindergarten Readiness Screener (FLKRS). Rule 6M-8.601(3)(b)1., F.A.C.; *see also* DOE, *Florida Kindergarten Readiness Screener*, http://www.fldoe.org/accountability/assessments/k-12-student-assessment/flkrs/ (last visited Mar. 13, 2021).
[71] Sections 1002.69(1)-(3) and 1002.73, F.S.
[72] *See* s. 1002.67(1), F.S. *See also* Florida's Office of Early Learning, *Early Learning and Developmental Standards: 4 Years Old to Kindergarten* (2017) at 1, *incorporated by reference* in rule 6M-8.602, F.A.C.
[73] Rule 6M-8.601(3)(b), F.A.C.
[74] Section 1002.69(5)-(6), F.S.; To be considered "ready for kindergarten," a student must achieve a score of 500 or higher on the Star Early Literacy assessment. Rule 6M-8.601, F.A.C.
[75] Section 1002.69(5), F.S.; Rule 6A-1.09433(1)(b), F.A.C.
[76] Section 1002.69(5), F.S.; Rule 6M-8.601(3)(b), F.A.C.
[77] *Id.*
[78] Section 1002.67(4), F.S.
[79] Email, DOE (Dec. 15, 2020) (on file with the Senate Committee on Education).
[80] Email, Office of Early Learning (Mar. 29, 2019) (on file with the Senate Committee on Education).

A VPK provider on probation and failing to meet the minimum readiness rate for two consecutive years must be removed from eligibility to provide the VPK program for 5 years, unless the provider receives from the OEL a good cause exemption.[81]

The DOE launched a VPK progress monitoring pilot program by permitting, beginning in January 2021 and continuing through the 2021-2022 school year, up to 1900 VPK providers to access the assessment used for the statewide kindergarten screening. The DOE allocated $2.9 million from the CARES Act funds for the program.[82]

The DOE allocated $18 million of the Child Care Development and Block Grant Fund from the CARES Act to implement summer programs for rising kindergarten students identified with limited language and emergent literacy skills as determined by the VPK assessments and teacher recommendations.[83]

Effect of Proposed Changes

VPK Instructor Requirements

The bill modifies s. 1002.59, to add requirements to the emergent literacy training courses, developed by the OEL, for prekindergarten instructors. The bill requires the JRFO to work with the OEL in the development of the emergent literacy training courses and specifies that the courses must be consistent with the evidence-based reading instructional and intervention programs developed by the JRFO and the Florida Center for Reading Research.

The bill also modifies s. 1002.55, F.S., to revise emergent literacy training to require that the training course be available online and that private prekindergarten instructors complete at least one qualifying emergent literacy training course every 5 years. The additional requirements for VPK instructors may provide instructors with more skills to teach VPK students.

VPK Accountability

The bill modifies s. 1008.25, F.S., to require a VPK student who demonstrates a substantial deficiency in early literacy skills based upon the results of the CSPM to be referred to the school district following completion of the VPK term and prior to the beginning of the next school year. The bill makes the student eligible for intensive reading interventions from the school district, which may be funded from the evidence-based reading instruction allocation. The additional reading interventions may provide additional opportunities for students to improve reading skills.

[81] Section 1002.67(4)(c)3., F.S. A VPK provider must submit a request for a good cause exemption to the OEL for review and approval and include specified data. Section 1002.69(7)(b)-(c), F.S. A VPK provider that receives a good cause exemption must continue to implement its improvement plan and take corrective actions until the provider meets the minimum kindergarten readiness rate. Sections 1002.69(7)(e) and 1002.67(3)(c)2., F.S.

[82] Florida Department of Education, *Progress Monitoring: Building Effective, Data-Informed Strategies to Close Achievement Gaps* (Nov. 18, 2020), *available at* https://www.fldoe.org/core/fileparse.php/19925/urlt/2-3.pdf at 6, (last visited Mar. 13, 2021).

[83] Florida Department of Education, *Reopening Florida's Schools and the CARES Act*, *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf at 98, (last visited Mar. 13, 2021).

The CSPM replaces current VPK program progress monitoring and accountability requirements in ss. 1002.67 and 1002.69, F.S. With the implementation of the CSPM beginning with the 2022-2023 school year, the bill:

- Phases out the pre- and post-assessment and the statewide kindergarten readiness screening.
- Requires learning gains and kindergarten readiness rates to be calculated using data from the CSPM.

The VPK accountability metrics provided in the bill may measure student performance more contemporaneously with the instruction provided and support the timely provision of information to parents, school districts, and VPK providers.

Kindergarten Readiness

To assist all parents with the transition from prekindergarten to kindergarten, the bill modifies s. 1002.83, F.S. to require the OEL to provide guidance for successful kindergarten transitions to ELCs, school districts, charter schools, and parents. The bill requires each ELC to develop a best-practices plan for transitioning students into kindergarten, which must include all of the following:

- Opportunities for prekindergarten students and their parents to visit schools in which they may be enrolled in kindergarten.
- Written information for parents on school registration and academic and social expectations for kindergarten.
- Meetings at least annually with school districts and charter schools in the coalition's service area to identify and address areas for improvement in transitioning prekindergarten students into kindergarten.
- Transferring prekindergarten student information for continuity in progress monitoring and the provision of supports.

The additional supports for transitioning students to kindergarten may help prepare students for kindergarten. ELCs may require coordination from school districts regarding kindergarten enrollment, visits, and student data.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providers may incur costs associated with having private VPK instructors to complete at least one qualifying emergent literacy training course every five years and having to participate in the new coordinated screening and progress monitoring system, beginning in the 2022-2023 school year.

C. Government Sector Impact:

The coordinated screening and progress monitoring required by the bill for students enrolled in the Voluntary Prekindergarten Education Program through grade 8 will require the expenditure of state funds.

The Department of Education estimates that it will cost $15 million annually to implement the new coordinated screening and progress monitoring program. These costs could be offset, in part, by the elimination of the current VPK assessment and kindergarten screening in fiscal year 2022-2023. To assist with the procurement of the new system and its ongoing management, the department anticipates needing one additional Program Specialist IV position, at a cost of $87,075 annually. School districts may also incur costs associated with computer equipment needed to administer the new assessments.

The department estimates that it will cost $5 million annually to contract with an external entity to implement the new Reading Achievement Initiative for Scholastic Excellence (RAISE) within the department. In addition, the department also anticipates needing two additional Program Specialist IVs and one additional administrative assistant at a cost of $240,014 annually to establish and maintain the literacy support teams and tutoring program. School districts may also incur costs associated with recruiting, training and deploying eligible high school students as part of the tutoring program.

The department anticipates that the addition of microcredentials to teacher certificates will require programming changes to the educator certification system at an indeterminate cost.

VI. Technical Deficiencies:

Section 15 of the bill includes an incorrect cross-reference to federal law. A provision of the bill that defines "evidence-based" to mean demonstrating a statistically significant effect on improving student outcomes or other relevant outcomes as provided in 20 U.S.C. s. 8101(21)(A)(i). The definition of the term "evidence-based" is included in the United States Code at 20 U.S.C. s. 7801(21)(A)(i).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.215, 1001.42, 1002.33, 1002.55, 1002.59, 1002.67, 1002.69, 1002.83, 1002.995, 1003.621, 1004.04, 1008.25, 1008.345, 1011.62, 1011.67, 1012.585, 1012.586, 1012.98, and 1012.986.

This bill creates section 1008.365 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Rodriguez

39-01370-21 20211898__

A bill to be entitled

An act relating to student literacy; amending s. 1001.215, F.S.; revising and providing duties for the Just Read, Florida! Office within the Department of Education; amending s. 1001.42, F.S.; revising a district school board's duty to implement a school improvement plan for certain low-performing schools to conform to changes made by the act; amending s. 1002.33, F.S.; conforming a provision to changes made by the act; amending s. 1002.55, F.S.; revising requirements for prekindergarten instructors relating to completing an emergent literacy training course; amending s. 1002.59, F.S.; requiring the Office of Early Learning to adopt minimum standards for such course in collaboration with the Just Read, Florida! Office; requiring such course to be consistent with certain strategies identified by the Just Read, Florida! Office; amending s. 1002.67, F.S.; requiring certain private prekindergarten providers and public schools to use a coordinated screening and progress monitoring system; amending s. 1002.69, F.S.; requiring the Department of Education, in consultation with the Office of Early Learning, to implement a coordinated screening and progress monitoring system for students in the Voluntary Prekindergarten Education Program through grade 8; requiring such screening and progress monitoring system to be used to assess kindergarten readiness and to determine student learning gains; amending s. 1002.83, F.S.; requiring

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early learning coalitions to adopt best-practices plans for transitioning prekindergarten students into kindergarten; providing requirements for such plans; requiring the Office of Early Learning to provide certain guidelines to assist early learning coalitions, schools districts, charter schools, and parents; amending ss. 1002.995 and 1003.621, F.S.; conforming provisions to changes made by the act; amending s. 1004.04, F.S.; revising provisions relating to teacher preparation programs; removing provisions authorizing the waiver of certain admission requirements for such programs; requiring certain school district and instructional personnel to have evidence of being certified or endorsed in reading beginning in a specified school year; amending s. 1008.25, F.S.; requiring certain students to participate in a certain coordinated screening and progress monitoring system; requiring schools to communicate with parents at least monthly regarding the progress of certain students; providing requirements for such communication; requiring the department to develop a handbook for schools to provide to parents of certain students; providing requirements for such handbook; requiring the department, in collaboration with the Office of Early Learning, to procure and require the use of a certain coordinated screening and progress monitoring system; providing requirements for such system; requiring private Voluntary Prekindergarten Education Program

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providers and public schools to participate in such system beginning in a specified school year; providing the frequency with which such system must be administered during the program year or school year, as applicable; providing that certain prekindergarten students may be eligible for intensive reading interventions; authorizing a school district to pay for such interventions using certain funds; requiring screening and progress monitoring system results to be reported to the department and maintained in a specified department warehouse; requiring such results to be provided to a student's teacher and parent; requiring the department, in collaboration with the Office of Early Learning, to provide certain training and support; amending s. 1008.345, F.S.; conforming a cross-reference; creating s. 1008.365, F.S.; providing a short title; establishing the Reading Achievement Initiative for Scholastic Excellence Program within the department; providing a purpose; requiring the department to establish a specified number of literacy support regions and regional support teams for a certain purpose; requiring a regional literacy support director to meet certain criteria; providing duties and requirements for such teams; authorizing the department to establish criteria for identifying schools that need supports; requiring such schools to implement a certain plan; requiring the department to provide progress monitoring data to such teams regarding the implementation of supports; providing

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requirements for such supports; providing that certain schools are not required to implement a turnaround option or take other corrective actions; authorizing a school to discontinue receiving supports and implementing a school improvement plan under certain circumstances; requiring the department to establish a tutoring program and develop certain training to prepare high school students to tutor certain students; providing eligibility criteria for high school students to participate in a tutoring program; requiring school districts that wish to participate in such program to recruit, train, and deploy eligible high school students; providing requirements for such program; requiring the department to designate certain high school students as New Worlds Scholars; requiring the State Board of Education to adopt rules; amending s. 1011.62, F.S.; renaming the research-based reading instruction allocation as the evidence-based reading instruction allocation; requiring such allocation to be used to provide comprehensive reading instruction to certain prekindergarten students; requiring a school district's K-12 comprehensive reading plan to be developed with input from certain personnel and provide for certain interventions delivered by certain instructional personnel; requiring the department to annually release to certain school districts their allocations of appropriated funds by a specified date; requiring the department to annually report certain findings and recommendations to the State Board of

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Education by a specified date; providing a definition; amending s. 1011.67, F.S.; authorizing school districts to purchase certain instructional materials with specified funds without undergoing certain adoption procedures; amending s. 1012.585, F.S.; providing a limitation on earning certain inservice points; amending s. 1012.586, F.S.; requiring the department to adopt competency-based pathways for instructional personnel to earn a reading endorsement by the beginning of a specified school year; providing requirements for such pathways; requiring the department to place microcredentials on participants' educator certificates; providing requirements for the department in adopting such pathways; requiring school districts to resubmit certain programs to the department for approval by a specified date; prohibiting instructional personnel from earning a reading endorsement solely by achieving a passing score on a specified assessment; amending s. 1012.98, F.S.; requiring the department to identify certain professional development opportunities to be implemented by school districts; amending s. 1012.986, F.S.; revising the goals of the William Cecil Golden Professional Development Program for School Leaders to include support for instructional personnel who provide reading instruction and interventions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) through (6) and subsection (11) of section 1001.215, Florida Statutes, are amended, and subsection (8) of that section is republished, to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office is fully accountable to the Commissioner of Education and shall:

(1) Provide training to ~~Train~~ reading coaches and school administrators on the evidence-based strategies identified pursuant to subsection (8) for purposes of implementation, modeling, and classroom observations to support professional growth and inform performance evaluations of instructional personnel.

(2) Create multiple designations of effective reading instruction, with accompanying credentials and microcredentials, to enable all teachers to integrate reading instruction into their content areas and indicate mastery of specific, evidence-based strategies.

(3) Work with the Lastinger Center for Learning at the University of Florida to develop training for K-12 teachers, reading coaches, and school administrators ~~principals~~ on effective content-area-specific reading strategies; the coordinated integration of content-rich curriculum from other core subject areas into reading instruction, with an emphasis on civic literacy; and evidence-based reading strategies identified pursuant to ~~in~~ subsection (8) to improve student reading performance. For secondary teachers, emphasis shall be on technical text. These strategies must be developed for all

content areas in the K-12 curriculum.

(4) Develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' background knowledge and literacy skills, including student attainment of the Next Generation Sunshine State Standards for social studies, science, and the arts. The office shall, as part of the adoption cycle for English Language Arts instructional materials, assist in evaluating elementary grades instructional materials submitted for adoption consideration, identify those materials that are closely aligned to the content and evidence-based strategies identified pursuant to subsection (8), and incorporate professional development to implement such strategies.

(5) Provide parents with information and evidence-based strategies for assisting their children in reading, including reading in content areas.

(6) Provide technical assistance to school districts in the development and implementation of district plans for use of the evidence-based ~~research-based~~ reading instruction allocation provided in s. 1011.62(9) and annually review and approve such plans.

(8) Work with the Florida Center for Reading Research to identify scientifically researched and evidence-based reading instructional and intervention programs that incorporate explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and incorporate decodable or phonetic text instructional strategies. Reading intervention includes

evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, multisensory approaches, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities.

(11) Work with teacher preparation programs approved pursuant to ss. 1004.04 and 1004.85 to integrate effective, ~~research-based and~~ evidence-based reading instructional and intervention strategies, including explicit, systematic, and sequential reading strategies, multisensory intervention strategies, and reading in content area instructional strategies into teacher preparation programs.

Section 2. Paragraph (a) of subsection (18) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(a) *School improvement plans.*—The district school board shall annually approve and require implementation of a new,

amended, or continuation school improvement plan for each school in the district which has a school grade of "D" or "F"; has a significant gap in achievement on statewide, standardized assessments administered pursuant to s. 1008.22 by one or more student subgroups, as defined in the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C. s. 6311(b)(2)(C)(v)(II); has not significantly increased the percentage of students passing statewide, standardized assessments; has not significantly increased the percentage of students demonstrating Learning Gains, as defined in s. 1008.34 and as calculated under s. 1008.34(3)(b), who passed statewide, standardized assessments; has been identified as requiring instructional supports under the Reading Achievement Initiative for Scholastic Excellence Program established in s. 1008.365; or has significantly lower graduation rates for a subgroup when compared to the state's graduation rate. The improvement plan of a school that meets the requirements of this paragraph shall include strategies for improving these results. The state board shall adopt rules establishing thresholds and for determining compliance with this paragraph.

Section 3. Paragraph (b) of subsection (17) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(b) The basis for the agreement for funding students

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enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation, the evidence-based ~~research-based~~ reading allocation, and the Florida digital classrooms allocation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education. For charter schools operated by a not-for-profit or municipal entity, any unrestricted current and capital assets identified in the charter school's annual financial audit may be used for other charter schools operated by the not-for-profit or municipal entity within the school district. Unrestricted current assets shall be used in accordance with s. 1011.62, and any unrestricted capital assets shall be used in accordance with s. 1013.62(2).

Section 4. Paragraph (c) of subsection (3) and subsection

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(4) of section 1002.55, Florida Statutes, are amended to read:

1002.55 School-year prekindergarten program delivered by private prekindergarten providers.—

(3) To be eligible to deliver the prekindergarten program, a private prekindergarten provider must meet each of the following requirements:

(c) The private prekindergarten provider must have, for each prekindergarten class of 11 children or fewer, at least one prekindergarten instructor who meets each of the following requirements:

1. The prekindergarten instructor must hold, at a minimum, one of the following credentials:

a. A child development associate credential issued by the National Credentialing Program of the Council for Professional Recognition; or

b. A credential approved by the Department of Children and Families as being equivalent to or greater than the credential described in sub-subparagraph a.

The Department of Children and Families may adopt rules under ss. 120.536(1) and 120.54 which provide criteria and procedures for approving equivalent credentials under sub-subparagraph b.

2. The prekindergarten instructor must successfully complete an emergent literacy training course and a student performance standards training course approved by the office as meeting or exceeding the minimum standards adopted under s. 1002.59. The emergent literacy training course must be completed at least once every 5 years after the prekindergarten instructor initially completes the course. ~~The requirement for completion~~

~~of the standards training course shall take effect July 1, 2014, and~~ The courses ~~course~~ shall be made available online.

(4) A prekindergarten instructor, in lieu of the minimum credentials ~~and courses~~ required under paragraph (3)(c)1. ~~(3)(c)~~, may hold one of the following educational credentials:

(a) A bachelor's or higher degree in early childhood education, prekindergarten or primary education, preschool education, or family and consumer science;

(b) A bachelor's or higher degree in elementary education, if the prekindergarten instructor has been certified to teach children any age from birth through 6th grade, regardless of whether the instructor's educator certificate is current, and if the instructor is not ineligible to teach in a public school because his or her educator certificate is suspended or revoked;

(c) An associate's or higher degree in child development;

(d) An associate's or higher degree in an unrelated field, at least 6 credit hours in early childhood education or child development, and at least 480 hours of experience in teaching or providing child care services for children any age from birth through 8 years of age; or

(e) An educational credential approved by the department as being equivalent to or greater than an educational credential described in this subsection. The department may adopt criteria and procedures for approving equivalent educational credentials under this paragraph.

Section 5. Subsection (1) of section 1002.59, Florida Statutes, is amended to read:

1002.59 Emergent literacy and performance standards training courses.—

(1) The office, in collaboration with the Just Read, Florida! Office, shall adopt minimum standards for one or more training courses in emergent literacy for prekindergarten instructors. Each course must comprise 5 clock hours and provide instruction in strategies and techniques to address the age-appropriate progress of prekindergarten students in developing emergent literacy skills, including oral communication, knowledge of print and letters, phonemic and phonological awareness, and vocabulary and comprehension development, consistent with the evidence-based content and strategies identified pursuant to s. 1001.215(8). Each course must also provide resources containing strategies that allow students with disabilities and other special needs to derive maximum benefit from the Voluntary Prekindergarten Education Program. Successful completion of an emergent literacy training course approved under this section satisfies requirements for approved training in early literacy and language development under ss. 402.305(2)(e)5., 402.313(6), and 402.3131(5).

Section 6. Paragraph (a) of subsection (3) of section 1002.67, Florida Statutes, is amended to read:

1002.67 Performance standards; curricula and accountability.—

(3)(a) Contingent upon legislative appropriation, each private prekindergarten provider and public school in the Voluntary Prekindergarten Education Program must implement an evidence-based pre- and post-assessment that has been approved by rule of the State Board of Education. However, beginning with the 2022-2023 school year, such providers and public schools shall use a coordinated screening and progress monitoring system

pursuant to s. 1008.25(8) to meet the requirements of this subsection.

Section 7. Subsections (1) and (5) of section 1002.69, Florida Statutes, are amended to read:

1002.69 Statewide kindergarten screening; kindergarten readiness rates; state-approved prekindergarten enrollment screening; good cause exemption.—

(1) The department shall adopt a statewide kindergarten screening that assesses the readiness of each student for kindergarten based upon the performance standards adopted by the department under s. 1002.67(1) for the Voluntary Prekindergarten Education Program. However, beginning with the 2022-2023 school year, the department, in consultation with the Office of Early Learning, shall implement a coordinated screening and progress monitoring system for the Voluntary Prekindergarten Education Program through grade 8 pursuant to s. 1008.25(8), which must be used to assess kindergarten readiness consistent with this subsection. The department shall require that each school district administer the statewide kindergarten screening to each kindergarten student in the school district within the first 30 school days of each school year. Nonpublic schools may administer the statewide kindergarten screening to each kindergarten student in a nonpublic school who was enrolled in the Voluntary Prekindergarten Education Program.

(5) The office shall adopt procedures to annually calculate each private prekindergarten provider's and public school's kindergarten readiness rate, which must be expressed as the percentage of the provider's or school's students who are assessed as ready for kindergarten. The methodology for

calculating each provider's kindergarten readiness rate must include student learning gains when available and the percentage of students who meet all state readiness measures. The rates must not include students who are not administered the statewide kindergarten screening. The office shall determine learning gains using a value-added measure based on growth demonstrated by the results of the preassessment and postassessment from at least 2 successive years of administration of the preassessment and postassessment. However, beginning with the 2022-2023 school year, a coordinated screening and progress monitoring system implemented pursuant to s. 1008.25(8) must be used to determine such learning gains consistent with this subsection.

Section 8. Present subsection (14) of section 1002.83, Florida Statutes, is redesignated as subsection (15), and a new subsection (14) is added to that section, to read:

1002.83 Early learning coalitions.—

(14) Each early learning coalition shall adopt a best-practices plan for transitioning prekindergarten students into kindergarten. The plan must provide for:

(a) Opportunities for prekindergarten students and their parents to visit schools in which they may be enrolled in kindergarten.

(b) Written information for parents on school registration and academic and social expectations for kindergarten.

(c) Meetings at least annually with school districts and charter schools in the coalition's service area to identify and address areas for improvement in transitioning prekindergarten students into kindergarten.

(d) Transferring prekindergarten student information for

continuity in progress monitoring and the provision of supports.

The office shall provide guidelines for successful kindergarten transitions to early learning coalitions, school districts, charter schools, and parents to assist with the implementation of this subsection.

Section 9. Subsection (2) of section 1002.995, Florida Statutes, is amended to read:

1002.995 Early learning professional development standards and career pathways.—

(2) To the greatest extent possible, the credentials and certifications established pursuant to this section shall align with the training for K-12 teachers, reading coaches, and school administrators ~~principals~~ in s. 1001.215(3).

Section 10. Paragraph (g) of subsection (2) of section 1003.621, Florida Statutes, is amended to read:

1003.621 Academically high-performing school districts.—It is the intent of the Legislature to recognize and reward school districts that demonstrate the ability to consistently maintain or improve their high-performing status. The purpose of this section is to provide high-performing school districts with flexibility in meeting the specific requirements in statute and rules of the State Board of Education.

(2) COMPLIANCE WITH STATUTES AND RULES.—Each academically high-performing school district shall comply with all of the provisions in chapters 1000-1013, and rules of the State Board of Education which implement these provisions, pertaining to the following:

(g) Those statutes pertaining to planning and budgeting,

including chapter 1011, except s. 1011.62(9)(d), relating to the requirement for a comprehensive reading plan. A district that is exempt from submitting this plan shall be deemed approved to receive the evidence-based ~~research-based~~ reading instruction allocation.

Section 11. Paragraph (b) of subsection (3) and paragraph (b) of subsection (5) of section 1004.04, Florida Statutes, are amended to read:

1004.04 Public accountability and state approval for teacher preparation programs.—

(3) INITIAL STATE PROGRAM APPROVAL.—

(b) Each teacher preparation program approved by the Department of Education, as provided for by this section, shall require students, at a minimum, to ~~meet, at a minimum, the following as prerequisites for admission into the program~~:

1. Have a grade point average of at least 2.5 on a 4.0 scale for the general education component of undergraduate studies or have completed the requirements for a baccalaureate degree with a minimum grade point average of 2.5 on a 4.0 scale from any college or university accredited by a regional accrediting association as defined by State Board of Education rule or any college or university otherwise approved pursuant to State Board of Education rule.

2. Demonstrate mastery of general knowledge ~~sufficient for entry into the program~~, including the ability to read, write, and perform in mathematics, by passing the General Knowledge Test of the Florida Teacher Certification Examination or, for a graduate level program, obtain a baccalaureate degree from an institution that is accredited or approved pursuant to the rules

of the State Board of Education.

~~Each teacher preparation program may waive these admissions requirements for up to 10 percent of the students admitted. Programs shall implement strategies to ensure that students admitted under a waiver receive assistance to demonstrate competencies to successfully meet requirements for certification and shall annually report to the Department of Education the status of each candidate admitted under such a waiver.~~

(5) PRESERVICE FIELD EXPERIENCE.—All postsecondary instructors, school district personnel and instructional personnel, and school sites preparing instructional personnel through preservice field experience courses and internships shall meet special requirements. District school boards may pay student teachers during their internships.

(b)1. All school district personnel and instructional personnel who supervise or direct teacher preparation students during field experience courses or internships taking place in this state in which candidates demonstrate an impact on student learning growth must have:

a. Evidence of "clinical educator" training;~~,~~

b. A valid professional certificate issued pursuant to s. 1012.56;~~, and~~

c. At least 3 years of teaching experience in prekindergarten through grade 12; ~~and must have~~

d. Earned an effective or highly effective rating on the prior year's performance evaluation under s. 1012.34 or be a peer evaluator under the district's evaluation system approved under s. 1012.34; and

e. Beginning with the 2022-2023 school year, for all such personnel who supervise or direct teacher preparation students during internships in kindergarten through grade 3 or who are enrolled in a teacher preparation program for a certificate area identified pursuant to s. 1012.585(3)(f), evidence of being certified or endorsed in reading.

The State Board of Education shall approve the training requirements.

2. All instructional personnel who supervise or direct teacher preparation students during field experience courses or internships in another state, in which a candidate demonstrates his or her impact on student learning growth, through a Florida online or distance program must have received "clinical educator" training or its equivalent in that state, hold a valid professional certificate issued by the state in which the field experience takes place, and have at least 3 years of teaching experience in prekindergarten through grade 12.

3. All instructional personnel who supervise or direct teacher preparation students during field experience courses or internships, in which a candidate demonstrates his or her impact on student learning growth, on a United States military base in another country through a Florida online or distance program must have received "clinical educator" training or its equivalent, hold a valid professional certificate issued by the United States Department of Defense or a state or territory of the United States, and have at least 3 years teaching experience in prekindergarten through grade 12.

Section 12. Present subsections (8) and (9) of section

1008.25, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and paragraph (d) of subsection (5) and a new subsection (8) are added to that section, and paragraph (a) of subsection (4), paragraph (c) of subsection (5), paragraph (a) of subsection (7), and present subsection (8) are amended, to read:

1008.25 Public school student progression; student support; screening and progress monitoring; reporting requirements.—

(4) ASSESSMENT AND SUPPORT.—

(a) Each student must participate in the statewide, standardized assessment program required under ~~by~~ s. 1008.22 and the Voluntary Prekindergarten Education Program through grade 8 coordinated screening and progress monitoring system required under subsection (8). Each student who does not achieve a Level 3 or above on the statewide, standardized English Language Arts assessment, the statewide, standardized Mathematics assessment, or the Algebra I EOC assessment must be evaluated to determine the nature of the student's difficulty, the areas of academic need, and strategies for providing academic supports to improve the student's performance.

(5) READING DEFICIENCY AND PARENTAL NOTIFICATION.—

(c) The parent of any student who exhibits a substantial deficiency in reading, as described in paragraph (a), must be notified in writing of the following:

1. That his or her child has been identified as having a substantial deficiency in reading, including a description and explanation, in terms understandable to the parent, of the exact nature of the student's difficulty in learning and lack of achievement in reading.

2. A description of the current services that are provided to the child.

3. A description of the proposed intensive interventions and supports that will be provided to the child that are designed to remediate the identified area of reading deficiency.

4. That if the child's reading deficiency is not remediated by the end of grade 3, the child must be retained unless he or she is exempt from mandatory retention for good cause.

5. Strategies, including multisensory strategies, through a read-at-home plan the parent can use in helping his or her child succeed in reading.

6. That the statewide, standardized English Language Arts assessment is not the sole determiner of promotion and that additional evaluations, portfolio reviews, and assessments are available to the child to assist parents and the school district in knowing when a child is reading at or above grade level and ready for grade promotion.

7. The district's specific criteria and policies for a portfolio as provided in subparagraph (6)(b)4. and the evidence required for a student to demonstrate mastery of Florida's academic standards for English Language Arts. A parent of a student in grade 3 who is identified anytime during the year as being at risk of retention may request that the school immediately begin collecting evidence for a portfolio.

8. The district's specific criteria and policies for midyear promotion. Midyear promotion means promotion of a retained student at any time during the year of retention once the student has demonstrated ability to read at grade level.

After initial notification, the school shall apprise the parent at least monthly of the student's progress in response to the intensive interventions and supports. Such communications must be in writing and must explain any additional interventions or supports that will be implemented to accelerate the student's progress if the interventions and supports already being implemented have not resulted in improvement.

(d) The Department of Education shall develop a handbook that schools must provide to the parent of a student who is identified as having a substantial reading deficiency. The handbook must be made available in an electronic format that is accessible online and must include the following information:

1. An overview of the types of assessments used to identify reading deficiencies and what those assessments measure or do not measure, the frequency with which the assessments are administered, and the requirements for interventions and supports that districts must provide to students who do not make adequate academic progress.

2. An overview of the process for initiating and conducting evaluations for exceptional education eligibility. The overview must include an explanation that a diagnosis of a medical condition alone is not sufficient to establish exceptional education eligibility but may be used to document how that condition relates to the student's eligibility determination and may be disclosed in an eligible student's individual education plan when necessary to inform school personnel responsible for implementing the plan.

3. Characteristics of conditions associated with learning disorders, including dyslexia, dysgraphia, dyscalculia, and

developmental aphasia.

4. A list of resources that support informed parent involvement in decisionmaking processes for students who have difficulty in learning.

(7) SUCCESSFUL PROGRESSION FOR RETAINED THIRD GRADE STUDENTS.—

(a) Students retained under paragraph (5)(b) must be provided intensive interventions in reading to ameliorate the student's specific reading deficiency and prepare the student for promotion to the next grade. These interventions must include:

1. Evidence-based, explicit, systematic, and multisensory reading instruction in phonemic awareness, phonics, fluency, vocabulary, and comprehension and other strategies prescribed by the school district.

2. Participation in the school district's summer reading camp, which must incorporate the instructional and intervention strategies under subparagraph 1.

3. A minimum of 90 minutes of daily, uninterrupted reading instruction incorporating the instructional and intervention strategies under subparagraph 1. This instruction may include:

a. Coordinated integration of content-rich texts in science and civic literacy ~~social studies~~ within the 90-minute block.

b. Small group instruction.

c. Reduced teacher-student ratios.

d. More frequent progress monitoring.

e. Tutoring or mentoring.

f. Transition classes containing 3rd and 4th grade students.

g. Extended school day, week, or year.

(8) COORDINATED SCREENING AND PROGRESS MONITORING SYSTEM.—

(a) The Department of Education, in collaboration with the Office of Early Learning, shall procure and require the use of a statewide, standardized coordinated screening and progress monitoring system for the Voluntary Prekindergarten Education Program and public schools serving kindergarten through grade 8 students. The system must:

1. Measure student progress in the Voluntary Prekindergarten Education Program through grade 8 in meeting the appropriate expectations in early literacy and mathematics skills and in English Language Arts and mathematics standards as required by ss. 1002.67(1)(a) and 1003.41.

2. Measure student performance in oral language development, phonemic and phonological awareness, knowledge of print and letters, decoding, fluency, vocabulary, and comprehension, as applicable by grade level.

3. Be a valid, reliable, and developmentally appropriate computer-adaptive direct instrument that provides screening and diagnostic capabilities for monitoring student progress and identifies students who have a substantial deficiency in reading, including identifying students with characteristics of dyslexia.

4. Provide data for Voluntary Prekindergarten Education Program accountability as required under s. 1002.67.

5. Provide Voluntary Prekindergarten Education Program providers, school districts, schools, and teachers with data and resources that enhance differentiated instruction and parent communication.

6. Provide information to the department to aid in the development of educational programs, policies, and supports for providers, districts, and schools.

(b) Beginning with the 2022-2023 school year, private Voluntary Prekindergarten Education Program providers and public schools must participate in the screening and progress monitoring system. The screening and progress monitoring system must be administered at least three times within a program year or school year, as applicable, with the first administration occurring no later than the first 30 instructional days after the start of the program year or school year pursuant to state board rule.

(c) A Voluntary Prekindergarten Education Program student who exhibits a substantial deficiency in early literacy skills based upon results under this subsection must be referred to the school district in which he or she resides and may be eligible to receive intensive reading interventions after program completion and before participating in kindergarten. Such interventions may be paid for using funds from the school district's evidence-based reading instruction allocation in accordance with s. 1011.62(9).

(d) Screening and progress monitoring system results shall be reported to the department pursuant to state board rule and maintained in the department's K-20 data warehouse. Results must be provided to a student's teacher and parent in a timely manner as required in paragraph (2)(a).

(e) The department, in collaboration with the Office of Early Learning, shall provide training and support for effective implementation of the screening and progress monitoring system.

(9)~~(8)~~ ANNUAL REPORT.—

(a) In addition to the requirements in paragraph (5)(b), each district school board must annually report to the parent of each student the progress of the student toward achieving state and district expectations for proficiency in English Language Arts, science, social studies, and mathematics. The district school board must report to the parent the student's results on each statewide, standardized assessment and the screening and progress monitoring system under subsection (8). The evaluation of each student's progress must be based upon the student's classroom work, observations, tests, district and state assessments, response to intensive interventions provided under paragraph (5)(a), and other relevant information. Progress reporting must be provided to the parent in writing in a format adopted by the district school board.

(b) Each district school board must annually publish on the district website and in the local newspaper the following information on the prior school year:

1. The provisions of this section relating to public school student progression and the district school board's policies and procedures on student retention and promotion.

2. By grade, the number and percentage of all students in grades 3 through 10 performing at Levels 1 and 2 on the statewide, standardized English Language Arts assessment.

3. By grade, the number and percentage of all students retained in kindergarten through grade 10.

4. Information on the total number of students who were promoted for good cause, by each category of good cause as specified in paragraph (6)(b).

5. Any revisions to the district school board's policies and procedures on student retention and promotion from the prior year.

Section 13. Paragraph (a) of subsection (5) of section 1008.345, Florida Statutes, is amended to read:

1008.345 Implementation of state system of school improvement and education accountability.—

(5) The commissioner shall annually report to the State Board of Education and the Legislature and recommend changes in state policy necessary to foster school improvement and education accountability. The report shall include:

(a) For each school district:

1. The percentage of students, by school and grade level, demonstrating learning growth in English Language Arts and mathematics.

2. The percentage of students, by school and grade level, in both the highest and lowest quartiles demonstrating learning growth in English Language Arts and mathematics.

3. The information contained in the school district's annual report required pursuant to s. 1008.25(9) ~~s. 1008.25(8)~~.

School reports shall be distributed pursuant to this subsection and s. 1001.42(18)(c) and according to rules adopted by the State Board of Education.

Section 14. Section 1008.365, Florida Statutes, is created to read:

1008.365 Reading Achievement Initiative for Scholastic Excellence Act.—

(1) This section may be cited as the "Reading Achievement

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Initiative for Scholastic Excellence Act."

(2) The Reading Achievement Initiative for Scholastic Excellence (RAISE) Program is established within the Department of Education to provide instructional supports to school districts, school administrators, and instructional personnel in implementing evidence-based reading instruction and interventions in order to improve student reading achievement.

(3) The department shall establish at least 20 literacy support regions and regional support teams, at the direction of a regional literacy support director appointed by the Commissioner of Education, to assist schools with improving low reading scores as provided in this section.

(a) A regional literacy support director must be an employee of a school district, successfully demonstrate competence on the evidence-based strategies identified pursuant to s. 1001.215(8) through a statewide, competency-based reading endorsement pathway under s. 1012.586(2), and have the experience and credentials necessary, as determined by the department, to:

1. Effectively monitor student reading growth and achievement data;

2. Oversee districtwide and schoolwide professional development and planning to establish evidence-based practices among school administrators and instructional personnel;

3. Evaluate implementation of evidence-based practices; and

4. Manage a regional support team.

(b) A regional support team shall report to its regional literacy support director and must consist of individuals who:

1. Successfully demonstrate competence on the evidence-

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based strategies identified pursuant to s. 1001.215(8) through a statewide, competency-based reading endorsement pathway under s. 1012.586(2);

2. Have substantial experience in teaching and monitoring student progress data in reading; and

3. Have received training necessary to assist with the delivery of professional development and site-based supports, including modeling evidence-based practices and providing feedback to instructional personnel.

(4) The department may establish criteria to identify schools that must receive supports from a regional support team. However, regardless of its school grade designated pursuant to s. 1008.34, a school must be identified for supports if 50 percent of its students who take the statewide, standardized English Language Arts assessment score below a Level 3 for any grade level, or, for students in kindergarten through grade 3, if progress monitoring data collected pursuant to s. 1008.25(8) shows that 50 percent or more of the students are not on track to pass the statewide, standardized grade 3 English Language Arts assessment. A school identified for supports under this section must implement a school improvement plan pursuant to s. 1001.42(18).

(5) The department shall provide progress monitoring data to regional support teams regarding the implementation of supports. Such supports must include:

(a) Professional development, aligned to evidence-based strategies identified pursuant to s. 1001.215(8), for appropriate instructional personnel and school administrators identified by the regional support team.

(b) Assistance with implementing:

1. Data-informed instructional decisionmaking using progress monitoring and other appropriate data.

2. Selection and consistent, coordinated use of high-quality instructional materials and supplemental materials.

3. Reading instruction in other core subject area curricula, with an emphasis on civic literacy.

4. A multitiered system of supports in order to provide students effective interventions and identify students who may require an evaluation for special educational services, including identifying characteristics of conditions that affect phonological processing, such as dyslexia.

(c) Evaluating a school's improvement plan for alignment with the school district's K-12 comprehensive reading plan under s. 1011.62(9)(d). If the regional support team determines that the school district's reading plan does not address the school's need to improve student outcomes, the regional literacy support director, the district school superintendent, or his or her designee, and the director of the Just Read, Florida! Office shall convene a meeting to rectify the deficiencies of the reading plan.

(6) Identification of a school for supports under this section does not require a school to implement a turnaround option or take other corrective actions under s. 1008.33. However, a regional support team may be used to assist with providing the differentiated matrix of intervention and support strategies under s. 1008.33, as appropriate. The department may direct a regional support team to make other forms of assistance available to school districts and schools.

(7) Once a school's data shows that it no longer meets the criteria under subsection (4), the school may discontinue receiving supports and implementing a school improvement plan. Such supports may continue subject to available resources.

(8) As part of the RAISE Program, the department shall establish a tutoring program and develop training in effective reading tutoring practices and content, based on evidence-based practices and aligned to the English Language Arts standards under s. 1003.41, which prepares eligible high school students to tutor students in kindergarten through grade 3 in schools identified under this section, instilling in those students a love of reading and improving their literacy skills.

(a) To be eligible to participate in the tutoring program, a high school student must be a rising junior or senior who has a cumulative grade point average of 3.0 or higher, has no history of out-of-school suspensions or expulsions, is on track to complete all core course requirements to graduate, and has written recommendations from at least two of his or her present or former high school teachers of record or extracurricular activity sponsors.

(b) School districts that wish to participate in the tutoring program must recruit, train, and deploy eligible high school students using the materials developed under this section. Tutoring must occur during the school day on school district property in the presence and under the supervision of instructional personnel who are school district employees. A parent must give written permission for his or her child to receive tutoring through the program.

(c) Tutoring may be part of a service-learning course

adopted pursuant to s. 1003.497. Students may earn up to 3 elective credits for high school graduation based on the verified number of hours the student spends tutoring under the program. The hours of volunteer service must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and an administrator or designee of the school in which the tutoring occurred. The hours that a high school student devotes to tutoring may be counted toward meeting community service requirements for high school graduation and community service requirements for participation in the Florida Bright Futures Scholarship Program as provided in s. 1003.497(3)(b). The department shall designate a high school student who provides at least 500 verified hours of tutoring under the program as a New Worlds Scholar and award the student with a pin indicating such designation.

(9) The State Board of Education shall adopt rules to administer this section.

Section 15. Paragraphs (b) and (d) of subsection (6) and subsections (9) and (11) of section 1011.62, Florida Statutes, are amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(6) CATEGORICAL FUNDS.—

(b) If a district school board finds and declares in a resolution adopted at a regular meeting of the school board that

the funds received for any of the following categorical appropriations are urgently needed to maintain school board specified academic classroom instruction or improve school safety, the school board may consider and approve an amendment to the school district operating budget transferring the identified amount of the categorical funds to the appropriate account for expenditure:

1. Funds for student transportation.

2. Funds for evidence-based ~~research-based~~ reading instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (9)(a).

3. Funds for instructional materials if all instructional material purchases necessary to provide updated materials that are aligned with applicable state standards and course descriptions and that meet statutory requirements of content and learning have been completed for that fiscal year, but no sooner than March 1. Funds available after March 1 may be used to purchase hardware for student instruction.

4. Funds for the guaranteed allocation as provided in subparagraph (1)(e)2.

5. Funds for the supplemental academic instruction allocation as provided in paragraph (1)(f).

6. Funds for the Florida digital classrooms allocation as provided in subsection (12).

7. Funds for the federally connected student supplement as provided in subsection (13).

8. Funds for class size reduction as provided in s.

1011.685.

(d) If a district school board transfers funds from its evidence-based ~~research-based~~ reading instruction allocation, the board must also submit to the Department of Education an amendment describing the changes that the district is making to its reading plan approved pursuant to paragraph (9)(d).

(9) EVIDENCE-BASED ~~RESEARCH-BASED~~ READING INSTRUCTION ALLOCATION.—

(a) The evidence-based ~~research-based~~ reading instruction allocation is created to provide comprehensive reading instruction to students in kindergarten through grade 12, including certain students who have completed the Voluntary Prekindergarten Education Program and who exhibit a substantial deficiency in early literacy skills under s. 1008.25(8)(c). Each school district that has one or more of the 300 lowest-performing elementary schools based on a 3-year average of the state reading assessment data must use the school's portion of the allocation to provide an additional hour per day of intensive reading instruction for the students in each school. The additional hour may be provided within the school day. Students enrolled in these schools who earned a level 4 or level 5 score on the statewide, standardized English Language Arts assessment for the previous school year may participate in the additional hour of instruction. Exceptional student education centers may not be included in the 300 schools. The intensive reading instruction delivered in this additional hour shall include: evidence-based ~~research-based~~ reading instruction that has been proven to accelerate progress of students exhibiting a reading deficiency; differentiated instruction based on

screening, diagnostic, progress monitoring, or student assessment data to meet students' specific reading needs; explicit and systematic reading strategies to develop phonemic awareness, phonics, fluency, vocabulary, and comprehension, with more extensive opportunities for guided practice, error correction, and feedback; and the coordinated integration of civic literacy ~~social studies~~, science, and mathematics-text reading, text discussion, and writing in response to reading.

(b) Funds for comprehensive, evidence-based ~~research-based~~ reading instruction shall be allocated annually to each school district in the amount provided in the General Appropriations Act. Each eligible school district shall receive the same minimum amount as specified in the General Appropriations Act, and any remaining funds shall be distributed to eligible school districts based on each school district's proportionate share of K-12 base funding.

(c) Funds allocated under this subsection must be used to provide a system of comprehensive reading instruction to students enrolled in the K-12 programs, which may include the following:

1. An additional hour per day of evidence-based intensive reading instruction to students in the 300 lowest-performing elementary schools by teachers and reading specialists who have demonstrated effectiveness in teaching reading as required in paragraph (a).

2. Kindergarten through grade 5 evidence-based ~~reading intervention teachers to provide~~ intensive reading interventions provided by reading intervention teachers ~~intervention~~ during the school day and in the required extra hour for students

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identified as having a substantial reading deficiency.

3. Highly qualified reading coaches to specifically support teachers in making instructional decisions based on student data, and improve teacher delivery of effective reading instruction, intervention, and reading in the content areas based on student need.

4. Professional development for school district teachers in scientifically researched and evidence-based ~~based~~ reading instruction, including strategies to teach reading in content areas and with an emphasis on technical and informational text, to help school district teachers earn a certification or an endorsement in reading.

5. Summer reading camps, using only teachers or other district personnel who are certified or endorsed in reading consistent with s. 1008.25(7)(b)3., for all students in kindergarten through grade 2 who demonstrate a reading deficiency as determined by district and state assessments, and students in grades 3 through 5 who score at Level 1 on the statewide, standardized English Language Arts assessment.

6. Scientifically researched and evidence-based supplemental instructional materials ~~that are grounded in scientifically based reading research~~ as identified by the Just Read, Florida! Office pursuant to s. 1001.215(8).

7. Evidence-based intensive reading interventions for students in kindergarten through grade 12 who have been identified as having a substantial reading deficiency or who are reading below grade level as determined by the statewide, standardized English Language Arts assessment.

(d)1. Annually, by a date determined by the Department of

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Education but before May 1, school districts shall submit a K-12 comprehensive reading plan for the specific use of the evidence-based ~~research-based~~ reading instruction allocation in the format prescribed by the department for review and approval by the Just Read, Florida! Office created pursuant to s. 1001.215. The plan format shall be developed with input from school district personnel, including teachers and principals, and shall provide for intensive reading interventions identified through a root-cause analysis of student performance data and reflection tool developed by the department to evaluate the effectiveness of interventions implemented in the prior year. Intensive reading interventions must be delivered by instructional personnel who are certified or endorsed in reading and must incorporate evidence-based strategies identified by the Just Read, Florida! Office pursuant to s. 1001.215(8).

2. By July 1 of each year, the department shall release to each school district with an approved plan its allocation of appropriated funds ~~The plan annually submitted by school districts shall be deemed approved unless the department rejects the plan on or before June 1~~. If a school district and the Just Read, Florida! Office cannot reach agreement on the contents of the plan, the school district may appeal to the State Board of Education for resolution. School districts shall be allowed reasonable flexibility in designing their plans and shall be encouraged to offer reading intervention through innovative methods, including career academies. ~~The plan format shall be developed with input from school district personnel, including teachers and principals, and shall provide for intensive reading interventions through integrated curricula, provided that,~~

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~~beginning with the 2020-2021 school year, the interventions are delivered by a teacher who is certified or endorsed in reading. Such interventions must incorporate strategies identified by the Just Read, Florida! Office pursuant to s. 1001.215(8). No later than July 1 annually, the department shall release the school district's allocation of appropriated funds to those districts having approved plans. A school district that spends 100 percent of this allocation on its approved plan shall be deemed to have been in compliance with the plan.~~ The department shall ~~may~~ withhold funds upon a determination that reading instruction allocation funds are not being used to implement the approved plan. The department shall evaluate ~~monitor and track~~ the implementation of each district plan, including conducting site visits and collecting specific data on expenditures and reading improvement results. By February 1 of each year, the department shall report its findings to the Legislature and the State Board of Education, including any recommendations for improving implementation of evidence-based reading and intervention strategies in classrooms.

3.~~2.~~ Each school district that has a school designated as one of the 300 lowest-performing elementary schools as specified in paragraph (a) shall specifically delineate in the comprehensive reading plan, or in an addendum to the comprehensive reading plan, the implementation design and reading intervention strategies that will be used for the required additional hour of reading instruction. The term "reading intervention" includes evidence-based strategies frequently used to remediate reading deficiencies and also includes individual instruction, tutoring, mentoring, or the use

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of technology that targets specific reading skills and abilities.

For purposes of this subsection, the term "evidence-based" means demonstrating a statistically significant effect on improving student outcomes or other relevant outcomes as provided in 20 U.S.C. s. 8101(21)(A)(i).

(11) VIRTUAL EDUCATION CONTRIBUTION.—The Legislature may annually provide in the Florida Education Finance Program a virtual education contribution. The amount of the virtual education contribution shall be the difference between the amount per FTE established in the General Appropriations Act for virtual education and the amount per FTE for each district and the Florida Virtual School, which may be calculated by taking the sum of the base FEFP allocation, the discretionary local effort, the state-funded discretionary contribution, the discretionary millage compression supplement, the evidence-based ~~research-based~~ reading instruction allocation, the teacher salary increase allocation, and the instructional materials allocation, and then dividing by the total unweighted FTE. This difference shall be multiplied by the virtual education unweighted FTE for programs and options identified in s. 1002.455 and the Florida Virtual School and its franchises to equal the virtual education contribution and shall be included as a separate allocation in the funding formula.

Section 16. Subsection (2) of section 1011.67, Florida Statutes, is amended to read:

1011.67 Funds for instructional materials.—

(2) Annually by July 1 and before the release of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

instructional materials funds, each district school superintendent shall certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan that supports fidelity of implementation of instructional materials programs, including verification that training was provided; that the materials are being implemented as designed; and, beginning July 1, 2021, for core reading materials and reading intervention materials used in kindergarten through grade 5, that the materials meet the requirements of s. 1001.215(8). Such instructional materials, as evaluated and identified pursuant to s. 1001.215(4), may be purchased by the school district with funds under this section without undergoing the adoption procedures under s. 1006.40(4)(b). This subsection does not preclude school districts from purchasing or using other materials to supplement reading instruction and provide additional skills practice.

Section 17. Paragraph (g) is added to subsection (3) of section 1012.585, Florida Statutes, to read:

1012.585 Process for renewal of professional certificates.—

(3) For the renewal of a professional certificate, the following requirements must be met:

(g) A teacher may earn inservice points only once during each 5-year validity period for any mandatory training topic that is not linked to student learning or professional growth.

Section 18. Section 1012.586, Florida Statutes, is amended to read:

1012.586 Additions or changes to certificates; duplicate certificates; reading endorsement pathways.—

(1) A school district may process via a Department of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Education website certificates for the following applications of public school employees:

(a) ~~(1)~~ Addition of a subject coverage or endorsement to a valid Florida certificate on the basis of the completion of the appropriate subject area testing requirements of s. 1012.56(5)(a) or the completion of the requirements of an approved school district program or the inservice components for an endorsement.

1. ~~(a)~~ To reduce duplication, the department may recommend the consolidation of endorsement areas and requirements to the State Board of Education.

2. ~~(b) By July 1, 2018, and~~ At least once every 5 years ~~thereafter~~, the department shall conduct a review of existing subject coverage or endorsement requirements in the elementary, reading, and exceptional student educational areas. The review must include reciprocity requirements for out-of-state certificates and requirements for demonstrating competency in the reading instruction professional development topics listed in s. 1012.98(4)(b)11. The review must also consider the award of an endorsement to an individual who holds a certificate issued by an internationally recognized organization that establishes standards for providing evidence-based interventions to struggling readers or who completes a postsecondary program that is accredited by such organization. Any such certificate or program must require an individual who completes the certificate or program to demonstrate competence in reading intervention strategies through clinical experience. At the conclusion of each review, the department shall recommend to the state board changes to the subject coverage or endorsement requirements

based upon any identified instruction or intervention strategies proven to improve student reading performance. This subparagraph ~~paragraph~~ does not authorize the state board to establish any new certification subject coverage.

(b) ~~(2)~~ A reissued certificate to reflect a name change.

(c) ~~(3)~~ A duplicate certificate to replace a lost or damaged certificate.

The employing school district shall charge the employee a fee not to exceed the amount charged by the Department of Education for such services. Each district school board shall retain a portion of the fee as defined in the rules of the State Board of Education. The portion sent to the department shall be used for maintenance of the technology system, the web application, and posting and mailing of the certificate.

(2)(a) By the beginning of the 2022-2023 school year, the department shall adopt one or more statewide, competency-based pathways by which instructional personnel may earn a reading endorsement. A pathway adopted by the department must allow a candidate to complete coursework online and demonstrate mastery of each endorsement competency either in person or remotely. The department shall place on each participant's educator certificate a microcredential for each competency module the candidate successfully completes.

(b) As part of adopting a pathway pursuant to paragraph (a), the department shall review the competencies for the reading endorsement for alignment with evidence-based instructional and intervention practices rooted in the science of reading, consistent with s. 1001.215(3), and recommend

changes to the State Board of Education. Recommended changes must address identification of the characteristics of conditions such as dyslexia, implementation of evidence-based classroom instruction and interventions, and effective progress monitoring. By July 1, 2023, each school district reading endorsement add-on program must be resubmitted for approval by the department consistent with this paragraph.

(c) Beginning July 1, 2024, instructional personnel may not earn a reading endorsement solely by achieving a passing score on the K-12 reading certification subject area assessment.

Section 19. Subsection (5) of section 1012.98, Florida Statutes, is amended to read:

1012.98 School Community Professional Development Act.—

(5) Each district school board shall provide funding for the professional development system as required by s. 1011.62 and the General Appropriations Act, and shall direct expenditures from other funding sources to continuously strengthen the system in order to increase student achievement and support instructional staff in enhancing rigor and relevance in the classroom. The department shall identify professional development opportunities that require the teacher to demonstrate proficiency in a specific classroom practice, with priority given to implementing evidence-based reading instructional and intervention strategies identified pursuant to s. 1001.215(8). A school district may coordinate its professional development program with that of another district, with an educational consortium, or with a Florida College System institution or university, especially in preparing and educating personnel. Each district school board shall make available

inservice activities to instructional personnel of nonpublic schools in the district and the state certified teachers who are not employed by the district school board on a fee basis not to exceed the cost of the activity per all participants.

Section 20. Paragraph (e) is added to subsection (1) of section 1012.986, Florida Statutes, to read:

1012.986 William Cecil Golden Professional Development Program for School Leaders.—

(1) There is established the William Cecil Golden Professional Development Program for School Leaders to provide high standards and sustained support for principals as instructional leaders. The program shall consist of a collaborative network of state and national professional leadership organizations to respond to instructional leadership needs throughout the state. The network shall support the human-resource development needs of principals, principal leadership teams, and candidates for principal leadership positions using the framework of leadership standards adopted by the State Board of Education, the Southern Regional Education Board, and the National Staff Development Council. The goal of the network leadership program is to:

(e) Support, through training on observation and evaluation practices aligned to the science of reading, the professional growth of instructional personnel who provide reading instruction and interventions.

Section 21. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2021

I respectfully request that **Senate Bill #1898**, relating to Student Literacy , be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/21
Meeting Date

1898
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Student Literacy

Name Dr. Danielle Thomas

Job Title VP of Education

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Orlando FL 32809
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1906
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee; and Senator Brodeur and others
SUBJECT:	Reemployment Assistance
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	**Fav/CS**
2.	Hrdlicka	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1906 changes the state's reemployment assistance weekly benefit amount from a range of $32 to $275 per week to $100 to $375 per week. The bill also allows the application of an alternative base period, consisting of the four most recent calendar quarters, if an individual cannot qualify under the current base period. The bill increases the number of available weeks by two weeks, for a range of a maximum of 14 weeks at an unemployment rate of 5 percent up to 25 weeks at an unemployment rate of 10.5 percent. Under the bill, the number of available weeks is calculated monthly instead of annually.

The bill removes the requirement that a claimant must include the telephone number of each prospective employer contacted for each week of unemployment claimed; clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted; reduces the number of prospective employers that each reemployment assistance claimants must contact each week from five to three, or from three to two for individuals in small counties; and allows submittal of a resume to an employer through an online job search service to count as a contact. The bill clarifies that pregnancy cannot be the basis of a denial of a claim.

The Revenue Estimating Conference has not yet estimated the impact of the bill.

The bill takes effect July 1, 2021.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.[1] The program is administered as a partnership of the federal government and the states.[2] The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[3] FUTA collections go to the states for costs of administering state unemployment compensation and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.[4]

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's program was created by the Legislature in 1937.[5] The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.[6]

State Reemployment Assistance Benefits

In Florida, which rebranded the unemployment compensation program as the reemployment assistance program in 2012,[7] a qualified claimant may receive benefits equal to 25 percent of wages, not to exceed $6,325 in a benefit year.[8] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount[9] of $275, for a maximum of between 12 weeks and 23

[1] USDOL, *State Unemployment Insurance Benefits*, available at: https://oui.doleta.gov/unemploy/uifactsheet.asp (last visited Apr. 8, 2021).
[2] There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. USDOL, *Unemployment Compensation, Federal – State Partnership*, available at: https://oui.doleta.gov/unemploy/pdf/partnership.pdf (last visited Apr. 8, 2021).
[3] FUTA is codified at 26 U.S.C. § 3301-3309.
[4] USDOL, *Unemployment Insurance Tax Topic*, available at: https://oui.doleta.gov/unemploy/uitaxtopic.asp#:~:text=FUTA%20taxes%20are%20calculated%20by,times%20the%20employer's%20taxable%20wages.&text=Employers%20who%20pay%20their%20state,tax%20paid%20to%20the%20state (last visited Mar. 30, 2021).
[5] Chapter 18402, Laws of Fla.
[6] Section 443.1316, F.S.
[7] Chapter 2012-30, Laws of Fla.
[8] Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.
[9] Pursuant to s. 443.111(3), F.S., the "weekly benefit amount," is an amount equal to one twenty-sixth of the total wages for insured work paid during the quarter of the base period where the wages paid were highest.

weeks,[10] depending on the claimant's length of prior employment and wages earned and the unemployment rate.[11]

The maximum available weeks is set at the beginning of the year and applies for the entire calendar year. The maximum available weeks is based upon the average seasonally adjusted statewide unemployment rate for the months of July, August, and September.[12] If the average rate for that most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12 weeks. For each 0.5 percent step about 5 percent, an additional week of benefits is added to the maximum duration, up to 23 weeks of benefits if that average third quarter unemployment rate is 10.5 percent. On January 1, 2021, the maximum weeks of benefits increased from 12 weeks to 19 weeks based on the three month average of July, August, and September of 2020, which was 8.6 percent.[13]

To receive benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.[14]

Earnings Requirements

The "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.[15] A claimant must have earned wages in at least two quarters of the claimant's base period. The minimum total base period wages must be at least 1.5 times the wages earned in the individual's highest quarter, but at least $3,400 in the base period.[16] For example, the minimum amount a person could earn could be $850 in all four quarters or $1,700 in two of the base period quarters. A claimant's weekly benefit amount is calculated taking the quarter in the base period with the highest amount of wages and multiplying that amount by one twenty-sixth. The minimum weekly benefit amount is $32 and the maximum is $275. For example, a person whose highest quarter earnings were $850, would be eligible for a weekly benefit amount of about $32; a person whose highest quarter earnings were $7,150, would be eligible for a weekly benefit amount of about $275; a person whose

[10] Section 443.111(5)(c), F.S. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent. On January 1, 2021, the maximum weeks of benefits increased from 12 weeks to 19 weeks based on the three month average of July, August, and September of 2020, which was 8.7 percent.

[11] The average weekly benefit amount for each quarter in 2020 was: first quarter – $254; second quarter – $236; third quarter – $227; and fourth quarter – $228. USDOL, *Unemployment Insurance Data*, run report for Florida, available at: https://oui.doleta.gov/unemploy/data_summary/DataSum.asp (last visited Apr. 9, 2021).

[12] Section 443.111(5)(c), F.S. Typically in the calculation of monthly unemployment rates, a rate is published about midway through the following month and the revised rate is published about midway through the next month. *See* DEO, *Unemployment – Local Area Unemployment Statistics (LAUS) – Release Schedule*, 2021, available at: http://lmsresources.labormarketinfo.com/library/DataReleaseSchedule.pdf (last visited Apr. 15, 2021).

[13] DEO, *Florida Department of Economic Opportunity Announces Florida Achieves Six Consecutive Months of Month-Over-Month Job Growth*, (Nov. 20, 2020) available at: https://floridajobs.org/news-center/DEO-Press/2020/11/20/florida-department-of-economic-opportunity-announces-florida-achieves-six-consecutive-months-of-month-over-month-job-growth (last visited Apr. 16, 2021).

[14] *See* s. 443.101, F.S.

[15] Section 443.036(7), F.S.

[16] Section 443.091(1)(g), F.S.

highest quarter earnings were $9,750, would be eligible for a weekly benefit amount of about $275; and a person whose highest quarter earnings were $12,936,[17] would be eligible for a weekly benefit amount of about $275.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. Generally, these include efforts related to finding new employment, such as:[18]

- Registering with Employ Florida;[19]
- Reporting to the One-Stop Career Center when directed to do so by the local CareerSource board;
- Being able to and available for work;[20]
- Contacting at least 5 prospective employers each week or going to the One-Stop Career Center for reemployment services; and
- Participating in reemployment services.

For each week of benefits claimed, a claimant must submit to the DEO the name, address, and telephone number of each prospective employer contacted.[21] A claimant must be actively seeking work to be considered available for work. "This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed" or three prospective employers for individuals who live in small counties.[22] Proof of work search efforts cannot include the same prospective employer at the same location in three consecutive weeks, unless in the meantime the employer has indicated that it is hiring. The DEO conducts random audits of the submitted information to verify that claimants are meeting these requirements.

The requirement to be available for work and able to work applies to an individual during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.[23]

An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available.[24]

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[17] The statewide average annual wage is $51,744 (2019).
[18] Section 443.091(1), F.S.
[19] *See* s. 443.091(1)(b), F.S., and Employ Florida, available at: https://www.employflorida.com/vosnet/Default.aspx (last visited Apr. 8, 2021). Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and the DEO. It provides job-matching and workforce resources.
[20] "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable work. *See* s. 443.036(1) and (6), F.S. *See also* Rule 73B-11.021(2), F.A.C.
[21] Section 449.091(1)(c)1., F.S.
[22] Section 443.091(1)(d), F.S. A "small county" is a county that has an unincarcerated population of 75,000 or less. Section 120.52(19), F.S.
[23] Rule 73B-11.021(2), F.A.C.
[24] Rule 73B-11.011(12), F.A.C. "Reemployment services" is defined as job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.

The DEO's website provides links to local, state, and national employment databases and to resources for job training or further educational opportunities. The One-Stop Career Centers provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs. Additionally, a claimant may be selected to participate in reemployment assistance services, such as the Reemployment Services and Eligibility Assessment (RESEA) program, designed to address the reemployment needs of claimants.[25]

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving benefits. These circumstances include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;[26]
- Failing to apply for available suitable work when directed by the DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;[27]
- Making false or fraudulent representations in filing for benefits;
- Being discharged from employment due to drug use or rejection from a job offer for failing a drug test; and
- Becoming unavailable for work due to incarceration or imprisonment.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

Financing Unemployment Compensation

State Unemployment Compensation Contributions

Florida sets its own taxable wage base and rate. The funds collected are paid into the Unemployment Compensation Trust Fund, which is maintained at the U.S. Treasury.[28] The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[29] Employers' state taxes are used solely to pay benefits to unemployed Floridians.

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[25] RESEA services may include an orientation, initial assessment, labor market information, employability development plan, and work search services. DEO, *Program Description*, available at: https://floridajobs.org/office-directory/division-of-workforce-services/workforce-programs/reemployment-services-and-eligibility-assessment-program (last visited Apr. 8, 2021). Rule 73B-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

[26] An individual is not disqualified for voluntarily leaving temporary work to return to full time work, or to relocate with his or her military spouse due to relocation orders, or due to circumstances related to domestic violence.

[27] Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

[28] Section 443.191, F.S.

[29] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust

Currently, an employer pays taxes on the first $7,000 of an employee's wages.[30] An employer's initial state tax rate is 2.7 percent.[31] After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but it may be adjusted down to a low of 0.1 percent.[32] The adjustment in the tax rate is determined by calculating several factors, including benefit charges associated with the employer, socialized costs,[33] and the balance of the Unemployment Compensation Trust Fund.

Employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the $7,000 wage base to their employees in the first or second quarter of the year, making their total payments due early in the year.

Florida's tax calculation method, especially due to the benefit ratio, is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund.

Other Unemployment Compensation Programs[34]

The maximum weekly benefit amount (WBA) and maximum weeks of assistance for unemployment compensation vary by program. The average maximum WBA of all 53 programs is $473. Sixteen programs offer a maximum WBA under $400; seven programs offer a maximum WBA amount of $275 or less. The average *minimum* WBA of all 53 programs is $63. Sixteen programs offer a *minimum* WBA of $32 or less; 44 programs offer a *minimum* WBA amount of $100 or less.

A majority of states have variable weeks of assistance. Some are based on the base period wages, while others are based on the base period wages and the state's unemployment rate. There are 10 programs that offer a uniform number of weeks (generally 26). Most states offer up to a maximum of 26 based on a person's base period wages. Seven states offer up to a maximum of between 20 and 30 weeks, based on the claimant's base period wages and the state's unemployment rate.

Some examples of other states include:

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fund. *See* s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers.

[30] Section 443.1217(2)(a)2., F.S.

[31] Section 443.131(2)(a), F.S.

[32] Section 443.131(2)(b) and (3)(d), F.S.

[33] Socialized costs include the noncharge ratio (benefits not attributable to any employer over the last 3 years, also called "overpayments"), the excess payments ratio (that portion of benefit charges which exceed the maximum rate of 5.4 percent), and the fund size factor (requires the trust fund maintain a certain balance). *See also* DOR, *Reemployment Tax rate Information: How Rates are Calculated*, available at: https://floridarevenue.com/taxes/taxesfees/Pages/rt_rate.aspx (last visited Apr. 8, 2021).

[34] Information from USDOL, *Comparison of State Unemployment Laws 2020, Chapter 3 Monetary Entitlement*, Table 3-5: Weekly Benefit Amounts and Table 3-12: Duration of Benefits, available at: https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/monetary.pdf (last visited Apr. 9, 2021).

- California offers unemployment insurance applicants a maximum WBA of $450 for up to 26 weeks;
- New York offers a maximum WBA of $504 for a total of 26 weeks;
- Texas offers a maximum WBA of $521 for up to 26 weeks;
- Georgia offers a maximum WBA of $365 for up to 14-20 weeks, depending on the state's unemployment rate;
- North Carolina offers a maximum WBA of $365 for a total of 12-20 weeks, depending on the state's unemployment rate; and
- Alabama offers a maximum WBA of $275 for up to 20 weeks, depending on the state's unemployment rate.

Federal Unemployment Assistance Related to COVID-19

In March 2020, Congress enacted several programs to assist workers who were impacted by the effects of COVID-19 on the economy. Programs took time to implement, as states waited on guidance from USDOL and worked to change the systems to enact the changes. The programs have been extended several times.[35]

The programs provide additional weekly payments to eligible individuals. Payments to workers not typically eligible for benefits or those who had previously exhausted their states' programs; and payments for additional weeks of benefits beyond states' programs. While program durations and amounts have started and expired or been changed in each extension, the currently available programs are:[36]

- State reemployment assistance – up to 19 weeks, for claims filed after January 1, 2021
  - Maximum weekly benefit amount up to $275
  - Additional $300 per week up to the week ending September 4, 2021 (Federal Pandemic Unemployment Compensation (FPUC))
  - Additional $100 per week up to the week ending September 4, 2021, for claimants eligible for state benefits who were also self-employed and earned at least $5,000 in net earnings from their self-employment (Mixed Earners Unemployment Compensation (MEUC))
- Pandemic Emergency Unemployment Compensation (PEUC) – up to 53 weeks, for those who exhaust their state reemployment assistance benefits (through September 4, 2021)
  - Maximum weekly benefit amount up to $275
  - Additional $300 per week up to the week ending September 4, 2021 (FPUC)
  - Additional $100 per week up to the week ending September 4, 2021 (MEUC)

[35] *See* USDOL, *Unemployment Insurance Relief During COVID-19 Outbreak*, available at: https://www.dol.gov/coronavirus/unemployment-insurance (last visited Mar. 30, 2021). The Families First Coronavirus Response Act (Pub. L. No. 116-127, Division D, Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA)); the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136, Title II, Subtitle A); the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Pub. L. No. 117-X, Consolidated Appropriations Act, 2021, Division N, Title II, Subtitle A); and the American Rescue Plan Act of 2021 (Pub. L. No. 114-2, Title IX, Subtitle A, Crisis Support for Unemployed Workers).

[36] DEO, *Florida Reemployment Assistance Benefit Programs*, updated Apr. 6, 2021, available at: https://floridajobs.org/docs/default-source/reemployment-assistance-center/cares-act/ra-benefit-programs.pdf?sfvrsn=d9d24bb0_12 (last visited Apr. 9, 2021).

- Pandemic Unemployment Assistance (PUA) – up to 79 weeks, for those who are not otherwise eligible for state reemployment assistance, including independent contractors, self-employed workers, and some who may have exhausted their state benefits (through September 4, 2021)
  - Maximum weekly benefit amount up to $275
  - Additional $300 per week up to the week ending September 4, 2021 (FPUC)

III. Effect of Proposed Changes:

Alternative Base Period

The bill allows the application of an alternative base period, which is defined by the bill in s. 443.036(3), F.S., (**Section 1**) as the four most recently completed calendar quarters before an individual's benefit year. If an individual is not eligible for benefits based on the individual's baes period wages, then the alternative base period can be used to qualify an individual for benefits, provided none of the quarters have been use to establish a previous reemployment assistance claim. The alternative base period eliminates the "gap" of the most recently completed quarter in the current base period.

The bill amends ss. 443.091(g) and 443.111(2), F.S., (**Sections 2 and 3**) to allow a claimant to establish a claim using wages calculated under the alternative base period. If the quarterly wage report is not available, the DEO must contact the claimant's employers to obtain wage information. The DEO is authorized to adopt rules necessary to administer the alternative wage base.

The bill makes corresponding changes and corrects cross references in ss. 443.036(24), 443.1216, and 443.131, F.S., (**Sections 1, 6, and 7**) related to these changes.

Weekly Benefit Amount

The bill amends s. 443.111, F.S., (**Section 3**) to change the state's reemployment assistance weekly benefit amount from a range of $32 to $275 per week to $100 to $375 per week. The weekly benefit about is based on either the claimant's eligible base period wages or alternative base period wages, as applicable.

For example, a person whose highest quarter earnings were $850, would be eligible for a weekly benefit amount of about $100; a person whose highest quarter earnings were $7,150, would be eligible for a weekly benefit amount of about $275; a person whose highest quarter earnings were $9,750, would be eligible for a weekly benefit amount of about $375; and a person whose highest quarter earnings were $12,936, would be eligible for a weekly benefit amount of about $375.

Available Weeks

The bill amends s. 443.111(5)(c), F.S., (**Section 3**) to increase the scale for the maximum number of available weeks by two weeks. The bill also amends s. 443.111(5), F.S., to set the maximum duration of benefits based upon the most recently available seasonally adjusted

monthly unemployment rate. When a seasonally adjusted monthly unemployment rate is adopted, then the following month the maximum number of available weeks for initial claims submitted during the month will be set based on that rate. Thus under the bill, at a seasonally adjusted monthly unemployment rate of 5 percent, the maximum number of available weeks is 14 weeks, up to a maximum number of available weeks of 25 weeks at a seasonally adjusted monthly unemployment rate of 10.5 percent. As the unemployment rate rises or falls, the scale for the number of available weeks will be more reactive to changing economic conditions.

Maximum Benefits

In accordance with the changes to the number of available weeks and the maximum weekly benefit amount, the bill amends s. 443.111(5)(b), F.S., (**Section 3**) to increase the maximum amount of state benefits that an individual may receive in the individual's benefit year from $6,325 to $9, 375 to correspond to the changes.

Able and Available for Work

The bill amends s. 443.091(1)(c), F.S., (**Section 2**) to remove the requirement that a claimant must provide the telephone number of each prospective employer contacted for each week of unemployment claimed. The bill also clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

The bill amends s. 443.091(1)(d), F.S., (**Section 2**) to reduce the number of prospective employers that reemployment assistance claimants must contact each week from five to three, or from three to two for claimants in small counties.

The bill also allows a claimant to meet the requirement to contact an employer by submitting a resume to an employer through an online job search service.

Pregnancy

The bill creates s. 443.092, F.S., to specifically prohibit the DEO from denying a claimant for reemployment assistance solely on the basis of pregnancy.

Miscellaneous

The bill reenacts related provisions in ss. 443.041 and 443.1116, F.S., (**Sections 8 and 9**) to incorporate the amendments made by the bill.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that the increase in the weekly benefit amount increases the amount of funds paid out to claimants from the Unemployment Compensation Trust Fund, the bill may indirectly cause increases in employer contributions. Employer contributions are based upon employer experience with the system and other factors, including the balance of the trust fund.

The Revenue Estimating Conference has not yet estimated the impact of the bill.

B. Private Sector Impact:

Eligible reemployment assistance claimants could receive higher benefits.

Reimbursable employers, such as charities, could experience an increase in costs consistent with the amount of increased reemployment assistance claims paid.

C. Government Sector Impact:

Governmental employers could experience an increase in costs consistent with the amount of increased reemployment assistance claims paid.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The revised seasonally adjusted unemployment rate for February 2021 is 4.7 percent and the initial unemployment rate for March 2021 is 4.7 percent.[37]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.425, 443.036, 443.091, 443.111, 443.1116, 443.1216, and 443.131.

The bill creates section 443.092 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 443.041 and 443.1116.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Creates an alternative base period for the qualification and calculation of reemployment assistance benefits.
- Reduces the number of employers that a claimant in a small county must contact from three to two.
- Increases the number of available weeks by two weeks (as applied to the scaled weeks, at an unemployment rate of 5 percent, the number of available weeks would be 14 weeks and at an unemployment rate of 10.5 percent, the number of available weeks would be 25 weeks). The committee substitute also changes when the number of available weeks is calculated based on the unemployment rate from annually to monthly.
- Increases the maximum benefit year amount to correspond to the increase in the maximum number of available weeks.
- Clarifies that a claimant who is pregnant cannot be denied benefits solely on the basis of the pregnancy.
- Corrects cross-references and reenacts additional provisions.

CS by Commerce and Tourism on March 29, 2021:
The committee substitute removes the requirement that a claimant must include the telephone number of each prospective employer contacted for each week of unemployment claimed, and clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

[37] DEO, *Florida's March Employment Figures Released*, (Apr. 16, 2021) available at: https://www.floridajobs.org/workforce-statistics/workforce-statistics-data-releases/latest-statistics (last visited Apr. 16, 2021).

The committee substitute reduces the number of prospective employers that reemployment assistance claimants must contact each week from five to three, and provides that a claimant may meet this work search requirement by submitting a resume through an online job search service.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 172
and insert:
Section 1. Present subsections (3) through (46) of section 443.036, Florida Statutes, are redesignated as subsections (4) through (47), respectively, a new subsection (3) is added to that section, and present subsection (24) of that section is amended, to read:
443.036 Definitions.—As used in this chapter, the term:

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(3) "Alternative base period" means the four most recently completed calendar quarters before an individual's benefit year, if such quarters qualify the individual for benefits and were not previously used to establish a prior valid benefit year.

(25) ~~(24)~~ "High quarter" means the quarter in an individual's base period, or in the individual's alternative base period if an alternative base period is used for determining benefits eligibility, in which the individual has the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

Section 2. Paragraphs (c), (d), and (g) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

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2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with

an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least three ~~five~~ prospective employers for each week of unemployment claimed. For the purposes of meeting the requirements of this paragraph, a claimant may contact a prospective employer by submitting a resume to an employer through an online job search service. A claimant who submits a resume to at least three employers through an online job search service satisfies the work search requirements of this paragraph. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least three ~~five~~ prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access

reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

(g) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than $3,400. If an unemployed individual is ineligible for benefits based on base period wages, his or her wages shall be calculated using the alternative base period, and his or her claim shall be established using such wages.

Section 3. Subsections (2) and (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic

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Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(2) QUALIFYING REQUIREMENTS.—

(a) To establish a benefit year for reemployment assistance benefits, an individual must have:

1. ~~(a)~~ Wage credits in two or more calendar quarters of the individual's base period or alternative base period.

2. ~~(b)~~ Minimum total base period wage credits equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period, or in the alternative base period if the alternative base period is used for benefits eligibility.

(b)1. If a worker is ineligible for benefits based on base period wages, wages for that worker must be calculated using an alternative base period and the claim shall be established using such wages.

2. If the wage information for an individual's most recently completed calendar quarter is unavailable to the department from regular quarterly reports of systematically accessible wage information, the department must promptly contact the individual's employer to obtain the wage information.

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3. Wages that fall within the alternative base period of claims established under this paragraph are not available for reuse in qualifying for any subsequent benefit years.

4. The department shall adopt rules to administer this paragraph.

(3) WEEKLY BENEFIT AMOUNT.—

(a) An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than $100 ~~$32~~ or more than $375 ~~$275~~. The weekly benefit amount, if not a multiple of $1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(b) The weekly benefit amount shall be based on either the claimant's base period wages or alternative base period wages, whichever period results in the greater benefit amount.

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $8,625 ~~$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

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Section 4. Paragraph (a) of subsection (4) of section 215.425, Florida Statutes, is amended to read:

215.425 Extra compensation claims prohibited; bonuses; severance pay.—

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(30) ~~s. 443.036(29)~~, by the unit of government.

Section 5. Paragraph (a) of subsection (1) and paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, are amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. 443.036(19) ~~s. 443.036(18)~~, which would otherwise be designated

as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions, and, whichever method is chosen, such election may not impact any other aspect of state law. An employee leasing company that elects the client method must pay contributions at the rates assigned to each client company.

(I) The election applies to all of the employee leasing company's current and future clients.

(II) The employee leasing company must notify the Department of Revenue of its election by July 1, 2012, and such election applies to reports and contributions for the first quarter of the following calendar year. The notification must include:

(A) A list of each client company and the unemployment account number or, if one has not yet been issued, the federal employment identification number, as established by the employee leasing company upon the election to file by client method;

(B) A list of each client company's current and previous employees and their respective social security numbers for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied;

(C) The wage data and benefit charges associated with each client company for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied. If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 2.7 percent; and

(D) The wage data and benefit charges for the prior 3 state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when

the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The applicable client company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The employee leasing company or its applicable client company is not liable for any violation of s. 443.071 engaged in by the other party or by the other party's officers or agents.

(VIII) If an employee leasing company fails to select the client method of reporting not later than July 1, 2012, the entity is required to report under the employee leasing company's tax identification number and contribution rate.

(IX) After an employee leasing company is licensed pursuant

to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

(X) Irrespective of the election, each transfer of trade or business, including workforce, or a portion thereof, between employee leasing companies is subject to the provisions of s. 443.131(3)(g) if, at the time of the transfer, there is common ownership, management, or control between the entities.

b. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Department of Economic Opportunity which includes each client establishment and each establishment of the leasing company, or as otherwise directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance account number, if available;

(III) The former federal employer's identification number, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

d. The department shall adopt rules as necessary to administer this subparagraph, and may administer, collect,

enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

e. For the purposes of this subparagraph, the term "establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) or (c) ~~s. 443.036(35)(b) or (c)~~, to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 6. Paragraph (f) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(f) *Transfer of employment records.*—

1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, are deemed a single employer and are considered to be one employer with a continuous employment record if the tax collection service provider finds that the successor employer continues to carry on the employing enterprises of all of the predecessor employers and that the successor employer has paid all contributions required of and due from all of the predecessor employers and has assumed liability for all

contributions that may become due from all of the predecessor employers. In addition, an employer may not be considered a successor under this subparagraph if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions. As used in this paragraph, notwithstanding s. 443.036(15) ~~s. 443.036(14)~~, the term "contributions" means all indebtedness to the tax collection service provider, including, but not limited to, interest, penalty, collection fee, and service fee. A successor employer must accept the transfer of all of the predecessor employers' employment records within 30 days after the date of the official notification of liability by succession. If a predecessor employer has unpaid contributions or outstanding quarterly reports, the successor employer must pay the total amount with certified funds within 30 days after the date of the notice listing the total amount due. After the total indebtedness is paid, the tax collection service provider shall transfer the employment records of all of the predecessor employers to the successor employer's employment record. The tax collection service provider shall determine the contribution rate of the combined successor and predecessor employers upon the transfer of the employment records, as prescribed by rule, in order to calculate any change in the contribution rate resulting from the transfer of the employment records.

2. Regardless of whether a predecessor employer's employment record is transferred to a successor employer under this paragraph, the tax collection service provider shall treat

the predecessor employer, if he or she subsequently employs individuals, as an employer without a previous employment record or, if his or her coverage is terminated under s. 443.121, as a new employing unit.

3. The state agency providing reemployment assistance tax collection services may adopt rules governing the partial transfer of experience rating when an employer transfers an identifiable and segregable portion of his or her payrolls and business to a successor employing unit. As a condition of each partial transfer, these rules must require the following to be filed with the tax collection service provider: an application by the successor employing unit, an agreement by the predecessor employer, and the evidence required by the tax collection service provider to show the benefit experience and payrolls attributable to the transferred portion through the date of the transfer. These rules must provide that the successor employing unit, if not an employer subject to this chapter, becomes an employer as of the date of the transfer and that the transferred portion of the predecessor employer’s employment record is removed from the employment record of the predecessor employer. For each calendar year after the date of the transfer of the employment record in the records of the tax collection service provider, the service provider shall compute the contribution rate payable by the successor employer or employing unit based on his or her employment record, combined with the transferred portion of the predecessor employer’s employment record. These rules may also prescribe what contribution rates are payable by the predecessor and successor employers for the period between the date of the transfer of the transferred portion of the

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predecessor employer's employment record in the records of the tax collection service provider and the first day of the next calendar year.

4. This paragraph does not apply to an employee leasing company and client contractual agreement as defined in s. 443.036, except as provided in s. 443.1216(1)(a)2.a. The tax collection service provider shall, if the contractual agreement is terminated or the employee leasing company fails to submit reports or pay contributions as required by the service provider, treat the client as a new employer without previous employment record unless the client is otherwise eligible for a variation from the standard rate.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 3 - 8

and insert:

s. 443.036, F.S.; defining and revising terms for purposes of the Reemployment Assistance Program Law; amending s. 443.091, F.S.; revising requirements for reemployment assistance benefits eligibility; amending s. 443.111, F.S.; requiring an alternative base period to be used under certain circumstances when calculating wages in determining qualification for reemployment assistance benefits; requiring the Department of Economic Opportunity to contact an individual's employer if certain wage information is unavailable through specified means; specifying that wages that fall within an alternative base period are

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not available for reuse in subsequent benefit years; requiring the department to adopt rules; increasing the weekly benefit amounts an individual may receive; providing that weekly benefit amounts be determined based on the greater of the base period or alternative base period; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year; amending ss. 215.425, 443.1216, and 443.131, F.S.; conforming cross-references; reenacting ss.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/17/2021	.	
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The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 130 - 172
and insert:

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least two ~~three~~ prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not

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apply to persons required to participate in reemployment services under paragraph (e).

Section 2. Subsection (3) and paragraphs (b) and (c) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than $100 ~~$32~~ or more than $375 ~~$275~~. The weekly benefit amount, if not a multiple of $1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

196634

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $8,625 ~~$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a calendar year, the duration of benefits is limited to:

1. Fourteen ~~Twelve~~ weeks if this state's average unemployment rate is at or below 5 percent.

2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.

3. Up to a maximum of 25 ~~23~~ weeks if this state's average unemployment rate equals or exceeds 10.5 percent.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 8

and insert:

to receive during a benefit year; increasing the duration of benefits based upon the state's unemployment rate; reenacting ss.

267314

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment to Amendment (196634) (with title amendment)

Between lines 11 and 12
insert:

Section 2. Section 443.092, Florida Statutes, is created to read:

443.092 Denial of reemployment assistance solely on the basis of pregnancy prohibited.—The department may not deny a person reemployment assistance solely on the basis of pregnancy.

267314

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 65
15 and insert:
16 unemployment rate; creating s. 443.092, F.S.;
17 prohibiting the Department of Economic Opportunity
18 from denying a person reemployment assistance solely
19 on the basis of pregnancy; reenacting ss.

973418

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Brodeur, Pizzo, and Powell) recommended the following:

Senate Substitute for Amendment (196634) (with title amendment)

Delete lines 130 - 172
and insert:

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least two ~~three~~ prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not

973418

apply to persons required to participate in reemployment services under paragraph (e).

Section 2. Section 443.092, Florida Statutes, is created to read:

443.092 Denial of reemployment assistance solely on the basis of pregnancy prohibited.—The department may not deny a person reemployment assistance solely on the basis of pregnancy.

Section 3. Subsection (3) and paragraphs (a), (b), and (c) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than $100 ~~$32~~ or more than $375 ~~$275~~. The weekly benefit

amount, if not a multiple of $1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(5) DURATION OF BENEFITS.—

(a) As used in this section, the term "most recent monthly ~~Florida average~~ unemployment rate" means the most recently available month's ~~average of the 3 months for the most recent third calendar year quarter of the~~ seasonally adjusted statewide unemployment rate ~~rates~~ as published by the Department of Economic Opportunity.

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $9,375 ~~$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a calendar year, the duration of benefits is limited to:

1. Fourteen ~~Twelve~~ weeks if this state's most recent monthly ~~average~~ unemployment rate is at or below 5 percent.

2. An additional week in addition to the 14 ~~12~~ weeks for each 0.5 percent increment in this state's most recent monthly ~~average~~ unemployment rate above 5 percent.

3. Up to a maximum of 25 ~~23~~ weeks if this state's most

973418

recent monthly ~~average~~ unemployment rate equals or exceeds 10.5 percent.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 8

and insert:

to receive during a benefit year; revising the definition of the term "Florida average unemployment rate" to "most recent monthly unemployment rate; increasing the duration of benefits based upon the state's unemployment rate; creating s. 443.092, F.S.; prohibiting the Department of Economic Opportunity from denying a person reemployment assistance solely on the basis of pregnancy; reenacting ss.

609816

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Farmer) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 137 - 152
and insert:
(g) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than $1,200 ~~$3,400~~.

Section 2. Paragraph (b) of subsection (2), subsection (3),

609816

and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(2) QUALIFYING REQUIREMENTS.—To establish a benefit year for reemployment assistance benefits, an individual must have:

(b) Minimum total base period wage credits equal to the high quarter wages multiplied by 1.5, but at least $1,200 ~~$3,400~~ in the base period.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete line 17

and insert:

Section 1. Paragraphs (c), (d), and (g) of subsection (1) of

609816

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 5
and insert:
s. 443.111, F.S.; revising a qualifying requirement for individuals seeking to establish a benefit year for reemployment assistance; increasing the weekly benefit

By the Committee on Commerce and Tourism; and Senators Brodeur, Taddeo, Stewart, Garcia, and Gruters

577-03547-21 20211906c1

A bill to be entitled

An act relating to reemployment assistance; amending s. 443.091, F.S.; revising requirements for reemployment assistance benefits eligibility; amending s. 443.111, F.S.; increasing the weekly benefit amounts an individual may receive; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year; reenacting ss. 443.041(2)(b) and 443.1116(6) and (8)(a), F.S., relating to fees and short-time compensation, respectively, to incorporate the amendments made to s. 443.111, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (c) and (d) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must,

577-03547-21 20211906c1

at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such

services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least three ~~five~~ prospective employers for each week of unemployment claimed. For the purposes of meeting the requirements of this paragraph, a claimant may contact a prospective employer by submitting a resume to an employer through an online job search service. A claimant who submits a resume to at least three employers through an online job search service satisfies the work search requirements of this paragraph. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact

that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least three ~~five~~ prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least

80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 2. Subsection (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance

benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than $100 ~~$32~~ or more than $375 ~~$275~~. The weekly benefit amount, if not a multiple of $1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $8,625 ~~$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

Section 3. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a

reference thereto, paragraph (b) of subsection (2) of section 443.041, Florida Statutes, is reenacted to read:

443.041 Waiver of rights; fees; privileged communications.—

(2) FEES.—

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida is entitled to counsel fees payable by the department as set by the court if the petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than provided in the decision from which appeal was taken. The amount of the fee may not exceed 50 percent of the total amount of regular benefits permitted under s. 443.111(5)(b) during the benefit year.

Section 4. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a reference thereto, subsection (6) and paragraph (a) of subsection (8) of section 443.1116, Florida Statutes, are reenacted to read:

443.1116 Short-time compensation.—

(6) WEEKLY SHORT-TIME COMPENSATION BENEFIT AMOUNT.—The weekly short-time compensation benefit amount payable to an individual is equal to the product of her or his weekly benefit amount as provided in s. 443.111(3) and the ratio of the number of normal weekly hours of work for which the employer would not compensate the individual to the individual's normal weekly hours of work. The benefit amount, if not a multiple of $1, is rounded downward to the next lower multiple of $1.

(8) EFFECT OF SHORT-TIME COMPENSATION BENEFITS RELATING TO THE PAYMENT OF REGULAR AND EXTENDED BENEFITS.—

(a) The short-time compensation benefits paid to an individual shall be deducted from the total benefit amount established for that individual in s. 443.111(5).

Section 5. This act shall take effect July 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 31, 2021

I respectfully request that **Senate Bill 1906**, relating to **Reemployment Assistance**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1948
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee; and Senator Bean and others
SUBJECT:	Department of Economic Opportunity
DATE:	April 17, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Fav/CS**
2.	Hrdlicka	Sadberry	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1948 modifies provisions related to the Department of Economic Opportunity (DEO), including:

- Changing the title for the head of the DEO from "Executive Director" to the "Secretary of Economic Opportunity;"
- Creating the Office of Economic Accountability and Transparency within the DEO;
- Adding the Secretary of Economic Opportunity or his or her designee to the Enterprise Florida Board of Directors and the CareerSource Board of Directors;
- Authorizing additional grant categories under the Community Development Block Grant (CDBG) program;
- Increasing the percentage of CDBG funding that the DEO may set aside annually for use in local government jurisdictions when an emergency or natural disaster has been declared by executive order;
- Repealing provisions that limit the number of grant applications a local government may submit during each CDBG application cycle;
- Requiring local governments to expedite the approval of building permits applied for by contractors on behalf of a property owner participating in the CDBG-Disaster Recovery program;
- Allowing regional workforce boards to conduct level 2 background screenings;

- Repealing a provision making a domestic violence claimant ineligible for reemployment assistance benefits if the claimant refuses an employer's reasonable accommodation;
- Revising the requirements for the reemployment assistance computer system and requiring the DEO, for Fiscal Year 2021-2022, to modernize the reemployment assistance system as provided in the General Appropriations Act;
- Requiring employers to respond to a notice of claim within 14 days, instead of 20 days;
- Clarifying when monetary determinations are final;
- Imposing a 5-year statute of limitations on RA appeals;
- Removing the requirement that reemployment assistance appeals referees be Florida attorneys;
- Expands the definition of "temporary layoff" to include an employer-initiated furlough; and
- Creates a process to allow employer-assisted claims.

The bill takes effect upon becoming a law.

II. Present Situation:

The Department of Economic Opportunity

The DEO was created in 2011 by combining the Agency for Workforce Innovation, the Department of Community Affairs, and the Governor's Office of Tourism, Trade, and Economic Development.[1] The head of the DEO is the executive director, who is appointed by the Governor and confirmed by the Senate.[2] The purpose of the DEO is to formulate and implement policies designed to promote economic opportunities for Floridians.[3] Formally in the statute, the DEO has five divisions: Strategic Business Development; Community Development; Workforce Services; Finance and Administration; and Information Technology.[4]

The Community Development Block Grant Program

The Community Development Block Grant (CDBG) Program was created by Title I of the federal Housing and Community Development Act of 1974. The CDBG program works to ensure the availability of decent affordable housing, to provide services to the most vulnerable in Florida communities, and to create jobs through the expansion and retention of businesses.[5]

Florida Small Cities Community Development Block Grant Program

The DEO administers the Small Cities CDBG program and distributes funds to eligible non-entitlement communities. To be eligible, a city must have a population under 50,000 or a county must have a population under 200,000. The program awards subgrants to communities in four funding categories: economic development, neighborhood revitalization, housing

[1] *See* ch. 2011-142, Laws of Fla.
[2] Section 20.60(2), F.S.
[3] *See* s. 20.60(4), F.S.
[4] Section 20.60(3), F.S.
[5] The Department of Economic Opportunity, *Community Development Block Grant Program, available at* https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/community-development-block-grant-program (last visited April 10, 2021).

rehabilitation, and commercial revitalization.[6] Currently, the DEO may annually set aside 5 percent of CDBG funds for use in local government jurisdictions for which an emergency or natural disaster has been declared by executive order.[7]

Except for applications for economic development, an eligible local government may only submit one application for a grant during each application cycle.[8] Additionally, if economic development funds remain available after the application cycle closes, the remaining funds must be awarded to eligible projects on a first-come, first served basis.[9]

Disaster Recovery

The Community Development Block Grant – Disaster Recovery (CDBG-DR) program is a federally funded program administered by the U.S. Department of Housing and Urban Development that is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance, such as federal assistance or private insurance, has been exhausted.[10]

The DEO administers the CDBG-DR program through its Division of Community Development's Office of Long-Term Resiliency. Currently, single-family residential housing repair and replacement projects are underway for Florida residents whose homes still have unrepaired damage from Hurricanes Hermine, Matthew, Irma, and Michael.[11] These projects must comply with the Florida Building Code Act by applying for and receiving Florida building permits. A building permit for a single-family residential home must be issued within 30 days of application.[12]

Enterprise Florida, Inc.

Enterprise Florida, Inc., (EFI) serves as the principle economic development organization for the state. Among its numerous duties, EFI markets the state for business creation, expansion, and retention.[13] EFI's is governed by a board of directors, of which the Governor is the chairperson, made up of 19 appointed members, a number of at-large members, and ex officio members of the Legislature. Appointed members include the agency heads from the Department of Education, Department of Financial Services, Department of Legal Affairs, Department of Agriculture,

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[6] The Department of Economic Opportunity, *Florida Small Cities Development Block Grant Program*, *available at* https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/florida-small-cities-community-development-block-grant-program (last visited April 10, 2021).
[7] Section 290.044(5), F.S.
[8] *See* s. 290.046(2)(a), F.S. An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant but may not receive more than one such grant per annual funding cycle. A local government may have more than one open economic development grant.
[9] Section 290.046(3)(b), F.S.
[10] The Department of Economic Opportunity, *Office of Disaster Recovery*, *available at* https://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited April 10, 2021).
[11] *See id*.
[12] *See* s. 553.79(14), F.S.
[13] Section 288.901(2), F.S.

Department of State, and CareerSource and 12 members from the private sector appointed by the Governor and the Legislature.[14]

Space Florida

Space Florida is an independent special district, created to foster the growth and development of the aerospace industry in Florida. The entity promotes aerospace business development by facilitating financing, research and development, spaceport operations, workforce development, and other programs.[15] Space Florida's 13-member board of directors is the same 12 private sector members appointed by the Governor and the Legislature and the Governor, who serves ex officio as the chair and a voting member of the board.[16]

CareerSource Florida, Inc.

CareerSource is the state's principal organization to set the workforce policy for the state. The state board works to design and implement strategies to help Floridians enter the workforce, stay employed, and advance in their employment. Members of the board are appointed by the Governor pursuant to federal law; however, there are several members of state agencies appointed to the board by state law. These include the vice chair of EFI, the director of DEO, and the Commissioner of Education.[17]

Workforce Development Boards

Twenty-four local workforce development boards (local boards) deliver Florida's workforce development services through over 100 one-stop service providers.[18] The one-stop service providers give Floridians access to available workforce services, including job placement, career counseling, and skills training.[19] Each local board formulates a local budget and oversees the one-stop delivery system within its local area.[20]

Background Screening

An employer[21] may not hire, select, or otherwise allow an employee to have contact with a vulnerable person[22] that would place the employee in a role that requires a background screening until the screening process is completed and demonstrates the absence of any grounds for the

[14] Section 288.901(4), (5), (6), and (7), F.S.
[15] Section 331.302, F.S.
[16] Section 331.3081, F.S.
[17] Section 445.004, F.S.
[18] The Department of Economic Opportunity, *CareerSource Florida Network Directory*, *available at* http://lcd.floridajobs.org/ (last visited April 10, 2021).
[19] *See* s. 445.009, F.S.
[20] Section 445.007(12), F.S.
[21] Section 435.02(3), F.S., defines "employer" as any person or entity required by law to conduct screening of employees pursuant to ch. 435, F.S.
[22] A vulnerable person is a minor or a vulnerable adult. Section 435.02(6), F.S., Section 415.102(28), F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

denial or termination of employment.[23] If any grounds for the denial or termination of employment arise during the screening process, then the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for disqualification by the agency.[24, 25]

Sections 435.03 and 435.04, F.S., outline the screening requirements. There are two levels of background screening.

- Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website[26] and may include criminal records checks through local law enforcement agencies.[27]
- Level 2 screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation and may include local criminal records checks through local law enforcement agencies.[28]

Reemployment Assistance

Florida's unemployment insurance program was created by the Legislature in 1937.[29] The program was rebranded as the "reemployment assistance program" in 2012.[30] The DEO is responsible for administering the program, and the DEO contracts with the Florida Department of Revenue, as the tax collection service provider, for the collection of unemployment taxes.[31]

Work Search Requirement

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.[32]

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. For example, each week an individual is required to contact at least five

[23] Section 435.06(2)(a), F.S.
[24] Section 435.02(1), F.S., defines "agency" as any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer, or is itself an employer, or that otherwise facilitates the screening of employees pursuant to ch. 435, F.S. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, "agency" means the Department of Children and Families.
[25] Section 435.06(2)(a), F.S. *See* s. 435.07, F.S., for the exemptions for disqualification.
[26] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. *Available at* https://www.nsopw.gov/ (last visited April 10, 2021**).**
[27] Section 435.03(1), F.S.
[28] Section 435.04(1)(a), F.S.
[29] Chapter 18402, Laws of Fla.
[30] Chapter 2012-30, Laws of Fla.
[31] Section 443.1316, F.S.
[32] *See* s. 443.091, F.S.

prospective employers (three prospective employers if the individual resides in a small county) or report to a one-stop career center for reemployment services.[33]

Domestic Violence[34] Victims

Sometimes victims of domestic violence must leave their jobs due to the impact that the violence has had on their lives. Employers are required to permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence.[35]

Except in cases of imminent danger to the health or safety of the employee, or a family or household member, an employee seeking leave from work must provide his or her employer with appropriate advance notice of the leave as required by the employer's policy along with sufficient documentation of the act of domestic violence or sexual violence as required by the employer.[36] An employer must keep all information relating to an employee's leave confidential.[37] Additionally, an employer may not fire, demote, suspend, retaliate, or otherwise discriminate against an individual for taking leave.[38]

Employees who voluntarily leave their job are not typically qualified to receive reemployment assistance benefits.[39] However, an individual will not be disqualified for voluntarily leaving work due to circumstances directly related to domestic violence.[40]

An individual who voluntarily leaves work due to domestic violence must:

- Make reasonable efforts to preserve employment, unless the individual establishes that such efforts are likely to be futile or increase the risk of future incidents of domestic violence;[41]
- Provide evidence such as an injunction, a protective order, or other documentation authorized by state law, which reasonably proves that domestic violence has occurred; and
- Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment.

An individual who is otherwise eligible for benefits is ineligible for each week that he or she no longer meets the qualifying criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.

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[33] *Id*. A "small county" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census. The DEO has been waiving the requirement to contact employers since March 15, 2020, through DEO emergency orders. The most recent is Emergency Order 21-005 (March 2, 2021), which waives the requirement through April 24, 2021.

[34] "'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28, F.S.

[35] Section 741.313, F.S.

[36] Section 741.313(4)(a), F.S.

[37] Section 741.313(4)(c), F.S.

[38] Section 741.313(5)(b), F.S.

[39] *See* s. 443.101(1)(a), F.S.

[40] *See* s. 443.101(1)(a)2.c., F.S.

[41] Efforts to preserve employment may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment. *See id*.

Temporary Layoff

Individuals who have temporarily separated from their employment due to a lack of work are exempt from certain requirements of the reemployment assistance system. The job separation must be due to a lack of work and cannot last longer than 8 consecutive weeks, and the individual must have a fixed or approximate date to return to work.[42]

An individual on a temporary layoff is not required to:
- Complete the DEO's online work registration (Employ Florida Marketplace);
- Report to the local one-stop career center for reemployment services if directed by the local workforce development board; or
- Complete the work search requirements, such as contacting at least five prospective employers each week.[43]

The CONNECT System

Florida's unemployment system is administered by the DEO using the CONNECT system, which was deployed in 2013 to replace a mainframe system with a modernized, Internet-based system.[44] According to ISF, an information technology and strategy firm that completed an assessment of the CONNECT system between November 2020 and February 2021, the CONNECT system was not designed to process the volume of claims received during the COVID-19 pandemic. ISF analyzed ways to improve the delivery of benefits, including a phased approach to ensure the DEO can meet current and future demands. ISF's assessment provides an overview of the current state of the CONNECT system, and recommends the modernization of the current system, which includes cloud migration.[45]

On May 4, 2020, at the request of Governor DeSantis, the Office of the Chief Inspector General initiated a review of the CONNECT system. The scope of the inspector general's review considered available documentation and testimony about the CONNECT system from the period of 2007 to 2020.[46] The draft report offered recommendations for agencies considering information technology (IT) projects, which include:
- Documenting future IT system capacity requirements and expected utilization in system testing plans and test results;
- Assessing the proposed level of maturity of any state transfer or commercial off-the-shelf system relied upon for risk and properly documenting the risk;
- Monitoring what is being provided by the vendor and building in an escape plan and financial penalties for noncompliance;

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[42] Section 443.036(43), F.S.
[43] *See* s. 443.091(1)(b)2. and (d)5., F.S.
[44] The Florida Department of Economic Opportunity, *Improved Delivery of Reemployment Assistance Benefits – Final Report*, at 1 (Feb. 26, 2021), *available at* http://floridajobs.org/docs/default-source/communicationsfiles/2021-improved-delivery-of-reemployment-assistance-benefits-final-report-and-cost-benefit-analysis.pdf (last visited April 10, 2021). *See also* s. 443.1113, F.S.
[45] *Id*. at 2.
[46] Office of the Chief Inspector General, *Review of the Department of Economic Opportunity Florida CONNECT System*, at iii (March 4, 2021), *available at* https://www.flgov.com/wp-content/uploads/2021/03/202005040015-Draft-Report-3.4.21_2.05pm.pdf (last visited April 10, 2021).

- Ensuring that independent verification and validation services are truly independent from the project management team and rigorous;
- Requiring project management to be flat and agile, which may include considering more modular IT projects to accommodate future and rapid technological changes; and
- Strengthening administrative and physical infrastructure needs, which may include tracking, reviewing, and resolving audit related findings and moving the future CONNECT system to the cloud to allow for greater scalability.[47]

In 2020, the Florida Digital Service was established to better leverage technology and support a data-driven government with a customer focus. The service's objectives include cyber-security, cloud-ready architecture, data interoperability, and agile methodologies that would help ensure successful outcomes of large-scale IT projects.[48]

Appeals Process

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements of reemployment assistance benefits.[49] Determinations and redeterminations are statements by the DEO regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days of mailing or delivery of the notice and the DEO must review the information on which the request is based and issue a redetermination.[50]

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee within 20 days of mailing or delivery of the notice. An appeals referee must be an attorney in good standing with the Florida Bar.[51] Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for RA benefits and the payment and collection of RA taxes.[52]

A decision by an appeals referee can be appealed to the RA Appeals Commission if done within 20 days of mailing or delivery of the notice of the referee's decision. The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission. However, the commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.[53]

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal. The notice of appeal should be filed either in the district

[47] *Id*. at vii.
[48] *Id*.
[49] Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).
[50] *See* s. 443.151, F.S.
[51] The DEO has been waiving this requirement since March 15, 2020, through DEO emergency orders. The most recent is Emergency Order 21-005 (March 2, 2021), which waives the requirement through April 24, 2021.
[52] *See* s. 443.151(4)(b), F.S.
[53] *See* s. 443.151(4)(c), F.S.

court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.[54]

III. Effect of Proposed Changes:

The Department of Economic Opportunity

Section 1 amends s. 20.60, F.S., to change the title for the head of the DEO from "Executive Director" to the "Secretary of Economic Opportunity."

The bill authorizes the secretary to appoint deputy and assistant secretaries as necessary. The bill establishes the Office of the Secretary and authorizes the secretary to create offices within the Office of the Secretary and within the DEO's divisions to promote efficient and effective operation of the DEO. The secretary is required to appoint directors for each division.

The bill also creates the Office of Economic Accountability and Transparency and require assigns it the following duties:

- Oversee the DEO's critical objectives and make sure the DEO's key objectives are clearly communicated to the public;
- Organize the DEO's resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state;
- Provide leadership for the DEO's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the DEO;
- Promote and facilitate key DEO initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues; and
- Promote strategic planning for the DEO.

Sections 17, 18, and 20 through 55 amend ss. 14.20195, 16.615, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S., respectively, to make conforming changes to references to the executive director.

Section 19 amends s. 20.04, F.S., to exempt the DEO from the requirements for all departments under the executive branch related to internal structure and standard terms and to limit the creation of additional divisions or offices in the DEO to only as allowed by statute.

[54] *See* s. 443.151(4)(e), F.S.

Enterprise Florida

Section 2 amends s. 288.901, F.S., to add the secretary or his or her designee to the EFI board of directors.

Section 6 amends s. 331.3081, F.S., to update a cross reference.

Florida Small Cities Community Development Block Grant Program

Section 3 amends s. 290.042, F.S., to provide that the definition of "administrative costs" has the same meaning as defined in the Housing and Community Development Act of 1974 and applicable federal regulations.[55]

Section 4 amends s. 290.044, F.S., to broaden the grant categories that applicants may compete for funding under. Currently grants are limited to housing rehabilitation, economic development, neighborhood revitalization, and commercial revitalization. The bill allows categories for any other activity authorized by federal law.

The bill increases the percentage of CDBG funds that the DEO may set aside annually for use in local government jurisdictions for which an emergency or natural disaster has been declared by executive order from 5 percent to 15 percent.

Currently, in the last quarter of the state fiscal year, the DEO must distribute any funds not allocated under the emergency-related set-aside to unfunded applications from the most recent funding cycle. The bill removes this limitation, allowing distribution to any unfunded application regardless of when the application was made.

Section 5 amends s. 290.046, F.S., to repeal provisions that limit the number of grant applications a local government may submit during each CDBG application or funding cycle. The bill also repeals the requirement that unused economic development grant funds be awarded on a first come, first serve basis.

The bill authorizes the DEO to prohibit an applicant from receiving a grant or to penalize an applicant in the rating of a current application if the DEO determines that the applicant has failed to substantially accomplish the results it proposed in previously funded applications. Currently the prohibition or penalty is only allowed if the applicant failed to accomplish its proposed results from its last funded application.

Section 16 amends s. 553.79, F.S., to require local governments to issue a building permit for a single-family residential home within 15 working days after receipt of the application when the permit is applied for by a contractor licensed in Florida on behalf of a property owner who participates in a CDBG-DR program. However, if the permit application fails to meet the

[55] *See* 42 U.S.C. 5305(a)(13) and 24 C.F.R. 570.206 (2015). Rule 73C-23.0030, F.A.C., incorporates the Housing and Community Development Act of 1974 and the relevant chapters of the Code of Federal Regulations by reference. *See also* s. 290.047, F.S., which provides that the maximum percentage of block grant funds that can be spent on administrative costs by an eligible local government is 15 percent for the housing rehabilitation program, 8 percent for both the neighborhood and the commercial revitalization program categories, and 8 percent for the economic development program category.

requirements of the Florida Building Code or the enforcing agency's laws or ordinances, then this timeframe does not apply.

Workforce Development Boards and CareerSource

Section 7 amends s. 435.02, F.S., to change the definition of "specified agency" to include regional workforce boards providing services defined in s. 445.002(3), F.S.,[56] which will allow regional workforce development boards to conduct level 2 background screenings.

Section 15 amends s. 445.004, F.S., to specifically add the secretary of the DEO or his or her designee to the CareerSource Florida, Inc., board of directors.

Reemployment Assistance

Section 8 amends s. 443.036, F.S., to expand the definition of temporary layoff to include an individual's employer-initiated furlough that causes a mandatory complete stoppage of work. The furlough must be temporary, and the individual must still be considered to be "job attached" and be expected to return to work with the employer. There is no time limit on the length of the furlough like there is for a job separation due to lack of work as provided in current law.

Section 9 amends s. 443.091, F.S., to repeal the requirement that a claimant must provide the telephone number of each prospective employer contacted for each week of unemployment claimed. The bill also clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

Section 10 amends s. 443.101, F.S., to repeal the provision that provides that a domestic violence claimant is ineligible to receive benefits for each week that the claimant no longer meets the criteria under s.443.101(1)(a)2.c., F.S., discussed above in the Present Situation, or if the claimant refuses an employer's reasonable accommodation.

Section 11 amends s. 443.1113, F.S., to update the statutory requirements for the state's reemployment assistance computer system. The DEO is required to implement a system for the "efficient distribution of benefits and the effective operation and management of the reemployment assistance program." The system must be "an integrated, modular system hosted in a cloud computing service…that provides for rapid provisioning of additional data processing when necessary."[57]

[56] Section 445.002(3), F.S., defines "services and one-time payments" or "services," when used in reference to individuals who are not receiving temporary cash assistance, as meaning nonrecurrent, short-term benefits designed to deal with a specific crisis situation or episode of need and other services; work subsidies; supportive services such as child care information referral; transitional services, job retention, job advancement, and other employment-related services; nonmedical treatment for substance abuse or mental health problems; teen pregnancy prevention; two-parent family support, including noncustodial parent employment; court-ordered supervised visitation, and responsible fatherhood services; and any other services that are reasonably calculated to further the purposes of the welfare transition program.

[57] The National Institute of Standard and Technology's (NIST) Special Publication 800-145 sets forth the definition of cloud computing service. *See* NIST, *The NIST Definition of Cloud Computing*, SP 800-145 (September 2011), *available at* https://csrc.nist.gov/publications/detail/sp/800-145/final (last visited April 15, 2021). *See also* s. 282.0041(5), F.S.

The bill requires the system to:

- Be accessible through the Internet and on mobile devices and personal computers;
- Process reemployment assistance claims and benefit payments;
- Process and manage overpayments;
- Perform adjudication functions;
- Process appeals and manage appeal hearings; and
- Manage and process employer charging.

The bill retains current system objects, whenever cost effective and operational feasible, and requires the system to enable and *enhance* online, self-service *capabilities*. The system must also maintain interoperability with other DEO workforce systems and allow for employer-assisted claims (see **section 13**, discussed below). The bill also repeals obsolete language related to previous requirements for system development.

Annually, the DEO is required to review the system and identify enhancements or modernization efforts to improve the delivery of services to both claimants and employers and the reporting of information to state and federal entities. These improvements are required to include infrastructure upgrades through cloud services, software improvements, enhanced data analytics and reporting, and increased cybersecurity.[58] The DEO must seek input from the following entities:

- The Florida Digital Service with the Department of Management Services;
- The General Tax Administration Program Office with the Department of Revenue; and
- The Division of Accounting and Auditing within the Department of Financial Services.

The bill requires that by October 1, 2023, the DEO must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which must include a summary of maintenance, enhancement, and modernization efforts over the last fiscal year and a 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion.

Section 12 requires the DEO, for Fiscal Year 2021-2022, to modernize the system as provided in the General Appropriations Act.

In April 2020, the DEO adopted Emergency Rule 73BER20-1, Florida Administrative Code, to create a process for employer assisted claims. The purpose of the rule was to "provide a process for employers to notify the DEO of a mass separation…and make a group filing on behalf of the employer's similarly situated employees." **Section 13** creates s. 443.1118, F.S., to allow for a process for employer-assisted claims. An employer-assisted claim is an initial claim filed by an employer on behalf of its employees who are part of a mass separation from the employer. A mass separation is a full, partial, permanent or temporary separation, including a temporary layoff, of full-time employees. For all employees affected, the separations must occur around the

[58] The Information Technology Security Act under s. 282.318, F.S., sets forth requirements for security of data and information technology. The Department of Management Services is required to establish standards and processes consistent with generally accepted best practices for information technology security, including cybersecurity, and adopt rules that safeguard an agency's data, information, and information technology resources. The act also state agencies to take certain actions to meet security standards and mitigate risks.

same time, be for the same reason, and must be due to no fault of the employees. At a minimum, a mass separation involves 1,000 employees.

To initiate an employer-assisted claim, the employer that commences a mass separation must submit employee information to the DEO within 10 days after the date of the separation and through a secure means approved by the DEO. The employer must give notice and instructions to each employee that the employer submits a claim on behalf of and direct the employee to complete further steps to complete the claim as required by the DEO. The employer must submit an affidavit to the DEO attesting to meeting the requirements of such process.

The effective date of the initial claims submitted by the employer is the Sunday immediately following the date that the employer-assisted claim was received by the DEO. Claimants must continue to meet other requirements to receive benefits, including biweekly reporting, and are subject to the same rights to request redeterminations and appeals.

The DEO is authorized to adopt rules, as necessary, to implement this claims process and must adopt rules setting forth:
- The claim initiation process;
- The form of submission;
- The form and format of the required attestation; and
- Additional procedures for filing of the employer-assisted claim.

The provisions of the statute created by the bill are similar to the provisions of the emergency rule adopted by the DEO in April 2020.

Section 14 amends s. 443.151, F.S., to require an employer[59] to respond to a notice of claim within 14 days after the mailing date of the notice, or in lieu of mailing, within 14 days after the delivery of the notice. Currently, employers are given 20 days to respond to a notice of claim.

The bill rewords the current provision related to the finality of monetary determination to provide clarification.

Under the bill, a claimant may file a request for the DEO to reconsider a monetary determination within 20 days after the DEO mails the notice to the claimant's last known address, or in lieu of mailing, within 20 days after delivery of the notice. A monetary determination is final for a claimant if the claimant does not file a timely request for redetermination. The bill provides that a monetary redetermination is final for a claimant unless within 20 days after the mailing of the notice of monetary redetermination to the claimant's last known address, or in lieu of mailing, within 20 days after delivery of the notice, the claimant files an appeal.

The monetary determination or monetary redetermination is final for an employer or other party entitled to notice unless within 20 days after the mailing or, in lieu of mailing, within 20 days after delivery of the notice, an appeal is filed by an employer or other party.

[59] "Employer" is referring to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination.

The bill repeals the requirement that an appeals referee be an attorney in good standing with the Florida Bar.

The bill establishes a five-year statute of limitations on appeals from the date the mailing or the delivery of the notice of determination.[60]

Effective Date

Section 56 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the changes to the reemployment assistance requirements makes it more efficient to deal with claims, both claimants and employers will benefit.

[60] The bill provides that an appeal may not be filed more than 5 years after the date of the mailing of a determination or, if the determination is not mailed, more than 5 years after the date of the delivery of the determination.

C. Government Sector Impact:

The changes to the CDBG statutes will allow the DEO to implement recent federal grants for disaster recovery more efficiently and allow local governments to receive more grants from additional categories to mitigate and recover from the effects of past events.

Related to the reemployment assistance computer system, the bill authorizes the DEO to take action to modernize the system as provided in the Fiscal Year 2021-2022 General Appropriations Act.

The DEO may realign existing resources through a budget amendment or may, in its Fiscal Year 2022-2023 Legislative Budget Request, make a request for any necessary realignment of resources related to the Office of Economic Accountability and Transparency, the Office of the Secretary, or any other offices created within the Office of the Secretary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 20.60, 288.901, 290.042, 290.044, 290.046, 331.3081, 435.02, 443.036, 443.091, 443.101, 443.1113, 443.151, 445.004, 553.79, 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015.

The bill creates section 443.1118 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute expands the definition of "temporary layoff" to include when an individual's employer mandates a furlough, if the furlough is temporary, the person is still "job attached," and the person expects to return to work with the employer.

The committee substitute creates a process for employers that commence a mass separation to initiate submittal of reemployment assistance claims on behalf of their employees.

The committee substitute requires the DEO to implement an integrated, modular system hosted in the cloud for reemployment assistance. The amendment requires the system to maintain interoperability with other department workforce system and allow for employer-assisted claims. The amendment also sets forth a non-exhaustive list of required annual review of improvements and makes other minor changes to this section of the bill.

CS by Commerce and Tourism on March 15, 2021:
The committee substitute requires the DEO, for Fiscal Year 2021-2022, to modernize the reemployment assistance (RA) system as provided in the General Appropriations Act. It clarifies that the RA system must efficiently distribute benefits and effectively manage and operate the RA program, which includes monitoring and managing the collection of overpayments.

The committee substitute clarifies that the DEO must perform an annual review of the RA system and identify ways to improve the delivery of services, and requires a summary of maintenance, enhancement, and modernization efforts over the last fiscal year and a 3-year outlook of recommended changes to be included in the RA Claims and Benefits Information System report. The committee substitute provides that the DEO must seek input and recommendations on RA system enhancements from specified entities.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Appropriations; and Commerce and Tourism; and Senators Bean, Bradley, Pizzo, and Bracy

576-04228-21 20211948c2

A bill to be entitled

An act relating to the Department of Economic Opportunity; amending s. 20.60, F.S.; renaming the executive director of the Department of Economic Opportunity as the Secretary of Economic Opportunity; authorizing the secretary to appoint deputy and assistant secretaries for a specified purpose; establishing the Office of the Secretary and the Office of Economic Accountability and Transparency; providing duties for the Office of Economic Accountability and Transparency; authorizing the secretary to create offices within the Office of the Secretary and within the divisions; requiring the secretary to appoint division directors; providing duties for the division directors; conforming provisions to changes made by the act; amending s. 288.901, F.S.; revising the membership of the board of directors of Enterprise Florida, Inc.; amending s. 290.042, F.S.; revising the definition of the term "administrative costs" relating to the Florida Small Cities Community Development Block Grant Program Act; amending s. 290.044, F.S.; revising the application process and funding for the Florida Small Cities Community Development Block Grant Program Fund; amending s. 290.046, F.S.; revising the application process and funding for development grants awarded by the department to local governments; amending s. 331.3081, F.S.; conforming a cross-reference; amending s. 435.02, F.S.; revising the definition of the term

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"specified agency" to include certain regional workforce boards for the purposes of labor laws; amending s. 443.036, F.S.; revising the definition of the term "temporary layoff"; amending s. 443.091, F.S.; revising the reporting requirements for reemployment assistance benefit eligibility; defining the term "address"; amending s. 443.101, F.S.; deleting a provision providing that individuals who voluntarily leave work as a direct result of circumstances relating to domestic violence are ineligible for benefits under certain circumstances; amending s. 443.1113, F.S.; requiring the department to implement an integrated, modular system hosted in a cloud service, rather than an integrated Internet-based system, for the reemployment assistance program; revising the functions and objectives of the Reemployment Assistance Claims and Benefits Information System; requiring the department to perform an annual review of the system; requiring the department to seek input from certain state entities when performing such review; requiring the department to submit an annual report to the Governor and the Legislature beginning on a specified date; providing requirements for such report; deleting obsolete language; requiring the department to take actions to modernize the system in the 2021-2022 fiscal year as directed in the General Appropriations Act; creating s. 443.1118, F.S.; defining terms; providing requirements for employer-assisted claims relating to

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mass separations; specifying the effective date of such claims; providing that benefits paid to a claimant pursuant to an employer-assisted claim count toward maximum benefits for which the claimant is eligible; requiring a claimant covered by an employer-assisted claim to file continued biweekly claims; providing construction; requiring and authorizing the department to adopt specified rules; amending s. 443.151, F.S.; revising the timeline for employers' responses to notices of benefits claims sent by the department; authorizing claimants to request the department to reconsider a monetary determination; providing requirements for such request; providing that monetary determinations and redeterminations are final after a specified period of time; providing exceptions; deleting a requirement that appeals referees be attorneys in good standing with The Florida Bar or be admitted to The Florida Bar within 8 months after the date of employment; prohibiting appeals from being filed after a specified time; amending s. 445.004, F.S.; revising the membership of the state board, which directs CareerSource Florida, Inc.; amending s. 553.79, F.S.; requiring specified building permit applications applied for by licensed contractors for property owners under certain programs administered by the department to be issued within a reduced timeframe; amending ss. 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955,

288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3), paragraph (a) of subsection (5), paragraph (b) of subsection (6), and subsection (9) of section 20.60, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(1) There is created the Department of Economic Opportunity.

(2) The head of the department is the Secretary of Economic Opportunity ~~executive director~~, who shall be appointed by the Governor, subject to confirmation by the Senate. The secretary ~~executive director~~ shall serve at the pleasure of and report to the Governor. The secretary may appoint deputy and assistant secretaries as necessary to aid the secretary in fulfilling his or her statutory obligations.

(3)(a) The following divisions and offices of the Department of Economic Opportunity are established:

1.~~(a)~~ The Division of Strategic Business Development.

2.~~(b)~~ The Division of Community Development.

3.~~(c)~~ The Division of Workforce Services.

4.~~(d)~~ The Division of Finance and Administration.

5.~~(c)~~ The Division of Information Technology.

6. The Office of the Secretary.

7. The Office of Economic Accountability and Transparency, which shall:

a. Oversee the department's critical objectives as determined by the secretary and make sure that the department's key objectives are clearly communicated to the public.

b. Organize department resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state.

c. Provide leadership for the department's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the department; and organize and manage external communication on such priority issues.

d. Promote and facilitate key department initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues.

e. Promote strategic planning for the department.

(b) The secretary:

1. May create offices within the Office of the Secretary and within the divisions established in paragraph (a) to promote efficient and effective operation of the department.

2. Shall appoint a director for each division, who shall directly administer his or her division and be responsible to the secretary.

(5) The divisions within the department have specific responsibilities to achieve the duties, responsibilities, and goals of the department. Specifically:

(a) The Division of Strategic Business Development shall:

1. Analyze and evaluate business prospects identified by the Governor, the secretary ~~executive director of the department~~, and Enterprise Florida, Inc.

2. Administer certain tax refund, tax credit, and grant programs created in law. Notwithstanding any other provision of law, the department may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund to contract for the administration of those programs, or portions of the programs, assigned to the department by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

3. Develop measurement protocols for the state incentive programs and for the contracted entities which will be used to determine their performance and competitive value to the state. Performance measures, benchmarks, and sanctions must be developed in consultation with the legislative appropriations committees and the appropriate substantive committees, and are subject to the review and approval process provided in s. 216.177. The approved performance measures, standards, and sanctions shall be included and made a part of the strategic plan for contracts entered into for delivery of programs authorized by this section.

4. Develop a 5-year statewide strategic plan. The strategic plan must include, but need not be limited to:

a. Strategies for the promotion of business formation, expansion, recruitment, and retention through aggressive marketing, international development, and export assistance, which lead to more and better jobs and higher wages for all geographic regions, disadvantaged communities, and populations of the state, including rural areas, minority businesses, and urban core areas.

b. The development of realistic policies and programs to further the economic diversity of the state, its regions, and their associated industrial clusters.

c. Specific provisions for the stimulation of economic development and job creation in rural areas and midsize cities and counties of the state, including strategies for rural marketing and the development of infrastructure in rural areas.

d. Provisions for the promotion of the successful long-term economic development of the state with increased emphasis in market research and information.

e. Plans for the generation of foreign investment in the state which create jobs paying above-average wages and which result in reverse investment in the state, including programs that establish viable overseas markets, assist in meeting the financing requirements of export-ready firms, broaden opportunities for international joint venture relationships, use the resources of academic and other institutions, coordinate trade assistance and facilitation services, and facilitate availability of and access to education and training programs that assure requisite skills and competencies necessary to compete successfully in the global marketplace.

f. The identification of business sectors that are of

current or future importance to the state's economy and to the state's global business image, and development of specific strategies to promote the development of such sectors.

g. Strategies for talent development necessary in the state to encourage economic development growth, taking into account factors such as the state's talent supply chain, education and training opportunities, and available workforce.

5. Update the strategic plan every 5 years.

6. Involve Enterprise Florida, Inc.; CareerSource Florida, Inc.; local governments; the general public; local and regional economic development organizations; other local, state, and federal economic, international, and workforce development entities; the business community; and educational institutions to assist with the strategic plan.

(6)

(b) The Department of Economic Opportunity shall serve as the designated agency for purposes of each federal workforce development grant assigned to it for administration. The department shall carry out the duties assigned to it by the Governor, under the terms and conditions of each grant. The department shall have the level of authority and autonomy necessary to be the designated recipient of each federal grant assigned to it and shall disburse such grants pursuant to the plans and policies of the state board as defined in s. 445.002. The secretary ~~executive director~~ may, upon delegation from the Governor and pursuant to agreement with the state board, sign contracts, grants, and other instruments as necessary to execute functions assigned to the department. Notwithstanding other provisions of law, the department shall administer other

programs funded by federal or state appropriations, as determined by the Legislature in the General Appropriations Act or other law.

(9) The secretary ~~executive director~~ shall:

(a) Manage all activities and responsibilities of the department.

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the secretary ~~director~~ shall enter into specific contracts with Enterprise Florida, Inc., and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not appropriate direct-support organizations.

(c) Serve as a member of the board of directors of the Florida Development Finance Corporation. The secretary ~~executive director~~ may designate an employee of the department to serve in this capacity.

Section 2. Paragraph (a) of subsection (5) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.—

(5) APPOINTED MEMBERS OF THE BOARD OF DIRECTORS.—

(a) In addition to the Governor or his or her designee, the board of directors shall consist of the following appointed members:

1. The Commissioner of Education or his or her designee.

2. The Chief Financial Officer or his or her designee.

3. The Attorney General or his or her designee.

4. The Commissioner of Agriculture or his or her designee.

5. The chairperson of the state board as defined in s. 445.002.

6. The Secretary of State or his or her designee.

7. The Secretary of Economic Opportunity or his or her designee.

8. Twelve members from the private sector, six of whom shall be appointed by the Governor, three of whom shall be appointed by the President of the Senate, and three of whom shall be appointed by the Speaker of the House of Representatives. Members appointed by the Governor are subject to Senate confirmation.

All board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of funds of Enterprise Florida, Inc.

Section 3. Subsection (2) of section 290.042, Florida Statutes, is amended to read:

290.042 Definitions relating to Florida Small Cities Community Development Block Grant Program Act.—As used in ss. 290.0401-290.048, the term:

(2) "Administrative costs" has the same meaning as defined in the Housing and Community Development Act of 1974, as amended, and applicable federal regulations ~~means the payment of all reasonable costs of management, coordination, monitoring,~~

~~and evaluation, and similar costs and carrying charges, related to the planning and execution of community development activities which are funded in whole or in part under the Florida Small Cities Community Development Block Grant Program. Administrative costs shall include all costs of administration, including general administration, planning and urban design, and project administration costs~~.

Section 4. Subsections (3), (4), and (5) of section 290.044, Florida Statutes, are amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(3) The department shall require applicants for grants to compete against each other in ~~the following grant program~~ categories that may include one or more of the following:

(a) Housing rehabilitation.

(b) Economic development.

(c) Neighborhood revitalization.

(d) Commercial revitalization.

(e) Any other activity authorized by the Housing and Community Development Act of 1974, as amended, and applicable federal regulations.

(4) The department shall define broad community development objectives to be achieved by the activities in ~~each of~~ the grant program categories with the use of funds from the Florida Small Cities Community Development Block Grant Program Fund. Such objectives shall be designed to meet at least one of the national objectives provided in the Housing and Community Development Act of 1974.

(5) The department may set aside an amount of up to 15 ~~5~~

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percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities for which no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside shall be distributed to unfunded applications ~~from the most recent funding cycle~~.

Section 5. Subsection (2), paragraph (b) of subsection (3), and subsection (6) of section 290.046, Florida Statutes, are amended to read:

290.046 Applications for grants; procedures; requirements.—

~~(2)(a) Except for applications for economic development grants as provided in subparagraph (b)1., an eligible local government may submit one application for a grant during each application cycle.~~

~~(b)1. An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant but may not receive more than one such grant per annual funding cycle. A local government may have more than one open economic development grant.~~

(2)(a)~~2.~~ The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, and the economic feasibility of the proposed project and shall establish any other criteria the department deems appropriate. Assistance to a private, for-profit business may

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not be provided from a grant award unless sufficient evidence exists to demonstrate that without such public assistance the creation or retention of such jobs would not occur.

(b) ~~(c) 1.~~ A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization contract is not eligible to apply for another housing rehabilitation, neighborhood revitalization, or commercial revitalization grant until administrative closeout of its existing contract. The department shall notify a local government of administrative closeout or of any outstanding closeout issues within 45 days after receipt of a closeout package from the local government. A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for an economic development grant.

(c) ~~2.~~ A local government with an open economic development community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for a housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant. A local government with an open economic development contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may receive ~~no~~ more than one additional economic development grant in each fiscal year.

(d) The department may not award a grant until it has

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conducted a site visit to verify the information contained in the local government's application.

(3)

(b) Funds shall be distributed according to the rankings established in each application cycle. If economic development funds remain available after the application cycle closes, the remaining funds shall be awarded to eligible projects ~~on a first-come, first-served basis until such funds are fully obligated~~.

(6) The department shall, before approving an application for a grant, determine that the applicant has the administrative capacity to carry out the proposed activities and has performed satisfactorily in carrying out past activities funded by community development block grants. The evaluation of past performance shall take into account procedural aspects of previous grants as well as substantive results. If the department determines that any applicant has failed to accomplish substantially the results it proposed in ~~its last~~ previously funded applications ~~application~~, it may prohibit the applicant from receiving a grant or may penalize the applicant in the rating of the current application. An application for grant funds may not be denied solely upon the basis of the past performance of the eligible applicant.

Section 6. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors.—Space Florida shall be governed by a 13-member independent board of directors that consists of the members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the

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Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)8. ~~s. 288.901(5)(a)7.~~ and the Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board.

Section 7. Subsection (5) of section 435.02, Florida Statutes, is amended to read:

435.02 Definitions.—For the purposes of this chapter, the term:

(5) "Specified agency" means the Department of Health, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, the Agency for Persons with Disabilities, regional workforce boards providing services as defined in s. 445.002(3), and local licensing agencies approved pursuant to s. 402.307, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

Section 8. Subsection (43) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, the term:

(43) "Temporary layoff" means an individual's ~~a~~ job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date; or an individual's employer-initiated furlough that causes a mandatory complete stoppage of work if such furlough is temporary and the individual remains job attached and is expected to return to work with the employer.

Section 9. Paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career

center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

Section 10. Paragraph (a) of subsection (1) and subsection (6) of section 443.101, Florida Statutes, are amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing

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unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of Economic Opportunity. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working or attributable to the individual's illness or disability requiring separation from his or her work. Any other disqualification may not be imposed.

2. An individual is not disqualified under this subsection for:

a. Voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months;

b. Voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders; or

c. Voluntarily leaving work if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence as defined in s. 741.28. An individual who voluntarily leaves work under this sub-

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subparagraph must:

(I) Make reasonable efforts to preserve employment, unless the individual establishes that such remedies are likely to be futile or to increase the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. ~~An individual who is otherwise eligible for benefits under this sub-subparagraph is ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.~~

3. The employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under sub-subparagraph 2.c.

4. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the seriousness of the misconduct, under the department's rules for

determining disqualification for benefits for misconduct.

5. If an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct before the date the voluntary quit was to take effect, the individual, if otherwise entitled, shall receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

6. If an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(6) For making any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071. The disqualification imposed under this subsection shall begin with the week for ~~in~~ which the false or fraudulent representation was ~~is~~ made and shall continue for a period not to exceed 1 year after the date the Department of Economic Opportunity discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation has been repaid in full. This disqualification may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the

appeals referee and the commission of the making of the false or fraudulent representation for which disqualification is imposed under this section.

Section 11. Section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(1) The Department of Economic Opportunity shall implement an integrated, modular system hosted in a cloud computing service, as defined in s. 282.0041, that provides for rapid provisioning of additional data processing when necessary. The system must support the efficient distribution of benefits and the effective operation and management of the reemployment assistance program. ~~To~~ The ~~extent that funds are appropriated for each phase of the Reemployment Assistance Claims and Benefits Information~~ system may be cited ~~by the Legislature, the Department of Economic Opportunity shall replace and enhance the functionality provided in the following systems with an integrated Internet-based system that is known~~ as the "Reemployment Assistance Claims and Benefits Information System" and must:

(a) Be accessible through the Internet on both mobile devices and personal computers ~~Claims and benefit mainframe system~~.

(b) Process reemployment assistance claims ~~Florida unemployment Internet direct~~.

(c) Process benefit payments ~~Florida continued claim Internet directory~~.

(d) Process and manage overpayments ~~Call center interactive~~

~~voice response system~~.

(e) Perform adjudication functions ~~Benefit overpayment screening system~~.

(f) Process appeals and manage appeal hearings ~~Internet and Intranet appeals system~~.

(g) Manage and process employer charging.

(2) Wherever cost-effective and operationally feasible, the Reemployment Assistance Claims and Benefits System shall accomplish the following main ~~business~~ objectives:

(a) ~~Wherever cost-effective and operationally feasible,~~ Eliminate or automate existing paper processes and enhance any existing automated workflows in order to expedite customer transactions and eliminate redundancy.

(b) Enable and enhance online, self-service capabilities ~~access~~ to claimant and employer information and federal and state reporting.

(c) Integrate benefit payment control with the adjudication program and collection system in order to improve the detection of fraud.

(d) Comply with all requirements established in federal and state law for reemployment assistance.

(e) Integrate with the Department of Revenue's statewide unified tax system that collects reemployment assistance taxes.

(f) Maintain interoperability with other department workforce systems.

(g) Allow for employer-assisted claims.

(3) The scope of the Reemployment Assistance Claims and Benefits Information System does not include any of the following functionalities:

(a) Collection of reemployment assistance taxes.

(b) General ledger, financial management, or budgeting capabilities.

(c) Human resource planning or management capabilities.

(4)(a) The Department of Economic Opportunity shall perform an annual review of the system and identify enhancements or modernization efforts that improve the delivery of services to claimants and employers and reporting to state and federal entities. These improvements must include, but need not be limited to:

1. Infrastructure upgrades through cloud services.

2. Software improvements.

3. Enhanced data analytics and reporting.

4. Increased cybersecurity pursuant to s. 282.318.

(b) The department shall seek input on recommended enhancements from, at a minimum, the following entities:

1. The Florida Digital Service within the Department of Management Services.

2. The General Tax Administration Program Office within the Department of Revenue.

3. The Division of Accounting and Auditing within the Department of Financial Services.

(5) By October 1, 2023, and each year thereafter, the Department of Economic Opportunity shall submit a Reemployment Assistance Claims and Benefits Information System report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include:

(a) A summary of maintenance, enhancement, and

modernization efforts over the last fiscal year.

(b) A 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion ~~The project to implement the Reemployment Assistance Claims and Benefits Information System is comprised of the following phases and corresponding implementation timeframes:~~

~~(a) No later than the end of fiscal year 2009-2010 completion of the business re-engineering analysis and documentation of both the detailed system requirements and the overall system architecture~~.

~~(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014.~~

~~(5) The Department of Economic Opportunity shall implement the following project governance structure until such time as the project is completed, suspended, or terminated:~~

~~(a) The project sponsor for the Reemployment Assistance Claims and Benefits Information System project is the department.~~

~~(b) The project shall be governed by an executive steering committee composed of the following voting members or their designees:~~

~~1. The executive director of the department.~~

~~2. The executive director of the Department of Revenue.~~

~~3. The director of the Division of Workforce Services within the department.~~

~~4. The program director of the General Tax Administration Program Office within the Department of Revenue.~~

~~5. The chief information officer of the department.~~

~~(c) The executive steering committee has the overall responsibility for ensuring that the project meets its primary objectives and is specifically responsible for:~~

~~1. Providing management direction and support to the project management team.~~

~~2. Assessing the project's alignment with the strategic goals of the department for administering the reemployment assistance program.~~

~~3. Reviewing and approving or disapproving any changes to the project's scope, schedule, and costs.~~

~~4. Reviewing, approving or disapproving, and determining whether to proceed with any major project deliverables.~~

~~5. Recommending suspension or termination of the project to the Governor, the President of the Senate, and the Speaker of the House of Representatives if it determines that the primary objectives cannot be achieved.~~

~~(d) The project management team shall work under the direction of the executive steering committee and shall be minimally comprised of senior managers and stakeholders from the department and the Department of Revenue. The project management team is responsible for:~~

~~1. Providing daily planning, management, and oversight of the project~~.

~~2. Submitting an operational work plan and providing quarterly updates to that plan to the executive steering committee. The plan must specify project milestones, deliverables, and expenditures.~~

~~3. Submitting written monthly project status reports to the executive steering committee which include:~~

~~a. Planned versus actual project costs;~~

~~b. An assessment of the status of major milestones and deliverables;~~

~~c. Identification of any issues requiring resolution, the proposed resolution for these issues, and information regarding the status of the resolution;~~

~~d. Identification of risks that must be managed; and~~

~~e. Identification of and recommendations regarding necessary changes in the project's scope, schedule, or costs. All recommendations must be reviewed by project stakeholders before submission to the executive steering committee in order to ensure that the recommendations meet required acceptance criteria.~~

Section 12. For the 2021-2022 fiscal year, the Department of Economic Opportunity shall take actions to modernize the Reemployment Assistance Claims and Benefits Information System as provided in the General Appropriations Act.

Section 13. Section 443.1118, Florida Statutes, is created to read:

443.1118 Employer-assisted claims.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Employer-assisted claim" means an initial claim filed by an employer on behalf of its employees who are a part of a

mass separation from the employer.

(b) "Mass separation" means a full, partial, permanent, or temporary separation, including a temporary layoff, of full-time employees from their employer if the separation occurs at or around the same time, the employees are separated for the same reason, and the separation is due to circumstances for which the employees are not at fault. At a minimum, a mass separation involves 1,000 or more employees.

(2) EMPLOYER-ASSISTED CLAIM PROCESS.—

(a) *Initiation*.—An employer that commences a mass separation may initiate an employer-assisted claim by submitting employee information to the department within 10 days after the date of the mass separation pursuant to rules adopted by the department.

(b) *Form of submission*.—Due to the sensitive nature of employee information, an employer shall submit employee information through secure means approved by department rule.

(c) *Notice and Affidavit*.—For each employer-assisted claim, the employer shall give notice and instructions to the employees for which claims are filed and direct the employees to complete further steps as required by the department. The employer shall provide an attestation to the department in a form and format required by the department.

(3) EFFECTIVE DATE OF CLAIM.—The effective date of an employer-assisted claim is the Sunday immediately preceding the date on which the employer-assisted claim was received by the department.

(4) PAYMENTS.—Weeks of benefits paid to a claimant pursuant to an employer-assisted claim count toward the maximum benefits

for which the claimant is eligible.

(5) CLAIMANT FILING REQUIREMENTS.—A claimant covered by an employer-assisted claim must file continued biweekly claims pursuant to department rule.

(6) CONSTRUCTION.—This section does not limit, alter, or amend a claimant's rights under this chapter relating to a hearing if a claimant is denied a claim.

(7) RULEMAKING.—The department shall adopt rules establishing additional procedures for filing an employer-assisted claim and may adopt additional rules to administer this section.

Section 14. Paragraphs (a) and (b) of subsection (3) and paragraphs (a) and (b) of subsection (4) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(3) DETERMINATION OF ELIGIBILITY.—

(a) *Notices of claim*.—The Department of Economic Opportunity shall promptly provide a notice of claim to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination. The employer must respond to the notice of claim within 14 ~~20~~ days after the mailing date of the notice, or in lieu of mailing, within 14 ~~20~~ days after the delivery of the notice. If a contributing employer or its agent fails to timely or adequately respond to the notice of claim or request for information, the employer's account may not be relieved of benefit charges as provided in s. 443.131(3)(a), notwithstanding paragraph (5)(b). The department may adopt rules as necessary to implement the processes described in this paragraph relating to

notices of claim.

(b) *Monetary determinations.*—In addition to the notice of claim, the department shall also promptly provide an initial monetary determination to the claimant and each base period employer whose account is subject to being charged for its respective share of benefits on the claim. The monetary determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A monetary determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(g) and, if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant for a benefit year. The claimant may file a request for the department to reconsider a monetary determination within 20 days after the department mails the notice to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice. A monetary determination is final for a claimant if the claimant does not file a timely request for the department to reconsider the monetary determination. A monetary redetermination is final for a claimant unless within 20 days after the mailing of the notice of monetary redetermination to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice, the claimant files an appeal. The monetary determination or monetary redetermination is final for an employer or other party entitled to notice unless within 20 days after the mailing of the respective notice to the employer or party to its last known address or, in lieu

of mailing, within 20 days after delivery of the notice, an appeal is filed by the employer or the party ~~The monetary determination is final unless within 20 days after the mailing of the notices to the parties' last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice~~. The department may adopt rules as necessary to implement the processes described in this paragraph relating to notices of monetary determinations and the appeals or reconsideration requests filed in response to such notices.

(4) APPEALS.—

(a) *Appeals referees.*—

1. The Department of Economic Opportunity shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims.

2. ~~An appeals referee must be an attorney in good standing with The Florida Bar or be successfully admitted to The Florida Bar within 8 months after his or her date of employment. This subparagraph does not apply to an appeals referee appointed before January 1, 2014.~~

~~3.~~ A person may not participate on behalf of the department as an appeals referee in any case in which she or he is an interested party.

3.~~4.~~ The department may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees.

4.~~5.~~ The department shall provide the commission and the

appeals referees with proper facilities and assistance for the execution of their functions.

(b) *Filing and hearing.*—

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing of the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivering the notice.

2. Unless the appeal is untimely or withdrawn or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. ~~However,~~ If an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an order to show cause to the appellant which requires the appellant to show why the appeal should not be dismissed as untimely. If, within 15 days after the mailing date of the order to show cause, the appellant does not provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed. <u>However, an appeal may not be filed more than 5 years after the date of the mailing of the determination or, if the determination is not mailed, more than 5 years after the date of the delivery of the determination.</u>

4. If an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the

pendency of the appeal to the employing unit and to the department, both of which become parties to the proceeding.

5.a. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court.

c. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

6. The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

Section 15. Paragraph (d) of subsection (3) of section 445.004, Florida Statutes, is amended, and subsections (1) and

(2) of that section are republished, to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated, organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc., shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with the department. The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, the principal workforce policy organization for the state. The purpose of the state board is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and

fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy directives of the state board and administer state workforce development programs as authorized by law.

(3)

(d) The state board must include the Secretary of Economic Opportunity or his or her designee, the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

Section 16. Subsection (14) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(14)(a) Except as provided in paragraph (b), a building permit for a single-family residential dwelling must be issued within 30 working days after receipt of the application ~~therefor~~ unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(b) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within

15 working days after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

Section 17. Paragraph (b) of subsection (2) of section 14.20195, Florida Statutes, is amended to read:

14.20195 Suicide Prevention Coordinating Council; creation; membership; duties.—There is created within the Statewide Office for Suicide Prevention a Suicide Prevention Coordinating Council. The council shall develop strategies for preventing suicide.

(2) MEMBERSHIP.—The Suicide Prevention Coordinating Council shall consist of 31 voting members and 1 nonvoting member.

(b) The following state officials or their designees shall serve on the coordinating council:

1. The Secretary of Elderly Affairs.

2. The State Surgeon General.

3. The Commissioner of Education.

4. The Secretary of Health Care Administration.

5. The Secretary of Juvenile Justice.

6. The Secretary of Corrections.

7. The executive director of the Department of Law Enforcement.

8. The executive director of the Department of Veterans' Affairs.

9. The Secretary of Children and Families.

10. The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 18. Paragraph (j) of subsection (1) of section 16.615, Florida Statutes, is amended to read:

16.615 Council on the Social Status of Black Men and Boys.—

(1) The Council on the Social Status of Black Men and Boys is established within the Department of Legal Affairs and shall consist of 19 members appointed as follows:

(j) The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her designee.

Section 19. Subsection (3) and paragraph (b) of subsection (7) of section 20.04, Florida Statutes, are amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(3) For their internal structure, all departments, except for the Department of Financial Services, the Department of Economic Opportunity, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation, must adhere to the following standard terms:

(a) The principal unit of the department is the "division." Each division is headed by a "director."

(b) The principal unit of the division is the "bureau." Each bureau is headed by a "chief."

(c) The principal unit of the bureau is the "section." Each section is headed by an "administrator."

(d) If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

(7)

(b) Within the limitations of this subsection, the head of the department may recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department.

However, additional divisions, or offices in the Department of Children and Families, the Department of Corrections, the Department of Economic Opportunity, and the Department of Transportation, may be established only by specific statutory enactment. New bureaus, sections, and subsections of departments may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

Section 20. Paragraph (a) of subsection (7) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(7)(a) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax, shall be made available to the following in performance of their official duties:

1. The Auditor General or his or her authorized agent;

2. The director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent;

3. The Chief Financial Officer or his or her authorized agent;

4. The Director of the Office of Insurance Regulation of the Financial Services Commission or his or her authorized agent;

5. A property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1);

6. Designated employees of the Department of Education

solely for determination of each school district's price level index pursuant to s. 1011.62(2);

7. The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her authorized agent;

8. The taxpayers' rights advocate or his or her authorized agent pursuant to s. 20.21(3); and

9. The coordinator of the Office of Economic and Demographic Research or his or her authorized agent.

Section 21. Paragraph (b) of subsection (5) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(5) APPLICATION AND CERTIFICATION.—

(b) In order to take a tax credit under subparagraph (a)1. or, if applicable, to transfer an approved credit under subparagraph (a)2., a spaceflight business must submit an application for certification to the Department of Economic Opportunity along with a nonrefundable $250 fee.

1. The application must include:

a. The name and physical in-state address of the taxpayer.

b. Documentation demonstrating to the satisfaction of the Department of Economic Opportunity that:

(I) The taxpayer is a spaceflight business.

(II) The business has engaged in a qualifying spaceflight project before taking or transferring a credit under this section.

c. In addition to any requirement specific to a credit, documentation that the business has:

(I) Created 35 new jobs in this state directly associated

with spaceflight projects during its immediately preceding 3 taxable years. The business shall be deemed to have created new jobs if the number of full-time jobs located in this state at the time of application for certification is greater than the total number of full-time jobs located in this state at the time of application for approval to earn credits; and

(II) Invested a total of at least $15 million in this state on a spaceflight project during its immediately preceding 3 taxable years.

d. The total amount and types of credits sought.

e. An acknowledgment that a transfer of a tax credit is to be accomplished pursuant to subsection (5).

f. A copy of an audit or audits of the preceding 3 taxable years, prepared by a certified public accountant licensed to practice in this state, which identifies that portion of the business's activities in this state related to spaceflight projects in this state.

g. An acknowledgment that the business must file an annual report on the spaceflight project's progress with the Department of Economic Opportunity.

h. Any other information necessary to demonstrate that the applicant meets the job creation, investment, and other requirements of this section.

2. Within 60 days after receipt of the application for certification, the Department of Economic Opportunity shall evaluate the application and recommend the business for certification or denial. The Secretary ~~executive director of the Department~~ of Economic Opportunity must approve or deny the application within 30 days after receiving the recommendation.

If approved, the Department of Economic Opportunity must provide a letter of certification to the applicant consistent with any restrictions imposed. If the Department of Economic Opportunity denies any part of the requested credit, the Department of Economic Opportunity must inform the applicant of the grounds for the denial. A copy of the certification shall be submitted to the department within 10 days after the secretary's ~~executive director's~~ approval.

Section 22. Subsection (3) of section 288.005, Florida Statutes, is amended to read:

288.005 Definitions.—As used in this chapter, the term:

~~(3) "Executive director" means the executive director of the Department of Economic Opportunity, unless otherwise stated.~~

Section 23. Subsections (1) and (3), paragraph (a) of subsection (5), and subsection (6) of section 288.061, Florida Statutes, are amended to read:

288.061 Economic development incentive application process.—

(1) Upon receiving a submitted economic development incentive application, the Division of Strategic Business Development of the Department of Economic Opportunity and designated staff of Enterprise Florida, Inc., shall review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant. The department shall recommend to the Secretary of Economic Opportunity ~~executive director~~ to approve or disapprove an applicant

business. If review of the application demonstrates that the application is incomplete, the secretary ~~executive director~~ shall notify the applicant business within the first 5 business days after receiving the application.

(3) Within 10 business days after the department receives the submitted economic development incentive application, the Secretary of Economic Opportunity ~~executive director~~ shall approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

(a) The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The department may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

(b) The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

(5)(a) The Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive application unless the application includes a signed written declaration by the applicant which states that the applicant has read the information in the application and that the information is true, correct, and complete to the best of the applicant's

knowledge and belief.

(6) Beginning July 1, 2020, the Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive application unless the application includes proof to the department that the applicant business is registered with and uses the E-Verify system, as defined in s. 448.095, to verify the work authorization status of all newly hired employees. If the department determines that an awardee is not complying with this subsection, the department must notify the awardee by certified mail of the department's determination of noncompliance and the awardee's right to appeal the determination. Upon a final determination of noncompliance, the awardee must repay all moneys received as an economic development incentive to the department within 30 days after the final determination.

Section 24. Paragraph (a) of subsection (6) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(6)(a) By August 1 of each year, the head of each of the following agencies and organizations shall designate a deputy secretary or higher-level staff person from within the agency or organization to serve as the REDI representative for the agency or organization:

1. The Department of Transportation.
2. The Department of Environmental Protection.
3. The Department of Agriculture and Consumer Services.
4. The Department of State.
5. The Department of Health.
6. The Department of Children and Families.

7. The Department of Corrections.
8. The Department of Education.
9. The Department of Juvenile Justice.
10. The Fish and Wildlife Conservation Commission.
11. Each water management district.
12. Enterprise Florida, Inc.
13. CareerSource Florida, Inc.
14. VISIT Florida.
15. The Florida Regional Planning Council Association.
16. The Agency for Health Care Administration.
17. The Institute of Food and Agricultural Sciences (IFAS).

An alternate for each designee shall also be chosen, and the names of the designees and alternates shall be sent to the Secretary of Economic Opportunity ~~executive director of the department~~.

Section 25. Paragraph (c) of subsection (5) and subsection (8) of section 288.106, Florida Statutes, are amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(5) TAX REFUND AGREEMENT.—

(c) The agreement must be signed by the Secretary of Economic Opportunity ~~executive director~~ and by an authorized officer of the qualified target industry business within 120 days after the issuance of the letter of certification under subsection (4), but not before passage and receipt of the resolution of local financial support. The department may grant an extension of this period at the written request of the qualified target industry business.

(8) SPECIAL INCENTIVES.—If the department determines it is in the best interest of the public for reasons of facilitating economic development, growth, or new employment opportunities within a Disproportionally Affected County, the department may, between July 1, 2011, and June 30, 2014, waive any or all wage or local financial support eligibility requirements and allow a qualified target industry business from another state which relocates all or a portion of its business to a Disproportionally Affected County to receive a tax refund payment of up to $6,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. over the term of the agreement. Before ~~Prior to~~ granting such waiver, the Secretary of Economic Opportunity ~~executive director of the department~~ shall file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver. Such business shall be eligible for the additional tax refund payments specified in subparagraph (3)(b)4. if it meets the criteria. As used in this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

Section 26. Subsection (5) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

(5) The department shall review proposals pursuant to s. 288.061 for all three categories of innovation incentive awards. Before making a recommendation to the Secretary of Economic Opportunity ~~executive director~~, the department shall solicit comments and recommendations from the Department of Agriculture

and Consumer Services. For each project, the evaluation and recommendation to the department must include, but need not be limited to:

(a) A description of the project, its required facilities, and the associated product, service, or research and development associated with the project.

(b) The percentage of match provided for the project.

(c) The number of full-time equivalent jobs that will be created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs likely to be stimulated by the project.

(d) The cumulative investment to be dedicated to the project within 5 years and the total investment expected in the project if more than 5 years.

(e) The projected economic and fiscal impacts on the local and state economies relative to investment.

(f) A statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

(g) A statement of any anticipated or proposed relationships with state universities.

(h) A statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state.

(i) A recommendation and explanation of the amount of the award needed to cause the applicant to expand or locate in this state.

(j) A discussion of the efforts and commitments made by the

local community in which the project is to be located to induce the applicant's location or expansion, taking into consideration local resources and abilities.

(k) A recommendation for specific performance criteria the applicant would be expected to achieve in order to receive payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions.

(l) Additional evaluative criteria for a research and development facility project, including:

1. A description of the extent to which the project has the potential to serve as catalyst for an emerging or evolving cluster.

2. A description of the extent to which the project has or could have a long-term collaborative research and development relationship with one or more universities or community colleges in this state.

3. A description of the existing or projected impact of the project on established clusters or targeted industry sectors.

4. A description of the project's contribution to the diversity and resiliency of the innovation economy of this state.

5. A description of the project's impact on special needs communities, including, but not limited to, rural areas, distressed urban areas, and enterprise zones.

(m) Additional evaluative criteria for alternative and renewable energy proposals, including:

1. The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The Department of Agriculture and Consumer Services shall give

greater preference to projects that provide such matching funds or other in-kind contributions.

2. The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

3. The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

4. The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

5. The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

6. The degree to which a project demonstrates efficient use of energy and material resources.

7. The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

8. The ability to administer a complete project.

9. Project duration and timeline for expenditures.

10. The geographic area in which the project is to be conducted in relation to other projects.

11. The degree of public visibility and interaction.

Section 27. Paragraph (b) of subsection (1) of section 288.1251, Florida Statutes, is amended to read:

288.1251 Promotion and development of entertainment

industry; Office of Film and Entertainment; creation; purpose; powers and duties.—

(1) CREATION.—

(b) The department shall conduct a national search for a qualified person to fill the position of Commissioner of Film and Entertainment when the position is vacant. The Secretary of Economic Opportunity ~~executive director of the department~~ has the responsibility to hire the film commissioner. Qualifications for the film commissioner include, but are not limited to, the following:

1. A working knowledge of the equipment, personnel, financial, and day-to-day production operations of the industries to be served by the Office of Film and Entertainment;

2. Marketing and promotion experience related to the film and entertainment industries to be served;

3. Experience working with a variety of individuals representing large and small entertainment-related businesses, industry associations, local community entertainment industry liaisons, and labor organizations; and

4. Experience working with a variety of state and local governmental agencies.

Section 28. Subsection (8) of section 288.8014, Florida Statutes, is amended to read:

288.8014 Triumph Gulf Coast, Inc.; organization; board of directors.—

(8) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, the secretary of the Department of Environmental Protection, or his or her designee, and the chair of the Committee of 8 Disproportionally

Affected Counties, or his or her designee, shall be available to consult with the board of directors and may be requested to attend meetings of the board of directors. These individuals shall not be permitted to vote on any matter before the board.

Section 29. Paragraph (a) of subsection (4) of section 288.955, Florida Statutes, is amended to read:

288.955 Scripps Florida Funding Corporation.—

(4) BOARD; MEMBERSHIP.—The corporation shall be governed by a board of directors.

(a) The board of directors shall consist of nine voting members, of whom the Governor shall appoint three, the President of the Senate shall appoint three, and the Speaker of the House of Representatives shall appoint three. The Secretary of Economic Opportunity ~~executive director of the department~~ or the secretary's ~~director's~~ designee shall serve as an ex-officio, nonvoting member of the board of directors.

Section 30. Subsection (2) of section 288.9604, Florida Statutes, is amended to read:

288.9604 Creation of the corporation.—

(2) The board of directors of the corporation shall consist of seven directors. The Secretary of Economic Opportunity ~~executive director of the department~~, or his or her designee, shall serve as chair of the board of directors of the corporation. The director of the Division of Bond Finance of the State Board of Administration, or his or her designee, shall serve as a director on the board of directors of the corporation. The Governor, subject to confirmation by the Senate, shall appoint the remaining five directors of the board of directors of the corporation. The terms of office for the

appointed directors are for 4 years after the date of their appointment. A vacancy occurring during a term of an appointed director shall be filled for the unexpired term. An appointed director is eligible for reappointment. At least three of the appointed directors of the corporation must have experience in finance, and one of the directors must have experience in economic development.

Section 31. Subsection (5) of section 288.987, Florida Statutes, is amended to read:

288.987 Florida Defense Support Task Force.—

(5) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve as the ex officio, nonvoting executive director of the task force.

Section 32. Paragraph (a) of subsection (6) of section 290.0065, Florida Statutes, is amended to read:

290.0065 State designation of enterprise zones.—

(6)(a) The department may develop guidelines necessary for the approval of areas under this section by the Secretary of Economic Opportunity ~~executive director~~.

Section 33. Subsection (1) of section 311.09, Florida Statutes, is amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic Development Council is created within the Department of Transportation. The council consists of the following 17 members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,

St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the secretary ~~director~~ of the Department of Economic Opportunity or his or her designee.

Section 34. Paragraph (b) of subsection (1) of section 311.105, Florida Statutes, is amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(1)

(b) The committee shall consist of the following members: the Secretary of Environmental Protection, or his or her designee, as an ex officio, nonvoting member; a designee from the United States Army Corps of Engineers, as an ex officio, nonvoting member; a designee from the Florida Inland Navigation District, as an ex officio, nonvoting member; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, as an ex officio, nonvoting member; and five or more port directors, as voting members, appointed to the committee by the council chair, who shall also designate one such member as committee chair.

Section 35. Subsection (3) of section 334.065, Florida Statutes, is amended to read:

334.065 Center for Urban Transportation Research.—

(3) An advisory board shall be created to periodically and objectively review and advise the center concerning its research program. Except for projects mandated by law, state-funded base projects shall not be undertaken without approval of the advisory board. The membership of the board shall consist of

nine experts in transportation-related areas, including the secretaries of the Department ~~Florida Departments~~ of Transportation, the Department of ~~and~~ Environmental Protection, and ~~the executive director of~~ the Department of Economic Opportunity, or their designees, and a member of the Florida Transportation Commission. The nomination of the remaining members of the board shall be made to the President of the University of South Florida by the College of Engineering at the University of South Florida, and the appointment of these members must be reviewed and approved by the Florida Transportation Commission and confirmed by the Board of Governors.

Section 36. Subsection (5) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.—

(5) The secretary of the Department of Environmental Protection, the secretary ~~executive director~~ of the Department of Economic Opportunity, the secretary of the Department of Transportation, the Commissioner of Agriculture, the executive director of the Fish and Wildlife Conservation Commission, and the executive director of the South Florida Water Management District may enter into agreements with landowners, developers, businesses, industries, individuals, and governmental agencies as necessary to effectuate the Miami-Dade County Lake Belt Plan and the provisions of this section.

Section 37. Subsection (2) of section 380.045, Florida Statutes, is amended to read:

380.045 Resource planning and management committees; objectives; procedures.—

(2) The committee must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, representation from each of the following: elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels is relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chair and vice chair. A staff member of the state land planning agency shall be appointed by the secretary ~~director~~ of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chair or on the demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee must ~~shall~~, from the time of appointment, remain in existence for no less than 6 months.

Section 38. Subsection (5) of section 403.0752, Florida Statutes, is amended to read:

403.0752 Ecosystem management agreements.—

(5) The Secretary ~~Executive Director of the Department~~ of Economic Opportunity, the Secretary of Transportation, the Commissioner of Agriculture, the Executive Director of the Fish and Wildlife Conservation Commission, and the executive

directors of the water management districts are authorized to participate in the development of ecosystem management agreements with regulated entities and other governmental agencies as necessary to effectuate the provisions of this section. Local governments are encouraged to participate in ecosystem management agreements.

Section 39. Subsection (1) of section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund; State Housing Fund.—

(1) There is established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as specified in this chapter. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available, as soon as received into the State Housing Trust Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Chief Financial Officer to the corporation upon certification by the Secretary ~~executive director of the Department~~ of Economic Opportunity that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the secretary ~~executive director~~ shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-

317, Laws of Florida, as amended. Moneys advanced by the Chief Financial Officer must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such fund. To the State Housing Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such fund under this chapter. It is the intent of this chapter that all loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to the State Housing Fund.

Section 40. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ shall contract, notwithstanding part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and be consistent with the corporation's strategic business plan prepared in accordance with s. 420.511. The contract must

provide that if the corporation fails to comply with a performance measure required by s. 420.511, the secretary ~~executive director~~ shall notify the Governor and refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review. If such failure is due to outside forces, it may not be deemed a violation of the contract. If such failure is due to inadequate management, the department's inspector general shall provide recommendations regarding solutions. The Governor may resolve differences of opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer shall approve the request absent a finding by the Chief Financial Officer that continuing such advances would adversely impact the state; however, the Chief Financial Officer shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State Housing Trust Fund if such contracts are in accordance with the laws of this state.

Section 41. Paragraph (d) of subsection (1) of section 420.101, Florida Statutes, is amended to read:

420.101 Housing Development Corporation of Florida; creation, membership, and purposes.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create a housing

development corporation under the provisions of this part for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(d) The names and post office addresses of the members of the first board of directors. The first board of directors shall be elected by and from the stockholders of the corporation and shall consist of 21 members. However, five of such members shall consist of the following persons, who shall be nonvoting members: the Secretary ~~executive director of the Department~~ of Economic Opportunity or her or his designee; the head of the Department of Financial Services or her or his designee with expertise in banking matters; a designee of the head of the Department of Financial Services with expertise in insurance matters; one state senator appointed by the President of the Senate; and one representative appointed by the Speaker of the House of Representatives.

Section 42. Subsection (8) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.—As used in this part, the term:

(8) "Contract" means the contract between the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ and the corporation for provision of housing services referenced in s. 420.0006.

Section 43. Subsections (1) and (3) of section 420.504, Florida Statutes, are amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

420.504 Public corporation; creation, membership, terms, expenses.—

(1) A public corporation and a public body corporate and politic, to be known as the "Florida Housing Finance Corporation," is created within the Department of Economic Opportunity. It is declared to be the intent of and constitutional construction by the Legislature that the Florida Housing Finance Corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in this state and that the corporation is not a department of the executive branch of state government within the scope and meaning of s. 6, Art. IV of the State Constitution, but is functionally related to the Department of Economic Opportunity in which it is placed. The executive function of state government to be performed by the Secretary ~~executive director of the Department~~ of Economic Opportunity in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a contract to monitor and set performance standards for the implementation of the business plan for the provision of housing approved for the corporation as provided in s. 420.0006. This contract must include performance standards for the provision of affordable housing in this state established in the strategic business plan described in s. 420.511.

(3) The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Economic Opportunity in any manner, including, but not limited to, personnel, purchasing, transactions involving real

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or personal property, and budgetary matters. The corporation shall consist of a board of directors composed of the Secretary ~~executive director of the Department~~ of Economic Opportunity as an ex officio and voting member, or a senior-level agency employee designated by the secretary ~~director~~, and eight members appointed by the Governor subject to confirmation by the Senate from the following:

(a) One citizen actively engaged in the residential home building industry.

(b) One citizen actively engaged in the banking or mortgage banking industry.

(c) One citizen who is a representative of those areas of labor engaged in home building.

(d) One citizen with experience in housing development who is an advocate for low-income persons.

(e) One citizen actively engaged in the commercial building industry.

(f) One citizen who is a former local government elected official.

(g) Two citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a)-(f).

Section 44. Subsection (1) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(1) The appointment and removal of an executive director shall be by the Secretary ~~executive director of the Department~~ of Economic Opportunity, with the advice and consent of the

corporation's board of directors. The executive director shall employ legal and technical experts and such other agents and employees, permanent and temporary, as the corporation may require, and shall communicate with and provide information to the Legislature with respect to the corporation's activities. Notwithstanding s. 216.262, the board may develop and implement rules regarding the employment of employees of the corporation and service providers, including legal counsel. The board is entitled to establish travel procedures and guidelines for employees of the corporation, subject to s. 112.061(6) and (7). The executive director's office and the corporation's files and records must be located in Leon County.

Section 45. Subsection (30) of section 420.507, Florida Statutes, is amended to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(30) To prepare and submit to the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ a budget request for purposes of the corporation, which request shall, notwithstanding the provisions of chapter 216 and in accordance with s. 216.351, contain a request for operational expenditures and separate requests for other authorized corporation programs. The request need not contain information on the number of employees, salaries, or any classification thereof, and the approved operating budget therefor need not comply with s. 216.181(8)-(10). The secretary ~~executive director~~ may include

within the department's budget request the corporation's budget request in the form as authorized by this section.

Section 46. Subsection (2) of section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program plan; annual report; audited financial statements.—

(2) The corporation, in coordination with the department, shall annually develop a long-range program plan for the provision of affordable housing in this state as required pursuant to chapter 186. In part, the plan must include provisions that maximize the abilities of the corporation to implement the state housing strategy established under s. 420.0003, to respond to federal housing initiatives, and to develop programs in a manner that is more responsive to the needs of public and private partners. The plan shall be developed on a schedule consistent with that established by s. 186.021. For purposes of this section, the Secretary of Economic Opportunity ~~executive director~~ or his or her designee shall serve as the corporation's representative to achieve a coordinated and integrated planning relationship with the department.

Section 47. Subsection (7) of section 420.602, Florida Statutes, is amended to read:

420.602 Definitions.—As used in this part, the following terms shall have the following meanings, unless the context otherwise requires:

~~(7) "Director" means the executive director of the Department of Economic Opportunity.~~

Section 48. Subsection (5) of section 420.609, Florida

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Statutes, is amended to read:

420.609 Affordable Housing Study Commission.—Because the Legislature firmly supports affordable housing in Florida for all economic classes:

(5) The commission shall review, evaluate, and make recommendations regarding existing and proposed housing programs and initiatives. The commission shall provide these and any other housing recommendations to the Secretary ~~director~~ of Economic Opportunity ~~the department~~ and the executive director of the corporation.

Section 49. Subsection (2) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(2) The Council on Homelessness is created to consist of 19 representatives of public and private agencies who shall develop policy and advise the State Office on Homelessness. The council members shall be: the Secretary of Children and Families, or his or her designee; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, who shall advise the council on issues related to rural development; the State Surgeon General, or his or her designee; the Executive Director of Veterans' Affairs, or his or her designee; the Secretary of Corrections, or his or her designee; the Secretary of Health Care Administration, or his or her designee; the Commissioner of Education, or his or her designee; the Executive Director of CareerSource Florida, Inc., or his or her designee; one representative of the Florida Association of Counties; one representative of the Florida League of Cities; one

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representative of the Florida Supportive Housing Coalition; one representative of the Florida Housing Coalition; the Executive Director of the Florida Housing Finance Corporation, or his or her designee; one representative of the Florida Coalition for the Homeless; the secretary of the Department of Elder Affairs, or his or her designee; and four members appointed by the Governor. The council members shall be nonpaid volunteers and shall be reimbursed only for travel expenses. The appointed members of the council shall be appointed to staggered 2-year terms and are encouraged to have experience in the administration or provision of resources, services, or housing that addresses the needs of persons experiencing homelessness. The council shall meet at least four times per year. The importance of minority, gender, and geographic representation shall be considered in appointing members to the council.

Section 50. Paragraph (g) of subsection (1) of section 427.012, Florida Statutes, is amended to read:

427.012 The Commission for the Transportation Disadvantaged.—There is created the Commission for the Transportation Disadvantaged in the Department of Transportation.

(1) The commission shall consist of seven members, all of whom shall be appointed by the Governor, in accordance with the requirements of s. 20.052.

(g) The Secretary of Transportation, the Secretary of Children and Families, the Secretary ~~executive director of the Department~~ of Economic Opportunity, the executive director of the Department of Veterans' Affairs, the Secretary of Elderly Affairs, the Secretary of Health Care Administration, the

director of the Agency for Persons with Disabilities, and a county manager or administrator who is appointed by the Governor, or a senior management level representative of each, shall serve as ex officio, nonvoting advisors to the commission.

Section 51. Subsections (2), (3), and (4) of section 443.1116, Florida Statutes, are amended to read:

443.1116 Short-time compensation.—

(2) APPROVAL OF SHORT-TIME COMPENSATION PLANS.—An employer wishing to participate in the short-time compensation program must submit a signed, written, short-time plan to the Department of Economic Opportunity for approval. The Secretary of Economic Opportunity ~~director~~ or his or her designee shall approve the plan if:

(a) The plan applies to and identifies each specific affected unit;

(b) The individuals in the affected unit are identified by name and social security number;

(c) The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent and by not more than 40 percent;

(d) The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;

(e) The plan applies to at least 10 percent of the employees in the affected unit;

(f) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement

covering any individual in the affected unit;

(g) The plan does not serve as a subsidy to seasonal employers during the off-season or as a subsidy to employers who traditionally use part-time employees;

(h) The plan certifies that, if the employer provides fringe benefits to any employee whose workweek is reduced under the program, the fringe benefits will continue to be provided to the employee participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program. As used in this paragraph, the term "fringe benefits" includes, but is not limited to, health insurance, retirement benefits under defined benefit pension plans as defined in subsection 35 of s. 1002 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., contributions under a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code, paid vacation and holidays, and sick leave;

(i) The plan describes the manner in which the requirements of this subsection will be implemented, including a plan for giving notice, if feasible, to an employee whose workweek is to be reduced, together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation; and

(j) The terms of the employer's written plan and implementation are consistent with employer obligations under applicable federal laws and laws of this state.

(3) APPROVAL OR DISAPPROVAL OF THE PLAN.—The Secretary of

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Economic Opportunity ~~director~~ or his or her designee shall approve or disapprove a short-time compensation plan in writing within 15 days after its receipt. If the plan is denied, the secretary ~~director~~ or his or her designee shall notify the employer of the reasons for disapproval.

(4) BEGINNING AND TERMINATION OF SHORT-TIME COMPENSATION BENEFIT PERIOD.—A plan takes effect on the date of its approval by the Secretary of Economic Opportunity ~~director~~ or his or her designee and expires at the end of the 12th full calendar month after its effective date.

Section 52. Paragraph (d) of subsection (2) of section 446.53, Florida Statutes, is amended to read:

446.53 Concrete masonry education.—

(2)

(d) In addition to the 13 voting members described in paragraph (a), the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve ex officio as a nonvoting member of the board of directors of the council.

Section 53. Section 450.261, Florida Statutes, is amended to read:

450.261 Interstate Migrant Labor Commission; Florida membership.—In selecting the Florida membership of the Interstate Migrant Labor Commission, the Governor may designate the Secretary ~~executive director of the Department~~ of Economic Opportunity as his or her representative.

Section 54. Paragraph (d) of subsection (1), paragraph (a) of subsection (4), and paragraphs (b), (c), and (d) of subsection (5) of section 624.5105, Florida Statutes, are

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amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(d) Each proposal for the granting of such tax credit requires the prior approval of the Secretary of Economic Opportunity ~~director~~.

(4) ADMINISTRATION.—

(a)1. The Department of Economic Opportunity may adopt rules to administer this section, including rules for the approval or disapproval of proposals by insurers.

2. The decision of the Secretary of Economic Opportunity ~~director~~ shall be in writing, and, if approved, the proposal shall state the maximum credit allowable to the insurer. A copy of the decision shall be transmitted to the executive director of the Department of Revenue, who shall apply such credit to the tax liability of the insurer.

3. The Department of Economic Opportunity shall monitor all projects periodically, in a manner consistent with available resources to ensure that resources are utilized in accordance with this section; however, each project shall be reviewed no less frequently than once every 2 years.

4. The Department of Economic Opportunity shall, in consultation with the Florida Housing Finance Corporation and the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

(5) DEFINITIONS.—As used in this section, the term:

~~(b) "Director" means the director of the Department of Economic Opportunity.~~

(b) ~~(c)~~ "Local government" means any county or incorporated municipality in the state.

(c) ~~(d)~~ "Project" means an activity as defined in s. 220.03(1)(t).

Section 55. Paragraph (f) of subsection (2) of section 1004.015, Florida Statutes, is amended to read:

1004.015 Florida Talent Development Council.—

(2) Members of the council shall include:

(f) The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 56. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #1948**, relating to Department of Economic Opportunity, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1966
INTRODUCER:	Appropriations Committee; Regulated Industries Committee; and Senator Diaz and others
SUBJECT:	Department of Business and Professional Regulation
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1966 revises provisions relating to the licensing and regulation of cosmetics manufacturers, construction contractors, tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Relating to reporting requirements for tobacco product wholesalers, the bill:

- Requires tax and sales reports to be filed with the Division of Alcoholic Beverages and Tobacco through the agency's electronic system; and
- Revises the reporting requirements.

Relating to construction contracting, the bill allows registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

Relating to construction and electrical contractors, the bill repeals the $4 fee all certificate holders and registrants must pay to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

Relating to cosmetic manufacturers, the bill:

- Creates an exemption from the cosmetic manufacturing permit requirements for a person who manufactures limited cosmetic products, such as soaps, and has annual gross sales of $25,000 or less;
- Authorizes a temporary permit for 90 calendar days to allow continued operation of a cosmetics establishment when there is a change of ownership, controlling interest, or location; and
- Authorizes the DBPR to issue remedial, nondisciplinary citations for violations that do not pose a substantial threat to the public health, safety, or welfare.

Relating to regulation of pugilistic events, the bill:
- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission);
- Authorizes the commission to establish the weight of any gloves used in pugilistic matches by rule; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Relating to alcoholic beverage regulations, the bill:
- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises they are seeking to license, and maintain a current electronic mailing address with the DBPR;
- Requires licensees to submit alcohol sales reports through the DBPR's electronic system;
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail;
- Revises the compliance audit timeframes for special restaurant licensees; and
- Removes "grains of paradise" from the list of prohibited ingredients in liquor under the crime of "adulterating liquor."

Relating to condominium and cooperative associations, the bill:
- Requires a proposed annual budget to be provided to members of the association and adopted by its board of directors no later than 14 days before the beginning of the fiscal year;
- Provides the board's failure to timely adopt the annual budget a second time is a minor violation and the prior year's budget will continue in effect until a new budget is adopted.

Relating to condominium associations, the bill:
- Defines the circumstances when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for submitting complaints against condominium associations.

The bill has a negative fiscal impact on state revenues. According to the DBPR, state government revenues deposited in the Professional Regulation Trust Fund will be reduced by $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023 resulting from the elimination of the $4 fee for construction licensure applications and renewals. As a result, revenues transferred to the General Revenue Fund as the general revenue service charge will be reduced by $35,536 over the next two fiscal years.

The bill takes effect July 1, 2021.

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 1966 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (DBPR) is provided below.

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 12 divisions:

- Administration.
- Alcoholic Beverages and Tobacco.
- Certified Public Accounting.
- Drugs, Devices, and Cosmetics.
- Florida Condominiums, Timeshares, and Mobile Homes.
- Hotels and Restaurants.
- Pari-mutuel Wagering.
- Professions.
- Real Estate.
- Regulation.
- Service Operations.
- Technology.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.[1] The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.[2]

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[3] The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.[4]

The DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[5] Regulation is required when:

[1] Section 548.003(1), F.S.
[2] *See* parts I and III of ch. 450, F.S.
[3] Section 455.01(6), F.S.
[4] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[5] Section 455.201(2), F.S.

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[6]

However, "neither the [DBPR] nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.[7]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[8] The FCTMH has limited regulatory authority over the following entities and individuals:[9]

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida. The DHR also licenses and regulates elevators, escalators, and other vertical conveyance devices.[10]

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco regulates the manufacturing, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- Receipt and processing of license applications;
- Collection and auditing of taxes, surcharges, and fees paid by licensees; and
- Enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[11]

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[6] *Id.*
[7] Section 455.201(4)(b), F.S.
[8] Department of Business and Professional Regulation (DBPR), *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/ (last visited Apr. 8, 2021).
[9] *Id.*
[10] DBPR, *Division of Hotels and Restaurants*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Apr. 8, 2021).
[11] DBPR, *Division of Alcoholic Beverages and Tobacco*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Apr. 8, 2021).

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.[12]

"Cigarettes" are defined in s. 210.01(1), F.S., for the purpose of taxation, as:

> …any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

"Tobacco products" are defined in s. 210.25(12), F.S., in the context of state taxes on tobacco products other than cigarettes or cigars, as:

> …loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions and therefore are not taxed as a cigarette or tobacco product in Florida.[13]

A person, firm, association, or corporation must obtain a permit from the DABT to function as any of the following in Florida:

- Retail tobacco products dealer.[14]
- Cigarette manufacturer.[15]
- Cigarette wholesale dealer.[16]
- Cigarette distributing agent.[17]
- Cigarette importer.[18]

[12] Section 561.02, F.S.
[13] Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Sections 877.112(1)(a) and (b), F.S.
[14] Section 569.003, F.S.
[15] Sections 210.01(21) and 210.15, F.S.
[16] Sections 210.01(6) and 210.15(1), F.S.
[17] Sections 210.01(14) and 210.15(1), F.S.
[18] Sections 210.01(20) and 210.15(1), F.S.

- Cigarette exporter.[19]
- Cigar wholesale dealer.[20]
- Tobacco wholesale dealer/distributor.[21]

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to the DABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. The DABT prescribes the manner in which these records are submitted.[22]

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.[23]

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system. Under the bill, manufacturers, importers, distributing agents, wholesale dealers, agents, and retail dealers may keep records in an electronic or paper format.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill replaces the term "return" with the term "report." It requires the tax report to be submitted to the DABT electronically, and permits any records that are required to be kept to be in an electronic or paper format.

[19] Sections 210.01(17) and 210.15(1), F.S.
[20] The term "cigar wholesale dealer" is not defined or referenced in ch. 210, F.S. However, the DABT issues a permit for "cigar wholesale dealer." See DBPR, *Permits for Cigarettes and Other Tobacco Products,* page 20, *available at* www.myfloridalicense.com/dbpr/abt/documents/ABTLicenses.pdf (last visited Apr. 8, 2021).
[21] Sections 210.25(5) and 210.40, F.S.
[22] Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. DBPR, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms,* http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Apr. 8, 2021).
[23] Section 210.55(1), F.S.

Construction Industry Licensing Board

Present Situation

Construction Contractor Divisions

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.[24] The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.[25]

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR, which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.[26]

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.[27]

Section 489.118, F.S., permits registered contractors to obtain statewide certification without taking the state licensure examination if they meet certain criteria. To qualify for this examination exception, a registered contractor must have applied to the DBPR before November 1, 2015. Because the "grandfathering" date of the November 1, 2015, has passed, registered contractors must sit for and satisfactorily pass the state certified license examination to receive a state certified contractor's license.

License Fees

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed $150, and, if an examination cost is included in the application fee, the combined amount may not exceed $350. For an applicant for registration as a contractor, the initial application fee may not exceed $100, and the initial registration fee and the

[24] *See* s. 489.107, F.S.
[25] Section 489.105(3), F.S.
[26] Sections 489.105(8) and 489.113(1), F.S.
[27] Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed $200. [28] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[29]

Fees must be adequate to ensure the continued operation of the CILB, and must be based on the DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.[30]

All certificate holders and registrants must pay a fee of $4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[31] The Florida Building Commission's advice is not binding on the DBPR, but the DBPR must ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry.[32]

Electrical contractors licensed by the Electrical Contractors' Licensing Board (ECLB) are also required to pay a fee of $4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[33]

Each biennium, upon receipt of funds from the CILB and the ECLB collected under ss. 489.109(3) and 489.509(3), F.S., the DBPR must determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.[34]

Effect of Proposed Changes

The bill amends ss. 489.109(3) and 489.509(3), F.S., to repeal the $4 fee all construction contracting and electrical contracting, respectively, certificate holders and registrants must pay to the DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

The bill repeals s. 553.841(5), F.S., to delete the requirement that the CILB and ECLB each biennium determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program from the $4 fee collected under ss. 489.109(3) and 489.509(3), F.S.

The bill amends s. 489.118, F. S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

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[28] Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.
[29] *Id*.
[30] *Id*.
[31] Section 489.109(3), F.S.
[32] *Id.*
[33] Section 489.509(3), F.S.
[34] Section 553.841, F.S.

Cosmetic Manufacturers

Present Situation

The Division of Drugs, Devices and Cosmetics within the DBPR administers the "Florida Drug and Cosmetic Act," in part I of ch. 499, F.S., which is intended to safeguard the health, safety, and welfare of the citizens of the state of Florida from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics.

Section 499.01(2)(p), F.S., requires a person manufacturing or repackaging cosmetics in the state to obtain a cosmetic manufacturing permit. Current law provides an exemption from the permit requirement if a person only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product.

According to the DBPR, there are numerous home businesses without the cosmetic manufacturing permit who manufacture "pour soaps," creams, and lotions.[35] These cosmetic products are typically offered for sale at flea markets, online, and at open markets.

A cosmetic manufacturer's permit holder must comply with current good manufacturing practices that apply to all cosmetic manufacturers whether the cosmetic manufacturer is manufacturing a "pour soap," bath wash, eye liner, lip gloss, or liquid foundation. According to the DBPR, many initial applicants for a cosmetic manufacturing permit cannot meet the criteria for the permit and are currently manufacturing cosmetics as unlicensed cosmetic manufacturers.[36]

A cosmetics manufacturer permit is nontransferable, and is valid only for the person or governmental unit for which the permit is issued.[37] A permit is also only valid for the establishment, i.e., the physical location,[38] for which the permit is issued.[39] A cosmetics manufacturer must submit an application for a new permit when a change of ownership, change of controlling interest, or a change of location occurs. According to the DBPR, cosmetics manufacturers are often unable to present the documentation to establish the change of ownership or controlling interest when submitting the application for the new permit because the legal change of ownership, controlling interest, or location has not occurred.[40] Consequently, there may be a period between such change and an application during which the permit holder is not legally compliant. For example, when an establishment changes location a lapse may occur because the business rarely is able to shut down one location and move equipment to the new location simultaneously with the issuance of the new permit thus requiring the business to maintain two permitted locations to continue to operate.[41]

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[35] *See* Department of Business and Professional Regulation, CS/*SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[36] *Id*.
[37] Section 499.012(6), F.S.
[38] *See* s. 499.003(18), F.S.
[39] Section 499.012(6), F.S.
[40] *See* DBPR, CS/*SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[41] *Id*.

If a person violates any criminal provision in ch. 499, F.S., the DBPR may provide relevant information to the appropriate state attorney or prosecuting agency having jurisdiction. The DBPR may seek a cease and desist order in circuit court to permanently or temporarily enjoin any person violating any provision of ch. 499, F.S., or any rule adopted under that chapter. The DBPR may also impose an administrative fine not to exceed $5,000 per day, for a violation relating to ch. 499, F.S., or any rule adopted under that chapter.

The DBPR or the Florida Department of Health (DOH) may issue such citations as a remedial or nondisciplinary tool for resolution of violations for which there is no substantial threat to the public health, safety, or welfare, but for which the licensee or permit holder has been provided prior opportunity to correct.[42] Current law does not authorize the DBPR to issue a remedial, nondisciplinary citation for violations of ch. 499, F.S., or any rule adopted thereunder.

Effect of Proposed Changes

Permit Exemption

The bill amends s. 499.01(2)(p), F.S., to exempt from the requirement for a cosmetic manufacturing permit a person who manufacturers cosmetics with annual gross sales of $25,000 or less. Under the bill, an exempt cosmetics manufacturer may only:

- Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.
- Sell cosmetic products that are not adulterated or misbranded, in accordance with 21 U.S.C. ss. 361 and 362.

Each unit of cosmetic product must contain, in a contrasting color, a statement in the form provided by the bill, indicating that the product is "made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

The bill authorizes the DBPR to investigate complaints. It provides that any officer or employee of the DBPR may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with ch. 499, F.S., and rules of the DBPR. A refusal to permit entry to the premises or to permit an inspection is a violation of the prohibition in s. 499.005(6), F.S.,[43] which prohibits refusing to allow an authorized officer or employee of the DBPR to enter the premises to conduct an inspection. Under the bill, refusal to allow an inspection is grounds for disciplinary action pursuant to s. 499.066, F.S., which provides remedies and penalties for violations of ch. 499, F.S., including administrative fines of up to $5,000 per violation.

[42] *See* ss. 455.224 and 456.077, F.S., authorizing the DBPR and the Department of Health (DOH) to issue citations, respectively.

[43] Section 499.005, F.S., specifies several prohibited acts, but does not specify any disciplinary actions. Disciplinary actions for violations of ch. 499, F.S, are specified in s. 499.066, F.S., relating to penalties and remedies, s. 499.0661, F.S., relating to cease and desist orders, and s. 499.067, F.S., relating to denial, suspension, or revocation of permit, certification, or registration.

The bill clarifies that s. 499.01(2)(p), F.S., does not exempt any person from any state or federal tax law, rule, regulation, or county or municipal law or ordinance that applies to cosmetic manufacturing.

Temporary Permits

The bill creates s. 499.012(6)(d), F.S., to authorize a 90 day temporary permit for issuance upon an application for change of ownership, controlling interest, or location. The existing permit expires when the DBPR authorizes the temporary permit. The temporary permit would allow the new owner to continue to operate for 90 days until the new owner's permit is issued, and would allow an establishment to continue to operate at the old location without renewing the permit if necessary until the new location is inspected and appropriately permitted, thus avoiding two separate permitting fees.

Citations

The bill creates s. 499.066(8), F.S., to authorize the DBPR to adopt rules to issue remedial, nondisciplinary citations to a permit holder alleged to have committed a violation. The bill specifies the information that must be included in the citation, including a brief factual statement, the sections of law allegedly violated, and the monetary assessment or other remedial measures imposed. The person receiving the citation will have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the DBPR.

The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the DBPR rescind the citation and conduct an investigation of violations alleged in the citation. The DBPR may rescind the citation if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. However, if the person does not successfully contest the citation to the satisfaction of the department, or complete the remedial action, the citation becomes a final order but does not constitute discipline.

Although the bill provides that a citation may become a final order and that such order does not constitute discipline, the bill requires the citation to include any monetary assessment imposed for the violation. The bill also provides that the DBPR is entitled to recover the costs of investigation, in addition to any penalty provided according to DBPR rule, as part of the penalty levied pursuant to a citation.

The DBPR must issue a citation within six months after the filing of a complaint against the manufacturer, e.g., a consumer or other person notifies the DBPR alleging a violation, which is the basis for the citation.

The citation may be served by personal service or certified mail, restricted delivery, to the person at their last known address of record with the DBPR, or to the person's Florida registered agent.

The bill authorizes the DBPR to adopt rules to designate the violations for which a person may be subject to issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation must

be limited to violations for which there is no substantial threat to the public health, safety, or welfare. The DBPR may amend such rules.

State Boxing Commission

Present Situation

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,[44] and mixed martial arts[45] by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.[46]

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,[47] which involves a professional.[48] Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.[49] Chapter 548, F.S., does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."[50]

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.[51] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[52] During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.[53]

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant,[54] manager, second, judge, physician, matchmaker, promoter,[55] trainer, timekeeper, referee, or announcer.[56]

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[44] The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.
[45] The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.
[46] Section 548.003(1), F.S.
[47] Section 548.006(1), F.S.
[48] The term "professional" means a person who has received or competed for a purse or other article of a value greater than $50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.
[49] Section 548.006(4), F.S.
[50] Section 548.007(6), F.S., and *supra* n. 50 for the definition of "mixed martial arts."
[51] Section 548.006(3), F.S.
[52] Section 548.002(2), F.S.
[53] *See* DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Apr. 8, 2021).
[54] Section 548.002(17), F.S., defines "participant" as a professional competing in a boxing, kickboxing, or mixed martial arts match.
[55] *See* s. 548.002, F.S., for the definitions of "manager," "second," "judge," "physician," "matchmaker," and "promoter."
[56] The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.

The commission must establish, by rule, the appropriate weight of gloves used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices the commission deems necessary.[57]

Effect of Proposed Changes

The bill amends s. 548.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission, as revised by the bill.

Division of Alcoholic Beverages and Tobacco

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for enforcing the beverage law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[58]

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries. Deliveries made by a manufacturer, distributor, or vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the DABT or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.[59]

The term "permit carrier" is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.[60] A separate permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement that each vehicle used to deliver alcoholic beverages from a distributor's place of business to the vendor's licensed

[57] Section 548.043(3), F.S.
[58] Section 561.02, F.S.
[59] Section 561.57(2), F.S.
[60] Section 561.01(20), F.S.

premises or to an off-premises storage have a permit. The 2015 amendment to s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[61]

License Application Process

Before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, a person must file a sworn application in the format prescribed by the DABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by the DABT.[62]

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.[63]

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from the DHR, the Department of Agriculture and Consumer Services, the DOH, the Agency for Health Care Administration, or the county health department stating that the place of business where the business is to be conducted meets all of the sanitary requirements of the state.[64]

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.[65] Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

Section 561.19(2)(a), F.S., authorizes the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to an increase in county population or if a quota license

[61] Chapter 2015-52, Laws of Fla.
[62] Section 561.17(1), F.S.
[63] *Id*.
[64] Section 561.17(2), F.S.
[65] Section 561.01(11), F.S., defining the term "licensed premises," and s. 565.03(2)(c), F.S., for craft distilleries.

is revoked. Current law does not reference the availability of a quota license due to the cancellation of a license.

Special Restaurant Licenses

A "special license" is an exception to the quota licensing scheme that allows the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.[66]

If a special restaurant licensee fails to satisfy the percentage requirements of food and nonalcoholic beverage sales, the license must be revoked or a pending license application must be denied. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation or denial of a license application.[67]

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:[68]

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- Exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to the DABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate with two copies sent to the DABT and a third copy to be retained for the licensee's record. Reports must be made on forms prepared and furnished by the DABT.[69]

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.[70]

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause

[66] Section 561.20(2)(a)4., F.S.
[67] *Id.*
[68] Section 561.55(1), F.S.
[69] Section 561.55(2), F.S.
[70] Section 561.42(3), F.S.

why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.[71]

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[72]

Adulterated Liquor

Section 562.455, F.S., provides that a person who adulterates, for the purpose of sale, any liquor, used or intended for drink with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, is guilty of a third degree felony.[73] This law was enacted in 1868.

Grains of paradise is a spice related to ginger and native to West Africa.[74] It is commonly used in alcoholic beverages, food, and medicine.[75] Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).[76]

On January 28, 2020, the United States District Court for the Southern District of Florida held that s. 562.455, F.S., as it relates to prohibiting the use of grains of paradise in liquor, is preempted by federal law.[77] The court found that the Federal Food, Drug, and Cosmetic Act (FFDCA) and FDA regulations conflict with s. 562.455, F.S., because it frustrates the purposes and objectives of the FFDCA and implementing FDA regulations. Under FFDCA, the FDA has broad regulatory authority to monitor and control the introduction of "food additives" in interstate commerce. The FFDCA seeks to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that is generally regarded as safe by the FDA.[78]

Effect of Proposed Changes

The bill deletes the definition for the term "permit carrier" in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term "permit carrier."

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[71] Section 561.42(4), F.S.
[72] *Id*.
[73] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[74] Merriam-Webster Dictionary, *Grains of Paradise*, https://www.merriam-webster.com/dictionary/grains%20of%20paradise (last visited Mar. 24, 2021).
[75] WebMD, *Grains of Paradise*, https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise (last visited Mar. 24, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, https://www.spiceography.com/grains-of-paradise/ (last visited Mar. 24, 2021).
[76] 21 C.F.R. s. 182.10 (2021).
[77] *Marrache v. Bacardi U.S.A., Inc*., 2020 WL 434928 (S.D. Fla. 2020).
[78] *Id.* at p. 2.

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.

The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant's right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT.

The bill amends s. 561.19(2)(a), F.S., to authorize the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to the cancellation of a license.

The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- Level 1 licensees, 51 to 60 percent, will be audited every year;
- Level 2 licensees, 61 to 75 percent, will be audited every two years;
- Level 3 licensees, 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

The bill amends s. 562.455, F.S., to remove "grains of paradise" as an ingredient that if added to liquor, would cause the liquor to be adulterated. Anyone who sells adulterated liquor commits a third degree felony.

Condominiums and Cooperative Associations

Present Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[79] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[80] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws governing the administration of the association.[81]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The FCTMH may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.[82] The FCTMH also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[83] After control of the condominium is transferred from the developer to the unit owners, the FCTMH's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.[84] For cooperatives, the FCTMH's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[85]

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.[86]

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the FCTMH may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and take affirmative action to carry out the purpose of the applicable chapter. In addition, the FCTMH is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The FCTMH may also impose civil penalties.[87]

[79] Section 718.103(11), F.S.
[80] Section 718.104(2), F.S.
[81] Section 718.103(4), F.S.
[82] Sections 718.501(1) and 719.501(1), F.S.
[83] *Id.*
[84] Section 718.501(1), F.S.
[85] Section 719.501(1), F.S.
[86] Sections 718.501(1) and 719.501(1), F.S.
[87] *Id.*

Annual Budget - Condominium and Cooperative Associations

Every condominium and cooperative association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[88]

A condominium and cooperative association must hold a meeting to adopt a proposed budget. These associations must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[89] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.[90]

Current law does not define the timing for adoption of the budget for a condominium or cooperative association.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors, termed a Board of Administration. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree of good faith, and must place the interests of the unit owners above the personal interests of the directors.[91]

To become a board member, a person may be:
- Elected to the board by the members of the association;[92]
- Appointed to the board by the developer if the developer is still entitled to representation; or
- Appointed by the board of directors if a vacancy on the board occurs between meetings.[93]

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.[94] However, current law also establishes minimum qualifications to serve on an association's board of directors.[95] To serve as a director, a person may not:[96]
- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.[97]

[88] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[89] Sections 718.112(2)(e)1 and 718.106(1)(e), F.S., relating to condominium and cooperative associations, respectively.
[90] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[91] Sections 718.103(4), 718.111, and 718.112, F.S.
[92] Section 718.112(2)(d)4., F.S.
[93] Sections 617.0809 and 718.112(2)(d)9., F.S.
[94] Section 718.112(2)(a), F.S.
[95] Section 718.112(2)(d), F.S.
[96] *Id*.
[97] Section 718.111(1)(d), F.S.

Chapter 718, F.S., does not define the terms "monetary obligation" or "delinquent." According to the DBPR, defining the term "delinquent" would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.[98] The DBPR also maintains that it is the practice of a "controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election."[99]

Condominium Ombudsman

The Office of the Ombudsman within the FCTMH is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the FCTMH, and the Legislature on any matter or subject within the jurisdiction of the FCTMH. In addition, the ombudsman may make recommendations to the FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[100]

The ombudsman also acts as a liaison among the FCTMH, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[101]

The ombudsman is required to maintain his or her principal office in Leon County.[102]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to replace the term "monetary obligation" with the term "assessment." The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association's governing documents, which include the declaration, articles of incorporation, and bylaws. If no due date is specifically identified in the governing documents, the due date is the first day of the assessment period.

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require the annual budget for condominium and cooperative associations to be proposed to unit owners and adopted by the board of directors no later than 14 days before the beginning of the fiscal year. Under the bill, the failure by an association's board to timely adopt the annual budget a second time is a minor violation[103] and the prior year's budget shall continue in effect until a new budget is adopted.

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[98] *See* Department of Business Professional Regulation, *SB 1966 Bill Analysis*, p. 4, (Mar. 12, 2021) (on file with Senate Committee on Regulated Industries).
[99] *Id.*
[100] Sections 718.5011 and 718.5012, F.S.
[101] *Id.*
[102] Section 718.5014, F.S.
[103] The term "minor violation" is not defined in ch. 718 and 719, F.S. Fla. Admin. Code R. 61B-21.001(3), relating to condominium resolution guidelines for unit owner-controlled associations, defines a "minor violation" as a violation in which the FCTMH will issue a notice of noncompliance as a first response to a violation of a rule due to the violation's lower potential for public harm. Failure to timely comply with the notice of noncompliance may result in further sanctions and enforcement. Fla. Admin. Code R. 61B-77.003(7)(a), provides a comparable definition for the term for violations related to cooperative associations.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Division of Professions of the Department of Business and Professional Regulation (DBPR) estimates that the bill will result in a reduction of application and license renewal fees paid by the private sector of approximately $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023.[104]

B. Private Sector Impact:

The bill has an indeterminate positive fiscal impact for the private sector. Under the bill, construction and electrical contractors would not have to pay the $4 fee to the Department of Business and Professional Regulation (DBPR) at the time of application or

[104] *See* Department of Business and Professional Regulation, *CS/SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

renewal to fund projects relating to the building construction industry or continuing education programs.

The bill may provide an opportunity for small cosmetic manufacturing businesses to generate revenues up to $25,000 in annual gross sales without the cost of a cosmetic manufacturing permit.

Relating to cosmetic manufacturers, the bill may save license expenses needed to continue operation of the business during permitting transfers due to change of ownership, change of controlling interest, or change of location. According to the DBPR, the bill will eliminate the dual permit fee many firms currently pay to continue operating pending approval of the new permit.[105]

C. Government Sector Impact:

The DBPR expects the following fiscal impact on revenues:[106]

Division of Alcoholic Beverages and Tobacco: Tax revenue may be maximized by the required electronic submission of tax reports.

Division of Professions: The bill repeals the $4 fee for Construction Industry Licensing Board (CILB) and the Electrical Contractors' Licensing Board (ECLB) license applications and license renewals. According to the DBPR, based on historical data, the repeal of the fee may result in a revenue reduction of $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023 deposited into the Professional Regulation Trust Fund for the CILB and ECLB.[107]

The $4.00 fee collected in the Professional Regulation Trust fund is also subject to the GR service charge. The elimination of the fee would reduce transfers to GR by $12,981 in Fiscal Year 2021-2022, and $22,555 in Fiscal Year 2022-2023. The total loss of revenue over the two fiscal years would be an estimated $479,739, of which $35,536 would be a reduction in transfers to GR. The net loss to the Professional Regulations Trust Fund would be an estimated $444,203 over the next two fiscal years.

The bill amends s. 489.118, F.S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination. According to the DBPR, by allowing registered contractors to be certified without sitting for the certification examination, there may be an indeterminate reduction in local registered license, renewal, and reciprocity fees.[108]

[105] *Id.*
[106] *Id.*
[107] *See* Department of Business and Professional Regulation, CS/*SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[108] *Id*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 210.60, 489.109, 489.118, 489.509, 499.01, 499.012, 499.066, 548.003, 548.043, 553.841, 561.01, 561.17, 561.19, 561.20, 561.42, 561.55, 562.455, 718.112, 718.501, 718.5014, 719.106, 455.219, 548.002, 548.05, 548.071, and 548.077.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:

The committee substitute:

- Removes from the bill the provisions amending ss. 509.241 and 509.251, F.S., to revise the staggered licensing schedule for public lodging establishments.
- Reduces from 30 days to 14 days before the beginning of the fiscal year the date by which the bill requires the annual budget for a condominium association to be proposed to unit owners and adopted by the board of directors.
- Requires the board of a cooperative association to propose to the unit owners and adopt the annual budget at least 14 days before the beginning of the fiscal year.
- Provides that, in the event the board of a condominium or cooperative association fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

CS by Regulated Industries on March 30, 2021:

The committee substitute (CS):

- Repeals s. 489.509(3), F.S., to delete the $4 fee that all certified and registered electrical contractors must pay to the DBPR at the time of application or renewal.
- Clarifies that refusal to permit an authorized officer or employee of the Department of Business and Professional Regulation to enter the premises is a violation of s. 499.005(6), F.S., and is grounds for disciplinary action pursuant to s. 499.066, F.S.

B. Amendments:

None.

By the Committees on Appropriations; and Regulated Industries; and Senators Diaz and Garcia

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A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; providing that specified records relating to cigarettes received, sold, or delivered within the state may be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; providing that specified records relating to tobacco products may be kept in an electronic or paper format; amending s. 489.109, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; amending s. 489.118, F.S.; removing an obsolete date; amending s. 489.509, F.S.; deleting requirements relating to certain fees collected by the department for electrical and alarm system contracting; amending s. 499.01, F.S.; exempting certain persons from specified permit requirements under certain circumstances; requiring an exempt cosmetics manufacturer to provide,

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upon request, to the department specified documentation verifying his or her annual gross sales; authorizing an exempt cosmetics manufacturer to only manufacture and sell specified products; requiring specified labeling for each unit of cosmetics manufactured by an exempt cosmetics manufacturer; authorizing the department to investigate complaints and to enter and inspect the premises of an exempt cosmetics manufacturer; providing disciplinary actions; providing construction; amending s. 499.012, F.S.; authorizing specified establishments to submit a request for a temporary permit; requiring such establishments to submit the request to the department on specified forms; providing that upon authorization by the department for a temporary permit for a certain location, the existing permit for such location is immediately null and void; prohibiting a temporary permit from being extended; providing for expiration of a temporary permit; prohibiting an establishment from operating under an expired temporary permit; amending s. 499.066, F.S.; requiring the department to adopt rules to permit the issuance of remedial, nondisciplinary citations; providing requirements for such citations; providing for contest of and the rescinding of a citation; authorizing the department to recover specified costs relating to a citation; providing a timeframe for when a citation may be issued; providing requirements for the service of a citation; authorizing the department to adopt and

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amend rules, designate violations and monetary assessments, and order remedial measures that must be taken for such violations; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 553.841, F.S.; conforming a provision to changes made by the act; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.19, F.S.; revising provisions relating to the availability of beverage licenses to include by reason of the cancellation of a quota beverage license; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 562.455, F.S.; removing grains of paradise as a form of adulteration of liquor used or intended for drink; amending s. 718.112, F.S.; providing the circumstances

under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring boards to adopt annual budgets within a specified timeframe; specifying that the failure to adopt a timely budget a second time is a minor violation and that the previous year's budget continues in effect until a new budget is adopted; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending s. 719.106, F.S.; requiring boards of administration to adopt annual budgets within a specified timeframe; specifying that the failure to adopt a timely budget a second time is a minor violation and that the previous year's budget continues in effect until a new budget is adopted; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 210.09, Florida Statutes, are amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means,

facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly reports ~~returns~~.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the taxable price of each tobacco product brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

(2) As soon as practicable after any report ~~return~~ is filed, the division shall examine each report ~~return~~ and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency

disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest, and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any report ~~return~~ fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the report ~~return~~ within 20 days after mailing of the demand and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the report ~~return~~, the division shall prepare the report ~~return~~ from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing

the incorrectness or invalidity of any report ~~return~~ or assessment made by the division because of the failure of the taxpayer to make a report ~~return~~.

(5) All taxes are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false report ~~return~~ with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected report ~~return~~. In assessing a tax on the basis of a report ~~return~~ made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division in the form of a deduction in submitting his or her report and paying the amount due; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10 percent or $50, whichever is less, if a taxpayer files an incomplete report ~~return~~.

1. An "incomplete report ~~return~~" means ~~is~~, for purposes of this section ~~part~~, a report ~~return~~ which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the report ~~return~~ may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the report ~~return~~; and such other information as the division may specify.

Section 3. Section 210.60, Florida Statutes, is amended to read:

210.60 Books, records, and invoices to be kept and preserved; inspection by agents of division.—Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate

consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers, and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein to determine whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The seller shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address

of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the retailer's place of business. Any records required by this section may be kept in an electronic or paper format.

Section 4. Subsection (3) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

~~(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of $4 to the department at the time of application or renewal. The funds must be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year,~~

~~summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 5. Section 489.118, Florida Statutes, is amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on

probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

~~Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015.~~

Section 6. Subsection (3) of section 489.509, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

489.509 Fees.—

(1) The board, by rule, shall establish fees to be paid for applications, examination, reexamination, transfers, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for certification of electrical contractors may not exceed $400. The initial application fee for registration may not exceed $150. The biennial renewal fee may not exceed $400 for certificateholders and $200 for registrants. The fee for initial application and examination for certification of alarm system contractors may not exceed $400. The biennial renewal fee for certified alarm

system contractors may not exceed $450. The board may establish a fee for a temporary certificate as an alarm system contractor not to exceed $75. The board may also establish by rule a delinquency fee not to exceed $50. The fee to transfer a certificate or registration from one business organization to another may not exceed $200. The fee for reactivation of an inactive license may not exceed $50. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of electrical contractors and alarm system contractors.

~~(3) Four dollars of each fee under subsection (1) paid to the department at the time of application or renewal shall be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the~~

~~allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 7. Paragraph (p) of subsection (2) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(2) The following permits are established:

(p) *Cosmetic manufacturer permit.*—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph. A person who manufactures cosmetics and has annual gross sales of $25,000 or less is exempt from the permit requirements of this paragraph. Upon request, an exempt cosmetics manufacturer must provide to the department written documentation to verify his or her annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

1. An exempt cosmetics manufacturer may only:

a. Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.

b. Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.

c. Sell cosmetics that are not adulterated or misbranded in accordance with 21 U.S.C. ss. 361 and 362.

d. Sell cosmetic products that are stored on the premises

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of the cosmetic manufacturing operation.

2. Each unit of cosmetics manufactured under this paragraph must contain, in contrasting color and not less than 10-point type, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

3. The department may investigate any complaint which alleges that an exempt cosmetics manufacturer has violated an applicable provision of this chapter or a rule adopted under this chapter. The department's authorized officer or employee may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with this chapter and department rules, as applicable. A refusal to permit an authorized officer or employee of the department to enter the premises or to conduct an inspection is a violation of s. 499.005(6) and is grounds for disciplinary action pursuant to s. 499.066.

4. This paragraph does not exempt any person from any state or federal tax law, rule, regulation, or certificate or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Section 8. Paragraph (d) is added to subsection (6) of section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

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(d) When an establishment that requires a permit pursuant to this part submits an application to the department for a change of ownership or controlling interest or a change of location with the required fees under this subsection, the establishment may also submit a request for a temporary permit granting the establishment authority to operate for no more than 90 calendar days. The establishment must submit the request for a temporary permit to the department on a form provided by the department and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and shall expire and become null and void by operation of law without further action by the department at 12:01 a.m. on the 91st day after the department authorizes such permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

Section 9. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to authorize the issuance of a remedial, nondisciplinary citation. A citation shall be issued to the person alleged to have committed a

violation and contain the person's name, address, and license number, if applicable; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The person shall have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the department. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051 of only those alleged violations contained in the citation. The citation shall be rescinded by the department if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of the department, or complete remedial action pursuant to this paragraph, the citation becomes a final order and does not constitute discipline.

(b) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

(c) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with the department, or to the person's Florida registered agent.

(e) The department may adopt rules to designate those

violations for which a person is subject to the issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation shall include violations for which there is no substantial threat to the public health, safety, or welfare. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 10. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before ~~prior to~~ the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter.

The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant’s apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager’s participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur

sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 11. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 12. Subsection (5) of section 553.841, Florida Statutes, is amended to read:

553.841 Building code compliance and mitigation program.—

~~(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.~~

Section 13. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 14. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of

manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance

Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division

to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 15. Paragraph (a) of subsection (2) of section 561.19, Florida Statutes, is amended to read:

561.19 License issuance upon approval of division.—

(2)(a) When beverage licenses become available by reason of an increase in the population of a county, by reason of a county permitting the sale of intoxicating beverages when such sale had been prohibited, or by reason of the cancellation or revocation of a quota beverage license, the division, if there are more applicants than the number of available licenses, shall provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The double random selection drawing method shall allow each applicant whose application is complete and does not disclose on its face any matter rendering the applicant ineligible an equal opportunity of obtaining an available license. After all applications are filed with the director, the director shall then determine by random selection drawing the order in which each applicant's name shall be matched with a number selected by random drawing, and that number shall determine the order in which the applicant will be considered for a license. This paragraph does not prohibit a person holding a perfected lien or security interest in a quota alcoholic beverage license, in accordance with s. 561.65, from enforcing the lien or security interest against the license within 180 days after a final order of revocation or suspension. A revoked

quota alcoholic beverage license encumbered by a lien or security interest, perfected pursuant to s. 561.65, may not be issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Section 16. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only

on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a

staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered

event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other

license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall

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be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell

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alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is

leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 17. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to

forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor may ~~shall~~ not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales may ~~shall~~ not be made, published, or declared until final disposition of such review by the department.

Section 18. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and

reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 19. Section 562.455, Florida Statutes, is amended to read:

562.455 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, ~~grains of paradise,~~ opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 20. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the

location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws

provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any

offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide

an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic

transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully

discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium

documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case

the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days prior to the

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start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an

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adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the

developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 21. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to

associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The

division may adopt rules regarding the submission of a complaint against an association.

Section 22. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 23. Paragraph (j) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

Section 24. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession’s trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are

adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 25. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

548.002 Definitions.—As used in this chapter, the term:

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 26. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain

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language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute before ~~prior to~~ release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 27. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 28. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust

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Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 29. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 2004
INTRODUCER:	Commerce and Tourism Committee and Senator Burgess
SUBJECT:	Broadband Internet
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Favorable**
3.	Hrdlicka	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 2004 requires the Office of Broadband (Office) within the Department of Economic Opportunity to address additional areas in its strategic plan. Specifically, the Office must develop short-term and long-term goals and strategies to increase the availability of and access to broadband Internet service in Florida; incorporate federal broadband activities that may improve Florida's broadband Internet service; and identify available federal funding for the expansion or improvement of broadband Internet service. The bill requires the Office to complete and submit its strategic plan by June 30, 2022.

Additionally, the bill requires the Office to provide technical and planning assistance to Florida's rural communities' broadband Internet infrastructure projects.

The bill provides an appropriation of $1.4 million in nonrecurring funds for Fiscal Year 2021-2022.

II. Present Situation:

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[1] Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which requires many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.[2]

While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[3] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.[4] Communities that lack broadband access can have difficulty attracting new capital investment.[5] Additionally, data indicates that low-income households disproportionately lack access to broadband Internet service, which puts children in those households at risk of falling behind.[6]

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).[7] Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.[8]

Other State Action

All 50 states have created either a task force, commission, or authority to coordinate broadband expansion.[9] One organization has studied the work of several state broadband offices authorities

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[1] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report*, at 1 (Feb. 2, 2018), *available at* https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Mar. 28, 2021).
[2] FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf (last visited Mar. 28, 2021).
[3] FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Mar. 28, 2021). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.
[4] National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Mar. 28, 2021). *See also* Congressional Research Service (CRS), *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7 (Oct. 25, 2019), *available at* https://fas.org/sgp/crs/misc/RL30719.pdf (last visited Mar. 28, 2021).
[5] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 8.
[6] New American Economy Research Fund, *Back to School: A Look at the Internet Access Gap* (Aug. 6, 2020), *available at* https://research.newamericaneconomy.org/report/internet-access-covid-19/ (last visited Mar. 28, 2021).
[7] CRS, *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), *available at* https://crsreports.congress.gov/product/pdf/R/R46307 (last visited Mar. 28, 2021).
[8] CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, *supra* note 4 at 1.
[9] National Conference of State Legislatures (NCSL), *State Broadband Task Forces, Commissions or Authorities and Other Broadband Resources* (June 2020), https://www.ncsl.org/research/telecommunications-and-information-technology/state-broadband-task-forces-commissions.aspx (last visited Mar. 28, 2021).

and determined that effective practices include stakeholder outreach and engagement at both the state and local levels; thorough development of a policy framework with well-defined goals; adoption of a state broadband plan; and helping communities identify their broadband goals and needs to better connect them with satisfactory resources.[10]

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the Department of Economic Opportunity (DEO).[11] The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.

Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in Florida which must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved[12] areas of the state through grant programs; and
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida's rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs.[13]

The DEO may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals.[14]

Federal Broadband Initiatives

FCC Digital Opportunity Data Collection Program

The FCC collects and monitors data on broadband deployment in order to identify underserved and unserved localities in the United States.[15] In August 2019, the FCC adopted the Digital Opportunity Data Collection Program, which modernized the collection of broadband deployment data by creating granular coverage maps, as opposed to census tract maps, and by

[10] Kathryn de Wit, Pew Charitable Trusts, *How States are Expanding Broadband Access* (Feb. 27, 2020), *available at* https://www.pewtrusts.org/en/research-and-analysis/reports/2020/02/how-states-are-expanding-broadband-access (last visited Mar. 28, 2021).
[11] Chapter 2020-26, Laws of Fla.
[12] Section 364.0135(2)(d), F.S., defines the term "underserved" to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 Mbps downstream and at least 1 Mbps upstream
[13] Section 364.0135(4), F.S.
[14] Section 364.0135(5), F.S.
[15] FCC, *Establishing the Digital Opportunity Data Collection*, at 1-2 (Jan. 19, 2021), *available at* https://www.fcc.gov/document/fcc-takes-next-step-collect-more-precise-broadband-mapping-data (last visited Mar. 28, 2021).

implementing a process to accept public data to confirm the maps' accuracy.[16] In March 2020, Congress ratified the FCC's Data Collection Program with passage of the Broadband Data Act, which requires the FCC to establish a semiannual collection of geographically granular broadband coverage data to use to create coverage maps.[17] Congress allocated $65 million to the FCC to achieve this mapping project in December 2020.[18]

To create these geographic service maps, the FCC collects information from service providers according to specific reporting standards. The service providers must report their service coverage areas, including where their services were available to residences or businesses, and the speed and latency at which their services are delivered.[19] The FCC also set up a website to allow for public input regarding consumers' experiences with broadband.[20] The FCC anticipates completing initial, targeted mapping by July 2021.[21]

FCC's Rural Digital Opportunity Fund

In January 2020, the FCC established the Rural Digital Opportunity Fund to fund the deployment of broadband networks in rural America over the next decade. The first phase of the fund began in 2020 and made available up to $16 billion to target census blocks that are wholly unserved by fixed broadband speeds of at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps).[22] Florida entities received over $190 million (to be distributed over the next 10 years) in this first round of funding.[23]

Phase II of the Fund will target underserved localities, as identified by the FCC's Digital Opportunity Data Collection Program.[24] Using this more precise data, the second phase of FCC grants will make available at least $4.4 billion to target geographic areas where some locations lack access to 25/3 Mbps broadband.[25]

FCC's Emergency Broadband Benefit Program

Congress appropriated $3.2 billion in December 2020 to expand broadband access via subsidies for broadband service to students, families, and unemployed workers.[26] Eligible households can receive a discount of up to $50 per month off their broadband service bill for service and associated equipment. A household is eligible to receive a subsidy if any member of the

[16] *Id*. at 3.
[17] 47 U.S.C. 642(a)(1)(A) and (a)(2) (2020).
[18] Marguerite Reardon, CNET, *FCC Chair Rosenworcel Launches Broadband Mapping Taskforce* (Feb. 17, 2021), *available at* https://www.cnet.com/news/fcc-chair-rosenworcel-launches-broadband-mapping-task-force/ (last visited Mar. 28, 2021).
[19] FCC, *Establishing the Digital Opportunity Data Collection*, *supra* note 15 at 5, 8-16.
[20] FCC, *Broadband Data Collection Consumer Information*, *available at* https://www.fcc.gov/BroadbandData/consumers (last visited Apr. 1, 2021).
[21] FCC, *Carr Welcomes New, Four-Month Timeline for Broadband Maps*, *available at* https://docs.fcc.gov/public/attachments/DOC-370911A1.pdf (last visited Apr. 1, 2021).
[22] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund* (Feb. 7, 2020), *available at* https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0 (last visited Mar. 28, 2021).
[23] Federal Communications Commission, *Auction 904 Winning Bidders: Attachment A*, *available at* https://www.fcc.gov/document/auction-904-winning-bidders (last visited Mar. 28, 2021).
[24] *See*, FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 3.
[25] FCC, *FCC Launches $20 Billion Rural Digital Opportunity Fund*, *supra* note 20 at 4.
[26] NCSL, *COVID-19 Economic Relief Bill: Broadband Provisions* (Jan. 4, 2021), *available at* https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx (last visited Mar. 28, 2021).

household: qualifies for the Lifeline program, receives benefits under the free or reduce-price school lunch program, received a Federal Pell Grant, experienced a substantial loss of income in the last year and had a total household income in 2020 below $99,000 for single filers and $198,000 for joint filers, or meets criteria to participate in service providers' existing low-income or COVID-19 programs.[27] The program will conclude when all the funding has been expended or six months after the end of the public health emergency.[28]

U.S. Department of Agriculture Programs

The U.S. Department of Agriculture (USDA) has several rural utilities programs to provide a variety of loans and grants to build and expand broadband networks.[29] The ReConnect Program offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service. Eligible entities include cooperatives and nonprofits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants for a grant or a loan/grant combination under the ReConnect Program must submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[30]

Miscellaneous Federal Broadband Initiatives

Federal assets to assist with the expansion and promotion of broadband comes from a variety of sources, for example:[31]

- The FCC's E-Rate Universal Service Fund subsidizes telephone service (including broadband Internet access) to low-income households, high-cost areas, rural healthcare providers, and eligible schools and libraries;[32]
- The U.S. Department of Housing and Urban Development[33] and Department of Education[34] offer block grants that can support broadband infrastructure;
- The Department of the Interior launched a mapping tool to allow service providers to locate federal property available for infrastructure development;[35] and

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[27] FCC, *Emergency Broadband Benefit Program*, https://www.fcc.gov/broadbandbenefit (last visited Mar. 28, 2021).
[28] *See* FCC, *FCC Adopts Report and Order for Emergency Broadband Benefit Program*, *available at* https://www.fcc.gov/document/fcc-adopts-report-and-order-emergency-broadband-benefit-program-0 (last visited Mar. 31, 2021).
[29] USDA, *Telecom Programs*, *available at* https://www.rd.usda.gov/programs-services/all-programs/telecom-programs (last visited Mar. 28, 2021).
[30] *See* USDA, *ReConnect Loan and Grant Program*, *available at* https://www.usda.gov/reconnect#anchor1 (last visited Mar. 28, 2021.
[31] *See generally*, National Telecommunications and Information Administration (NTIA), American Broadband Initiative, *Progress Report* (June 2020), *available at* https://www.ntia.doc.gov/files/ntia/publications/abi_progress_report_june2020.pdf (last visited Mar. 28, 2021).
[32] FCC, *E-Rate: Universal Service Program for Schools and Libraries* (Sep. 16, 2020), https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate (last visited Mar. 28, 2021).
[33] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Mar. 28, 2021).
[34] U.S. Department of Education, *Rural and Low-Income School Program*, *available at* https://www2.ed.gov/programs/reaprlisp/index.html (last visited Mar. 28, 2021).
[35] U.S. Department of Interior, *Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed at Interior*, *available at* https://www.doi.gov/broadband (last visited Mar. 28, 2021).

- The National Telecommunications and Information Administration within the U.S. Department of Commerce is working to improve coordination between federal programs that fund broadband and statewide efforts.[36]

Additionally, the latest COVID-19 relief bill passed by Congress in December 2020[37] included the following funding to expand broadband Internet access for students, families, and unemployed workers:[38]

- $300 million for rural broadband;[39]
- $250 million for the FCC's telehealth program;[40]
- $285 million to fund a pilot program to assist with broadband issues at historically Black colleges and universities;[41]
- $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects, like broadband infrastructure.[42]
- $1.9 billion for "rip and replace" efforts related to Huawei and ZTE equipment in U.S. networks;[43] and
- $1 billion in grants for tribal broadband programs.[44]

Additionally, the American Rescue Plan, signed into law on March 11, 2021, includes multiple appropriations that can be used for broadband infrastructure, such as $10 billion for the Capital Projects Fund to provide grants to states for the costs of capital projects, like broadband infrastructure and $130.2 billion for Community Development Block Grants that can be used for community development projects, including broadband infrastructure.[45]

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[36] Broadband USA, *State Broadband Leaders Network* (Dec. 19, 2018), https://broadbandusa.ntia.doc.gov/ntia-resources/state-broadband-leaders-network-sbln (last visited Mar. 28, 2021).
[37] Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2021).
[38] NCSL, *COVID-19 Economic Relief Bill: Broadband*, *supra* note 24.
[39] *See generally*, NTIA, *Overview of Consolidated Appropriations Act, 2021: Broadband Infrastructure Deployment Grants*, *available at* https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021 (last visited Mar. 28, 2021). These grants will be available to support infrastructure for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to internet at a speed of 25/3Mbps or higher.
[40] FCC, *COVID-19 Telehealth Program* (Feb. 9, 2021), *available at* https://www.fcc.gov/covid-19-telehealth-program (last visited Mar. 28, 2021).
[41] *See generally*, NTIA, *Minority Broadband Initiative*, https://www.ntia.doc.gov/category/minority-broadband-initiative (last visited Mar. 28, 2021).
[42] U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, *available at* https://home.treasury.gov/news/press-releases/jy0069 (last visited Apr. 2, 2021).
[43] B. Braverman, M. Browne, and J. Mark, *Let Her Rip! FCC Adopts Remove-and-Replace Rules* (Jan. 15, 2021), https://www.dwt.com/insights/2021/01/fcc-huawei-zte-rip-and-replace-rules (last visited Mar. 28, 2021). *See also*, FCC, *Second Report and Order in re: Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* (Dec. 10, 2020), *available at* https://docs.fcc.gov/public/attachments/FCC-20-176A1.pdf (last visited Mar. 28, 2021).
[44] *See generally*, NTIA, *NTIA Announces Tribal Consultations on New Program to Increase Broadband Access Across Indian Country* (Feb. 5, 2021), https://www.ntia.gov/blog/2021/ntia-announces-tribal-consultations-new-program-increase-broadband-access-across-indian (last visited Mar. 28, 2021).
[45] Pub. L. No. 112-2, ss. 603 and 604 (117th Congress) (H.R. 1319). U.S. Treasury, *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, *available at* https://home.treasury.gov/news/press-releases/jy0069 (last visited Apr. 2, 2021).

III. Effect of Proposed Changes:

The Office is currently required to draft a strategic plan for increasing the use of broadband Internet service in Florida. **Section 1** of the bill adds additional subject matter areas that the Office must address in the strategic plan, specifically:

- Short and long-term goals that increase and improve the availability of and access to broadband Internet service in Florida;
- Federal broadband activities, specifically those implemented by the FCC, that may improve broadband Internet service in Florida; and
- Federal funding sources that may be used to expand or improve broadband Internet service in Florida.

The bill requires that the Office complete and submit its strategic plan to the Governor, Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022. The plan must be updated biennially thereafter.

Section 1 of the bill also expands the Office's duties to include the provision of technical and planning assistance relating to broadband infrastructure to rural communities.

Section 2 appropriates $1.4 million in nonrecurring funds from the State Economic Enhancement and Development Trust Fund to the Department of Economic Opportunity for the 2021-2022 fiscal year. The department must use these funds to commission a broadband feasibility study and to develop a strategic plan as required by s. 364.0135, F.S.

Section 3 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Office's planning and execution of its duties may help localities secure funding for broadband Internet service, which will positively impact citizens' business and personal needs. Additionally, communities with sufficient broadband Internet service may better attract or retain business.

C. Government Sector Impact:

The bill appropriates $1.4 million in nonrecurring funds from the State Economic Enhancement and Development Trust Fund to the DEO to commission a broadband feasibility study and develop a broadband strategic plan, as required by s. 364.0135, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 364.0135 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 15, 2021:
The CS appropriates $1.4 million in nonrecurring funds for the fiscal year 2021-2022 from the State Economic Enhancement and Development Trust Fund to the DEO for the specific purposes of commissioning a broadband feasibility study and developing a strategic plan.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part XV of chapter 288, Florida Statutes, consisting of sections 288.9960, 288.9961, and 288.9962 is created and entitled "Florida Office of Broadband."

Section 2. Section 288.9960, Florida Statutes, is created to read:

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288.9960 Promotion of broadband adoption; definitions.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of this state, is essential for all residents of this state, and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

(2) DEFINITIONS.—As used in this part section, the term:

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband Internet services in all areas of this state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(d) "Underserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 10 megabits per second downstream and at least 10 megabits 1 megabit per second upstream.

(e) "Unserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and at least 3 megabits per second upstream.

Section 3. Section 364.0135, Florida Statutes, is transferred, renumbered as section 288.9961, Florida Statutes,

and amended to read:

288.9961 ~~364.0135~~ ~~Promotion of broadband adoption;~~ Florida Office of Broadband.—

~~(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.~~

~~(2) DEFINITIONS.—As used in this section, the term:~~

~~(a) "Department" means the Department of Economic Opportunity.~~

~~(b) "Office" means the Florida Office of Broadband.~~

~~(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.~~

~~(d) "Underserved" means a geographic area of the state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.~~

(1) ~~(3)~~ STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(2) ~~(4)~~ FLORIDA OFFICE OF BROADBAND.—The Florida Office of

Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has short-term and long-term goals and strategies for increasing and improving the availability of and access to ~~use of~~ broadband Internet service in this ~~the~~ state. In development of the plan, the department shall incorporate applicable federal broadband activities, including any efforts or initiatives of the Federal Communications Commission, to improve broadband Internet service in this state. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state. The plan must also identify available federal funding sources for the expansion or improvement of broadband. The strategic plan must be submitted to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022. The strategic plan must be updated biennially thereafter.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) Provide technical and planning assistance related to broadband infrastructure to rural communities.

(d) ~~(c)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband Internet service ~~in primarily underserved areas~~ by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in ~~underserved areas of~~ this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(e) ~~(d)~~ Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in this ~~the~~ state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of the state are best positioned to benefit from federal and state

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broadband deployment programs.

(e) Administer the Broadband Opportunity Program established in s. 288.9962.

(3) ~~(5)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

(d) Adopt rules to implement this part.

Section 3. Section 288.9962, Florida Statutes, is created to read:

288.9962 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the office to award grants to applicants who seek to expand broadband Internet service to unserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be subject to appropriation.

(2)(a) Grants awarded under this section shall fund the installation or deployment of infrastructure that supports the provision of broadband Internet service that provides access to the Internet at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload. State funds may not be used to install or deploy broadband Internet service to a geographic area in which broadband Internet service is already deployed by at least one provider.

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(b) For purposes of this section, "deployed" means that a provider meets either of the following:

1. Currently provides broadband Internet service in a specific geographic area with access to the Internet at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload; or

2. Is able to provide broadband Internet service in a specific geographic area with such access to a customer that requests that service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period shall be extended to 60 days if permits are needed before the broadband Internet service is installed and activated.

(3) Applicants eligible for grant awards include:

(a) Corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Indian tribes.

(4) The office may not award, directly or indirectly, grants under this section to a governmental entity, a rural electric cooperative or its broadband affiliate, or an educational institution or affiliate to provide broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved area.

(5) An eligible applicant shall submit a grant application

to the office on a form prescribed by the office. A grant application must include the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure that is proposed.

(c) Evidence demonstrating the unserved nature of the project area.

(d) The number of households and businesses that would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (8).

(7)(a) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(b) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area or a

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broadband Internet service provider that has been designated to receive a federal broadband award in this state may submit to the office, within 45 days after publication of the information under paragraph (a), a written challenge to an application. The challenge must contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant;

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

4. The provider has been awarded federal funding pursuant to the Rural Digital Opportunity Fund or other federal program specifically to support the deployment or expansion of broadband networks within the proposed project area.

(c) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(d) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(e) If the office denies funding to an applicant as a result of a broadband Internet service provider’s challenge and the provider does not fulfill its commitment to provide

broadband Internet service in the unserved area, the office may not consider another challenge from the provider for the next two grant application cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(8)(a) Notwithstanding s. 288.9961(2)(d), in evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions, including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from residents, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved households and businesses;

8. Leverage greater amounts of funding for a project from private sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 288.9961.

(b) The office must endeavor to award grants to qualified applications serving all regions of this state.

(9)(a) The office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded for a broadband project.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of $5 million.

(10) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(11) By October 15, 2022, and each year thereafter, the office shall publish on its website and include in the department’s annual report required under s. 20.60 all of the following information:

(a) A list of all grant applications received during the previous fiscal year and for each application:

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1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous fiscal year and the results of those challenges.

Section 4. This act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to broadband Internet deployment; creating pt. XV of ch. 288, F.S.; relating to the Florida Office of Broadband; creating s. 288.8862, F.S.; providing for legislative intent; creating definitions relating to broadband Internet service; transferring, renumbering, and amending s. 364.0135, F.S.; revising duties of the Florida Office of Broadband; requiring the office’s strategic plan to include short-term and long-term goals for increasing the availability of and access to broadband Internet service in this state; providing requirements for the

development of the plan; requiring the updated plan to be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislature by a specified date; requiring the plan to be updated biennially; requiring the office to provide technical and planning assistance related to broadband infrastructure to rural communities; providing rulemaking authority; creating s. 288.9962, F.S.; creating the Broadband Opportunity Program within the office; providing for administration of the program; providing requirements for grant awards; providing eligibility requirements; providing application requirements; requiring the publication of certain information related to grant applications and grant awards on a website; authorizing grant applications to be challenged under certain circumstances; specifying contents of a challenge; providing procedures to be used by the office in evaluating challenges; providing direction for prioritizing grant funding; specifying conditions for the award of grants; requiring that office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish specified information annually on its website; requiring the office to publish specified information annually on its website and include the information in the department’s annual report; providing an effective date.

By the Committee on Commerce and Tourism; and Senator Burgess

577-02868-21 20212004c1

A bill to be entitled

An act relating to broadband Internet; amending s. 364.0135, F.S.; requiring the Florida Office of Broadband's strategic plan to include short-term and long-term goals for increasing the availability of and access to broadband Internet service in this state; providing requirements for the development of the plan; requiring the updated plan to be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislature by a specified date; requiring the plan to be updated biennially; requiring the office to provide technical and planning assistance related to broadband infrastructure to rural communities; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in the state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has short-term and long-term goals and strategies for increasing and improving the availability of and access to ~~use of~~ broadband Internet service in this ~~the~~ state. In development of the plan, the department shall incorporate applicable federal broadband activities, including any efforts or initiatives of the Federal Communications Commission, to improve broadband Internet service in this state. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state. The plan must also identify available federal funding sources for the expansion or improvement of broadband. The strategic plan must be submitted to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2022. The strategic plan must be updated biennially thereafter.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) Provide technical and planning assistance related to broadband infrastructure to rural communities.

(d) ~~(c)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(e) ~~(d)~~ Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in the state as necessary to ensure that this information is accurately presented and that rural, unserved, and underserved areas of the state are best positioned to benefit from federal and state broadband deployment programs.

Section 2. For the 2021-2022 fiscal year, the sum of $1.4 million in nonrecurring funds is appropriated from the State Economic Enhancement and Development Trust Fund to the Department of Economic Opportunity for the purpose of commissioning a broadband feasibility study and developing a strategic plan as required in s. 364.0135, Florida Statutes.

Section 3. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 2010
INTRODUCER:	Appropriations Committee; Education Committee; and Senator Diaz
SUBJECT:	Foreign Influence
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Fav/CS**
2.	Underhill	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 2010 provides safeguards against foreign influence through establishing processes that govern screening and disclosure of foreign gifts, contracts, employment, travel, and research arrangements, as well as cultural agreements, with countries of concern. Specifically, the bill:

- Requires specified entities that apply for or receive any gift or grant with a value of $50,000 or more from any foreign source to disclose such gift or grant to the appropriate agency, along with additional specified information.
- Requires the Department of Financial Services (DFS) to manage a website to publish required disclosures and maintain an active and current list of ineligible entities on the website, and requires DFS to investigate an allegation of a disclosure violation.
- Requires the Department of Management Services to, at least once every five years, screen specified vendors participating in the online procurement system.
- Subjects an institution of higher education that knowingly, willfully, or negligently fails to disclose to a civil penalty of 105 percent of the amount of the undisclosed gift.
- Provides protections for a whistle-blower who reports an undisclosed foreign gift to the appropriate inspector general, Attorney General, or Chief Financial Officer.
- Requires each state university or specified entity that receives state appropriations or state tax revenue and has a research budget of $10 million or more to screen applicants for research or research-related support positions who are citizens of a foreign country and who are not permanent residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least one year of prior employment or training, in a specified foreign country of concern.

- Requires the state university or entity to maintain records of applications, expenses, and payments or honoraria related to approved international travel. Such records must be retained for at least three years.
- Prohibits specified participation in cultural agreements with or acceptance of any grant from a foreign country of concern, or any entity controlled by such a country, for specified activities and requires sharing, prior to the execution of any cultural exchange agreement with a foreign country of concern, the substance of such agreement with appropriate federal agencies.

The bill has an indeterminate fiscal impact. See Section V.

The bill takes effect July 1, 2021.

II. Present Situation:

In March 2021, Governor Ron DeSantis and members of the Florida House and Senate highlighted proposed legislation to combat foreign influence, in response to the Communist Party of China's deliberate attempts to economically infiltrate the United States. Among the purposes of the proposed legislation were to place strategic safeguards against foreign influence through strengthening institutional vetting and applying protections for Florida's institutions of higher education, public entities, and recipients of public grants or contracts.[1]

Legislative Background – Select Committee on Integrity of Research Institutions

In 2020, the Florida House of Representatives Select Committee on the Integrity of Research Institutions (Select Committee) undertook an extensive review of Florida's university-based research programs. This investigation arose out of revelations that the CEO of H. Lee Moffitt Cancer Center and Research Institute and three other officers or research scientists had failed to disclose support from relationships with Chinese talent and research programs. Following that disclosure, the University of Florida (UF) disclosed to the Select Committee that three of its research staff were under similar investigations. The Select Committee learned of additional investigations, some of which remain confidential due to active law enforcement investigations.

The Select Committee learned that Florida-based research institutions had a combined annual budget of $2.7 billion with Florida's public universities accounting for $2.3 billion of that research spending. Eight of Florida's State University System universities had research budgets of $10 million or more. Four private institutions had budgets exceeding $10 million. Research grants from public sources fund the vast majority of this research and universities receive generous shares of research grants for administration. Consequently, research activity generates significant profits for many institutions.[2]

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[1] Florida Governor Ron DeSantis, *Governor Ron DeSantis and House Speaker Chris Sprowls Highlight Proposed Legislation to Combat Foreign Influence and Corporate Espionage* (March 1, 2021), *available at* https://www.flgov.com/2021/03/01/governor-ron-desantis-and-house-speaker-chris-sprowls-highlight-proposed-legislation-to-combat-foreign-influence-and-corporate-espionage/.

[2] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 7.

The open and collaborative research environment in the free world depends on the honesty and integrity of individual scientists, technicians, and administrators. The Select Committee in 2020 learned that federal officials were investigating about 200 cases across the U.S. involving federal grant recipients of research funds who had failed to disclose professional, academic, and business relationships in violation of various grant requirements. The Select Committee also ascertained that Florida state research grants often lacked similar requirements deemed reasonably necessary to ensure research integrity.[3]

In 2020, Florida law[4] required that any person engaged in the design, conduct, or reporting of research and employed by a state university or specified entity engaging in research, is required by the policies of such university or entity to disclose and receive a determination that the outside activity[5] or financial interest[6] does not affect the integrity of the state university or entity. An employee who does not disclose any outside activity or financial interest as required must be suspended without pay pending the outcome of an investigation, which must not exceed 60 days. Additionally, upon conclusion of the investigation, the university or entity may terminate the contract of the employee.[7]

The Select Committee also learned that a U.S. visa to study or teach in the U.S. does not adequately screen foreign scientists' and students' security risk or trustworthiness. As with many employment or enrollment decisions, verifying representations made by an applicant regarding experience and credentials is a significant tool to protect an institution's integrity.[8]

In addition, the Select Committee learned that many undisclosed activities relate to foreign travel of U.S.-based faculty. International travel by faculty and graduate students creates opportunities for recruitment to engage in unethical conduct and for misappropriation of property and theft of university research. If an institution does not scrutinize and monitor foreign travel, it can expect compromising activities to take place.[9]

As part of its investigation, the Select Committee reviewed studies indicating that sister cities programs, academic language and culture centers, foreign funding of domestic institutions and foreign-influenced employment of domestic scientists and engineers are all means to influence domestic policy, advance hostile foreign interests, and limit academic freedom. Such activities project foreign interests into domestic affairs.[10]

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[3] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 7.
[4] Section 18, ch. 2020-117, L.O.F.
[5] "Outside activity" is defined to include anything an employee does for an organization or an individual, other than the university or entity, that is related to the employee's expertise. Section 1012.977(2)(b), F.S.
[6] "Financial interest" is defined to include anything of value other than that provided directly by the university or entity. Section 1012.977(2)(a), F.S.
[7] Section 1012.977, F.S.
[8] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 7.
[9] *Id.*
[10] *Id.*

Federal Law and Recommended Practices

Threats to the U.S. Research Enterprise

Although state law currently imposes few limitations on relationships between foreign governments and state agencies, political subdivisions, or public contractors, federal law imposes many layers of scrutiny on certain dealings with foreigners, mostly related to science and technology having military implications, sales of arms and certain financial transactions related to terrorism, human trafficking, international drug dealing and other important national interests. Various agencies publish many lists related to various sanctions, restrictions and scrutiny imposed by federal law. In addition, many programs scrutinize transactions involving America's biggest global competitors, China and Russia. On January 19, 2021, the U.S. Department of Commerce published an interim final rule entitled: "Securing the Information and Communications Technology and Services Supply Chain." That interim rule[11] defined "foreign adversaries" to include Russia, China, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea. Along with Syria, a state sponsor of terrorism, these reflect the foreign governments most hostile to U.S. interests.[12]

As of March 2018, more than 1.4 million international students and professors were participating in America's open and collaborative academic environment. The inclusion of these international scholars at U.S. colleges and universities entails both substantial benefit—and notable risk. Some foreign actors, particularly foreign state adversaries, seek to illicitly or illegitimately acquire U.S. academic research and information to advance their scientific, economic, and military development goals. Through their exploitative efforts, they reduce U.S. competitiveness and deprive victimized parties of revenue and credit for their work.[13]

The Chinese government's strategic goals include becoming a comprehensive national power, creating innovation-driven economic growth, and modernizing its military. It aspires to equal or surpass the U.S. as a global superpower and influence the world with a value system shaped by undemocratic, totalitarian ideals. The Chinese government has historically sponsored economic espionage, and China is the world's principal infringer of intellectual property. The annual cost to the U.S. economy of counterfeit goods, pirated software, and theft of trade secrets is between $225 billion and $600 billion.[14]

A 2019 U.S. Senate report found that China prioritizes a strategy of military-civilian fusion that seeks to pool talent and financial resources to jointly develop technologies, conduct research, and attract talent that mutually reinforces both the military and civilian sectors. As of 2017, China has reportedly recruited 7,000 researchers and scientists, with U.S.-based researchers and scientists targeted specifically if they focus on or have access to cutting-edge research and

[11] 86 Fed. Reg. 4911 (January 19, 2021).
[12] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 8.
[13] Florida House of Representatives, Select Committee on the Integrity of Research Institutions, *Meeting Packet* (Jan. 21, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3075&Session=2020&DocumentType=Meeting%20Packets&FileName=sci%201-21-20.pdf, at 253.
[14] *Id.* at 254 and 255.

technology. In response to U.S. government scrutiny, China has attempted to delete online references to its talent recruitment plans and reportedly instructed Chinese institutions on how to avoid additional U.S. scrutiny. Employment contracts used by China's most prominent talent recruitment plan, the Thousand Talents Plan, contain provisions that violate U.S. research values, including non-disclosure provision related to their research and employment with Chinese institutions. In some cases, members of China's Thousand Talents Plan received both U.S. grants and Chinese grants for similar research, established "shadow labs" in China to conduct parallel research being conducted in the U.S., and stole intellectual capital and property.[15]

In response to these findings, recommendations from the U.S. Senate report include all of the following:

- Federal agencies should declassify and disseminate more information on foreign talent recruitment plans.
- U.S. grant-making agencies should harmonize the grant proposal process and standardize reporting requirements for disclosing all foreign conflicts of interest, conflicts of commitment, and all outside and foreign support.
- U.S. research institutions should establish best practices in monitoring scientific and research collaboration with foreign nationals.[16]

Presidential Memorandum on National Security

On January 14, 2021, President Donald Trump signed National Security Presidential Memorandum 33 (the Memorandum) to direct a national response to safeguard the security and integrity of federally funded research and development in the United States. Among other directives, the Memorandum:

- Prohibited federal personnel from participating in foreign government-sponsored talent recruitment programs.
- Directed specified entities to ensure that vetting processes for foreign students and researchers reflect the changing nature of the risks to the U.S. research enterprise.
- Directed departments and agencies to standardize disclosure processes, definitions, and forms related to research security across funding agencies to the maximum extent practicable.[17]

Strengthening the Security and Integrity of America's Research Enterprise

Also in January 2021, the National Science and Technology Council released recommended practices for strengthening the security of America's research in science and technology. Recommended practices include:[18]

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[15] U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans* (Nov. 18, 2019), *available at* https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report%20-%20China's%20Talent%20Recruitment%20Plans%20Updated2.pdf, at 7 and 8.

[16] *Id.* at 11-13.

[17] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (Feb. 15, 2021), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%202-15-21.pdf, at 7-25.

[18] *Id*. at 27-48.

- Establishing and operating a comprehensive research security program.[19]
- Requiring disclosure to the organization of all information necessary to identify and assess potential conflicts of interest and commitment, including filing of relevant disclosures.
- Ensuring compliance with requirements for reporting foreign gifts and contracts.
- Establishing and operate a risk-based security process for foreign travel review and guidance.

Disclosure and Screening of Foreign Gifts and Contracts

Federal law restricts the receipt and disposition of foreign gifts. Any federal employee, member of the Armed Forces and their spouses may not request or accept a gift from any unit or agent of a foreign government. The Attorney General may bring a civil action against any employee who knowingly solicits or accepts an unauthorized gift from a foreign government or who fails to deposit or report such gift. The court may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.[20]

The most critical list of foreign nations identifies "state sponsors of terrorism" as Cuba, North Korea, Iran, and Syria.[21] Further, foreign adversaries to the United States have been defined to include Russia, China, the Nicolás Maduro government of Venezuela, Cuba, Iran, and North Korea.[22]

Reporting, Inspection, and Penalties for Foreign Gifts

Current Disclosure Requirements – Institutions of Higher Education

Divisions of sponsored research at state universities must disclose the amount and source of research funding, even when the research itself involves records that are confidential and exempt from public inspection. However, university and Florida College System institutions direct support organizations (DSOs) enjoy a broad confidentiality exemption for records related to donors who wish to be anonymous and expenditures of donated funds other than travel expenditures.[23]

The Higher Education Act of 1965 requires education institutions to report foreign gifts and grants valued at $250,000 or more. Between 2018 and 2021, the U.S. Department of Education

[19] According to the recommendation, research security programs should include, at a minimum, elements of cyber security, foreign travel security, insider threat awareness and education, and export control training. Depending on the organization's individual risk profile and resources, cyber security elements can include robust access and device registration protocols, hardware encryption, and incorporating use of commercial threat management and commercial compliance solutions into internal due diligence programs. Economies of scale often can be realized by coordinating with other organizations to leverage physical and intellectual assets and avoid unnecessary duplication.
[20] 5 U.S. Code § 7342.
[21] U.S. Department of State, *State Sponsors of Terrorism*, https://www.state.gov/statesponsors-of-terrorism/ (last visited March 18, 2021).
[22] *See* 86 Fed. Reg. 4911 (January 19, 2021). State law further prohibits certain business interactions with specified vendors, including those on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and vendors engaged in business operations with Cuba or Syria. Department of Management Services (DMS), *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021)(on file with Senate Committee on Education), at 2. *See also* Rule 60A-1.006(2), F.A.C.
[23] Florida House of Representatives, Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 10.

carefully scrutinized the reporting program and discovered billions of dollars of unreported foreign gifts from many of the best-funded institutions. At the same time, it became evident that the federal mandate does not extend to foreign donations to foundations and other non-profit entities controlled by, or formed or operated for the exclusive benefit of, the reporting institutions.[24]

From 1984 to 1994, Florida law required universities and community colleges to report foreign receipts valued $100,000 or more to the Commissioner of Education and legislative leaders.[25] As with the federal law, the statute did not extend to university foundations and DSOs, and the requirement appears to have generated few such reports.[26]

The Whistle-blower's Act

Florida law prevents agencies[27] or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. The information disclosed must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act.[28] The name or identity of any individual who discloses in good faith to the appropriate official information that alleges that an employee or agent has violated or is suspected of having violated any law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, except as specified in law.[29]

Applicant Screening and Research Integrity of Foreign Researchers

At present, state law imposes no responsibility on research institutions to screen foreign applicants. Universities conduct background screening on faculty hires in general, not only on foreign researchers.[30]

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[24] U.S. Department of Education Office of General Counsel, *Institutional Compliance with Section 117 of the Higher Education Act of 1965* (Oct. 2020), *available at* https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf.

[25] Section 240.138, F.S. 1994 (repealed ch. 95-196 and ch.95-392, L.O.F.).

[26] Florida House Public Integrity & Elections Committee, *Meeting Packet* (March 4, 2020), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3104&Session=2021&DocumentType=Meeting%20Packets&FileName=pie%203-4-21.pdf, at 10.

[27] Defined to mean any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university. Section 112.3187(3)(a), F.S.

[28] Section 112.3187(2) and (6), F.S.

[29] Section 112.3188(1), F.S.

[30] Board of Governors (BOG), *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 4. This screening consists of checks such as criminal background screening, reference checks, experience verification, and education verification. For example, Florida State University conducts international criminal history background checks for candidates who have lived outside the United States for six months or more within the past seven years. *Id.*

Approval Processes for International Travel

UF has implemented an active registration and screening program for international travel, including specific prohibitions and limitations on activities with Iran and Cuba. The program provides faculty and travelers clear guidance on legal and ethical restrictions. It also ensures protection of UF property including intellectual property.[31] Other institutions may also have international travel screening and monitoring in place.

State Law and Regulations

Code of Ethics for Public Officers and Employees

The Florida constitution requires a code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests.[32] The Code of Ethics for Public Officers and Employees (the Code) is outlined in Florida law,[33] and includes standards of conduct for public officers, employees of agencies, and local government attorneys;[34] full and public disclosure of financial interests;[35] and investigative procedures in response to prohibited personnel actions.[36]

Ethics laws generally consist of two types of provisions, either prohibiting certain actions or conduct or requiring that certain disclosures be made to the public. Prohibited actions or conduct include solicitation and acceptance of gifts, unauthorized compensation, misuse or abuse of public position, disclosure or use of specified information, and solicitation or acceptance of honoraria. Prohibited employment and business relationships include doing business with one's agency, and conflicting contractual relationship, among others. Public officers and employees are required to publicly disclose their financial interests to prevent conflicts of interests.[37]

International Cultural Agreements

Florida law provides for coordination of certain international relationships, including those between sister states and sister cities. Florida's economic development programs emphasize commerce with foreign jurisdictions.[38] However, such agreements may impose the public policy of foreign competitors upon local U.S. governments; it has been reported that China requires sister city agreements to enforce its "One China" policy.[39] According to the Tampa Bay Protocol

[31] *See* UF Research, *International Travel*, https://research.ufl.edu/compliance/export-controls/international-travel.html (last visited March 15, 2021).
[32] State of Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* (2021), *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf, at 1.
[33] *See* ss. 112.311 - 112.3261, F.S.
[34] Section 112.313, F.S.
[35] Sections 112.3144 and 112.31445, F.S. There is currently no disclosure requirement for any gift or grant of any value for state agencies, political subdivisions, or entities that apply to a grant or propose a contract. There are also no penalties for failure to disclose such information. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 2.
[36] Section 112.31895, F.S.
[37] State of Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* (2021), *available at* http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf, at 2-5, 11.
[38] *See* ss. 288.816 and 288.826, F.S.
[39] *See* Matej Šimalčík and Adam Kalivoda, *Sister-City Relations and Identity Politics: The Case of Prague, Beijing, Taipei, and Shanghai*, The Diplomat, Feb. 25, 2020, *available at* https://thediplomat.com/2020/02/sister-city-relations-and-identity-politics-the-case-of-prague-beijing-taipei-and-shanghai/.

and Trade Council, there are a number of sister city agreements with jurisdictions in nations described above as "foreign adversaries": eleven with political subdivisions of China, six with Russian jurisdictions and three with Venezuelan cities.[40]

In the past decade, the University of North Florida, the University of West Florida, the University of South Florida, and Miami-Dade College each were home to a Confucius Institute under a program of the Communist Party of China promoting Chinese language and culture, funded by significant Chinese grants. By 2014, there were at least 90 Confucius Institutes in the U.S. and more than 400 worldwide.[41] By September 2019, each of the four above-named Florida institutions had closed its Confucius Institute following significant criticism by U.S. Senator Marco Rubio and others. A U.S. Senate Subcommittee found that the limitations on Confucius Institutes "export China's censorship of political debate to the United States and prevent the academic community from discussing topics" sensitive to the Communist Party of China,[42] and some Confucius Institute agreements apply law of the Communist Party of China to activities on U.S. campuses.[43]

Linkage Institutes

Beginning in 1987, Florida law established linkage institutions between Florida postsecondary institutions and foreign countries to assist in the development of stronger economic, cultural, educational, and social ties between this state and strategic foreign countries, through the promotion of the following specified activities between the postsecondary institutions in this state and those of selected foreign countries:[44]

- Expanded public and private dialogue on cooperative research and technical assistance activities;
- Increased bilateral commerce;
- Student and faculty exchange;
- Cultural exchange; and
- The enhancement of language training skills.[45]

A Florida-China Institute is currently authorized by law for three postsecondary institutions in Florida,[46] and ten other institutes are established by law.[47]

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[40] Tampa Bay Protocol & Trade, *Florida Sister Cities Database*, https://tampabayprotocol.com/sister-cities-database (last visited March 15, 2021).
[41] UWF Newsroom, *UWF to Host Opening Ceremony of Confucius Institute* (April 28, 2014), *available at* https://news.uwf.edu/uwf-host-opening-ceremony-confucius-institute/.
[42] U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans* (Nov. 18, 2019).
[43] *See also* U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *China's Impact on the U.S. Education System* (Feb 29, 2019), *available at* https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf.
[44] Section 288.8175(1), F.S.
[45] The BOG has noted that several foreign languages have been designated by the U.S. government as "critical languages" with respect to national security. These include Chinese or Mandarin, Russian, Arabic, and Persian. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 6.
[46] Section 288.8175(4)(e), F.S.
[47] The BOG has also identified student exchange agreements between the University of North Florida and the Saint Petersburg State University of Economics in Russia, and student recruitment agreements between Florida International

As of March 4, 2021, the U.S. Senate passed a bill restricting federal departmental funding from institutions of higher education or other postsecondary educational institutions that maintain any contract or agreement with a Confucius Institute, unless such agreement includes clear provisions that protect academic freedom, prohibit the application of any foreign law on any campus of such institution, and grant full managerial authority, including full control over what is being taught, to such institution.[48]

III. Effect of Proposed Changes:

The bill provides safeguards against foreign influence through establishing processes that govern screening and disclosure of foreign gifts, contracts, employment, travel, and research arrangements, as well as cultural agreements, with countries of concern.

Disclosure and Screening of Foreign Gifts and Contracts

The bill creates s. 286.101, F.S., to require any state agency or political subdivision[49] that receives directly or indirectly any gift or grant with a value of $50,000 or more from any foreign source to disclose such gift or grant to the Department of Financial Services (DFS) within 30 days after its receipt.[50] Such disclosure must include the date of the gift or grant, the amount of the gift or grant, and the name and country of residence or domicile of the foreign source.

The bill requires any entity that applies to a state agency or political subdivision for a grant or proposes a contract[51] of $100,000 or more to disclose to the state agency or political subdivision any current, or for the past five years, any prior interest of, any contract with, or any grant or gift received from a foreign country of concern[52] of $50,000 or more. The bill also specifies requirements for updates to the disclosure during the gift, grant, or contract. Such disclosure must include the name and mailing address of the disclosing entity, the amount of the contract, grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. Within one year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to DFS.[53]

University and entities in Venezuela. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021)(on file with the Senate Committee on Education), at 3.

[48] CONFUCIUS Act, S. 590, 117th Cong. (2021).

[49] The bill defines "political subdivision" as having the same meaning as s. 1.01(8), F.S., to include counties, cities, towns, village, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state, including any entity under the control of or established for the benefit of a political subdivision.

[50] Disclosure is not required if such gift or grant is disclosed under s. 1010.25, F.S., established in the bill.

[51] The Department of Management Services (DMS) has noted that it is unclear if proposing a contract, as used in this bill, refers to bids, proposals, or replies. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 3.

[52] "Foreign country of concern" is defined in the bill to mean the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

[53] It is unclear if the language requires such disclosure a year before an application, or if the bill requires only that a disclosre not be more than a year old. Additionally, the BOG identified the need for clarification in language requiring entities to disclose specified items to DFS "within 1 year before applying for any grant or proposing any contract," since universities

Disclosure is not required with respect to:

- A proposal to sell commodities through the online procurement program;
- A proposal to sell commodities to a university pursuant to Board of Governors (BOG) Regulation 18.001;
- An application or proposal from an entity that discloses foreign gifts or grants under provisions for institutions of higher education and affiliated organizations;
- An application or proposal from a foreign source that, if granted or accepted, would be disclosed under provisions for institutions of higher education and affiliated organizations; or
- An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

The bill deems a disclosure published online to a DFS online site as a disclosure to every state agency and political subdivision. From the time a disclosure is made through the term of any awarded state grant or contract, the entity must revise its disclosure within 30 days after entering into a contract with or receiving a grant or gift from a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern. In addition, the bill requires, at least once every five years, the Department of Management Services (DMS) to screen each vendor of commodities participating in the online procurement system if the vendor has the capacity to fill an order of $100,000 or more. Screening must be conducted through federal agencies responsible for identifying persons and organizations subject to trade sanctions, embargoes, or other restrictions under federal law.[54]

If a vendor is identified as being subject to sanctions, embargoes, or other restrictions, the vendor must make the required disclosures until such restriction expires. A notification regarding the applicability of the disclosure requirement to the vendor must be included on the online procurement system when applicable. DMS must ensure that purchasers made by vendors using the online procurement system are easily accessible by the system's participants.

The bill requires DFS to establish and maintain a website to publish the disclosures. Upon receiving a referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint based upon substantive information and reasonable belief, DFS must investigate an allegation of a violation of disclosure requirements.

The bill also:

- Authorizes DFS, an inspector general, or any other agent or compliance officer authorized by a state agency or political subdivision to request records relevant to any reasonable suspicion of a violation. Records must be provided within 30 days or at a later agreed upon time.
- Specifies that failures to disclose or provide records constitutes a civil violation and fine of $5,000 for a first violation or $10,000 for any subsequent violation.

might not be aware of grant or contractual opportunities a year before they take place, BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 11.

[54] DMS has pointed out that the bill does not provide authority for DMS to specify in rule "other restrictions under federal law" that DMS would be required to screen for, which could be more specifically defined. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 6.

The bill specifies, in addition to any fine assessed, a final order determining a third or subsequent violation:

- By a state agency or political subdivision, must include a determination of the identity of the officer responsible for acceptance of the undisclosed grant or gift. DFS must send the order to the Governor or other authorized officer able to suspend or remove a public officer. The referral must also be provided to the President of the Senate and the Speaker of the House of Representatives for oversight of such suspension and removal authority.
- By an entity other than a state agency or political subdivision, must automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.

The bill specifies that information disclosed according to specified foreign gift reporting requirements for institutions of higher education, and specified gift, grant, and contract disclosure requirements for a grant or contract except for information protected by any statute that is a trade secret as defined in s. 688.002(4) or s. 812.081(1)(c), F.S, is not confidential or exempt.

The bill authorizes DMS and DFS to adopt rules necessary to carry out their responsibilities as specified. Specifically:

- DMS may identify the federal agencies to be consulted as specified and the procedure for notifying a vendor of the disclosure requirements when applicable.
- DMS may adopt rules to apply requirements as specified to the online procurement system.
- Any rules necessary for implementation must be published by December 1, 2021,[55] subject to certain exceptions.

Reporting, Inspection, and Penalties for Foreign Gifts

The bill creates s. 1010.25, F.S., to require each institution of higher education (IHE)[56] to semiannually report, each January 31 and July 31, any gift received directly or indirectly from a foreign source with a value of $50,000 or more during the fiscal year.[57] If a foreign source provides more than one gift directly or indirectly to an IHE in a single fiscal year and the total value of those gifts is $50,000 or more, all gifts received from that foreign source must be reported. A gift received from a foreign source through an intermediary is considered an indirect gift to the IHE. An IHE is authorized to consolidate its report with that of all its affiliate organizations.

[55] According to DMS, the term used in the bill does not specify if the publication by this deadline refers to the publication of the Notice of Rule Development, Notice of Proposed Rule, or adoption of the rule. DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021), at 6. Currently, ss. 120.74(4)-(5), F.S., require publication of a Notice of Rule Development by November 1 and a notice of Proposed Rule by the following April 1.

[56] The bill defines "Institution of higher education" as a state university; an entity listed in law that has its own governing board; a Florida College System institution; an independent nonprofit college or university that is located in and chartered by the state and grants baccalaureate or higher degrees; any other institution that has a physical presence in the state and is required to report foreign gifts or contracts pursuant to 20 U.S.C. s. 1011(f); or an affiliate organization of an institution of higher education.

[57] Pursuant to 20 U.S.C. s. 1101(f), universities report gifts of $250,000 or more from foreign sources to the U.S. Department of Education within a calendar year, on January 31 or July 31, whichever is sooner.

A report is required to be made to the following entities:

- The Board of Governors (BOG), if the recipient is a state university, a branch campus, center, institute, or special program as specified in law,[58] that has its own governing board or DSO.
- Unless already reported to the BOG, the State Board of Education (SBE), if the recipient is any other IHE or an affiliated DSO.

For each gift subject to the reporting requirement, the IHE is required to provide to the BOG or SBE, as applicable, all of the following information, unless otherwise prohibited or deemed confidential under federal or state law:

- The amount of the gift and the date it was received.
- The contract start and end dates if the gift is a contract.
- The name of the foreign source and, if not a foreign government, the country of citizenship, if known, and the principal residence or domicile of the foreign source.
- A copy of a gift agreement between the foreign source and the IHE, signed by the foreign source and the chief administrative officer of the IHE, which must include the purpose, terms, and conditions of the gift. With respect to an agreement containing information from a division of sponsored research protected from disclosure by specified law, an abstract and redacted copy providing all required information that is not so protected may be submitted in lieu of a copy of the agreement.

Beginning July 1, 2022, the Inspector General of the BOG or the Inspector General of the Department of Education (DOE), as applicable, is required to randomly inspect or audit at least five percent of the total number of gifts or gift agreements received from IHEs during the previous year. However, upon the request of the Governor, the President of the Senate, or the Speaker of the House of Representatives, the Inspector General of the BOG or the Inspector General of the DOE, as applicable, must inspect or audit a gift or gift agreement.

The BOG or SBE, as applicable, is required to exercise the oversight and enforcement authority provided in law[59] to sanction an IHE that fails to report a reportable gift within 60 days after the reporting deadlines established as specified.

The bill subjects an IHE that knowingly, willfully, or negligently fails to disclose the information to a civil penalty of 105 percent of the amount of the undisclosed gift, payable only from nonstate funds of the IHE or the affiliate organization that received such gift. The BOG and SBE, as applicable, is authorized to administratively enforce and impose the civil penalty.

In the absence of enforcement by the BOG or SBE, as applicable, the bill authorizes the Attorney General or Chief Financial Officer (CFO) to bring a civil action to enforce as specified.

[58] *See* ss. 1004.33-1004.64991, F.S. The Board of Governors has identified entities with governing boards listed in subpart B of part II of chapter 1004, F.S., as including the Florida Industrial and Phosphate Research Institute, Shands Teaching Hospital and Clinics, H. Lee Moffitt Cancer Center and Research Institute, Medical Marijuana Research Board, and the Florida Institute for Human and Machine Cognition. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 1.
[59] Section 1008.322 or 1008.32, F.S., respectively,

The bill provides whistle-blower protection[60] for a whistle-blower who reports an undisclosed foreign gift to the appropriate inspector general, Attorney General, or CFO. The bill states that such a whistle-blower is entitled to receive a reward in the amount of 25 percent of any penalty recovered by the BOG, the SBE, the Attorney General, or the CFO, who is authorized to incur expenditures to provide such reward from the penalty recovery. The reward may be paid through an intermediary attorney or trustee which the whistle-blower designates.

The bill specifies that information reported relating to a gift from a foreign source is not confidential or exempt,[61] except as provided in specified law regarding divisions of sponsored research, or unless protected by any statute as a trade secret as defined in law.

The bill authorizes the BOG to adopt regulations and the SBE to adopt appropriate rules.

Applicant Screening and Research Integrity of Foreign Researchers

The bill creates s. 1010.35, F.S., to require, beginning July 1, 2021, each state university or entity listed as specified in law[62] which receives state appropriations or state tax revenue and has a research budget of $10 million or more to screen applicants for research or research-related support positions, and applicants for positions of visiting researcher, who are citizens of a foreign country and who are not permanent residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least one year of prior employment or training, excepting employment or training by an agency of the United States government, in a specified foreign country of concern. Such screening is required prior to interviewing such applicant or offering a position of employment or of visiting researcher. At the discretion of the university or entity, other applicants for such positions may be screened.

In addition to satisfying all federal employment and enrollment qualifications, the BOG or the governing board of the applicable entity must require a foreign applicant to submit:

- A complete copy of his or her most recently submitted Nonimmigrant Visa Application, DS-160. After extraction of all information relevant to these requirements a university or entity may destroy or return the copy of the DS-160 submitted by an applicant.
- A complete resume and curriculum vitae, including every institution of higher education attended; all previous employment since the applicant's 18th birthday; and a list of all published material for which the applicant received credit as an author, a researcher, or otherwise, or to which the applicant contributed significant research, writing, or editorial support; a list of the applicant's current and pending research funding from any source, including funder, amount, applicant's role on the project, and brief description of the research; and a full disclosure of non-university professional activities including any affiliation with an institution or program in a foreign country of concern. For applicants who have been continually employed or enrolled in a postsecondary education institution in the United States for 20 years or more, the resume may include employment history before the most recent 20 years.

[60] Under s. 112.3188, F.S.
[61] As defined in s. 119.07(1), F.S., and Art. 1, s. 24(a), Fla. Const.
[62] *See* ss. 1004.22-1004.64991, F.S.

The president or chief administrative officer of the state university or applicable entity is required to designate a research integrity office to review all required materials and take reasonable steps to verify all attendance, employment, publications, and contributions listed in the application required prior to any interview of or offer of a position to the applicant.

The bill specifies "reasonable steps" that must be taken by a research integrity office to include:

- Searching public databases for research publications and presentations and public conflict of interest records to identify any research publication or presentation that may have been omitted from the application;
- Contacting all employers of the most recent 10 years to verify employment;
- Contacting all institutions of higher education attended to verify enrollment and educational progress;
- Searching public listings of persons subject to sanctions or restrictions under federal law;
- Submitting the applicant's name and other identifying information to the Federal Bureau of Investigation (FBI) or any federal agency reasonably willing to scrutinize such applicant for national security or counterespionage purposes; and
- Any other steps deemed appropriate to the office.

The university or applicable entity may also direct the office to approve applicants for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of the applicant. These requirements must be completed before interviewing or offering any position to an individual described in any research or research-related support position and before granting such applicant any access to research data or activities or other sensitive data.

An applicant who must be screened may not be employed in any research or research-related support position if he or she fails to disclose a substantial educational, employment, or research-related activity or publication or presentation at the time of submitting the application required, unless the department head, or his or designee, certifies in writing the substance of the nondisclosure and the reasons for disregarding such failure to disclose. A copy of such certification must be kept in the investigative file of the research integrity office and must be submitted to the nearest FBI field office.

The research integrity office is required to report to the nearest FBI office, and to any law enforcement agency designated by the Governor or the BOG and the governing board of the applicable entity described, the identity of any applicant who was rejected for employment based on the scrutiny required or other security-related screening.

By July 1, 2025, the Inspector General of the BOG, the inspector general of an entity described, or the Auditor General is required to perform an operational audit regarding such implementation of screening requirements.

Approval Processes for International Travel

The bill creates s. 1010.36, F.S., to require, by January 1, 2022, each state university or associated entity listed in specified law[63] that receives state appropriations or state tax revenue and has a research budget of $10 million or more to establish an international travel approval and monitoring program. The program must require preapproval and screening by the research integrity office designated by the president or chief administrative officer of the state university or entity for any employment-related foreign travel and employment-related foreign activities engaged in by all faculty, researchers, and research department staff.

Preapproval by the research integrity office must be based on the applicant's review and acknowledgement of guidance published by the employing state university or entity that relates to countries under sanctions or other restrictions of the state or the U.S. government. In addition, the preapproval must be based on the binding commitment of the individual traveler not to violate the state university's or entity's limitations on travel and activities abroad and to obey all applicable federal laws.

The state university or entity is required to maintain records of all applications for foreign travel and activities; expenses reimbursed by the university incurred during such travel and activities; and payments and honoraria received during such travel and activities. The state university or entity must also keep records of all teaching, presentations, and other activities related to the individual traveler's professional, research, and academic activities undertaken during foreign travel. Such records must be retained for at least three years or any longer period of time required by any other applicable state or federal law.

The state university or entity is required to provide an annual report of foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited to the BOG or the governing board of the applicable entity.

In addition, by July 1, 2025, the Inspector General of the BOG, the inspector general of a described entity, or the Auditor General is required to perform an operation audit regarding implementation of foreign travel reporting.

International Cultural Agreements

The bill creates s. 288.860, F.S., to specify that a state agency, political subdivision, public school, state college, or state university, which includes any direct support organizations, authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern, which establishes a program or other endeavor to promote the language or culture of a foreign country of concern, which:

- Constrains the freedom of contract of such public entity;

[63] *See* ss. 1004.22-1004.64991, F.S. BOG has identified entities with governing boards listed in subpart B of part II of chapter 1004, F.S., which receive state funds and have a research budget of $10 million or more as encompassing all state universities besides Florida Gulf Coast University, Florida Polytechnic University, and New College of Florida. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 2.

- Allows the curriculum or values of a program in Florida to be directed or controlled by the foreign country of concern; or
- Promotes an agenda detrimental to the safety or security of the United States or its residents.

The bill specifies that, prior to the execution of any cultural exchange agreement with a foreign country of concern, the substance of the agreement must be shared with federal agencies concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. If such federal agency provides information suggesting such agreement promotes an agenda detrimental to the safety or security of the U.S. or its residents, the public entity may not enter the agreement.

The bill specifies that a state agency, political subdivision, public school, state college, or state university may not or accept anything of value conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern.[64]

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Board of Governors (BOG) has identified that its constitutional duties under Art. IX, s. 7 of the Florida Constitution extend to establishing personnel programs for the universities. BOG Regulation 1.001(5) delegates constitutional authority from the BOG to its university boards of trustees to establish university personnel programs, which includes establishing policies regarding recruitment and selection of employees and employee travel.[65]

[64] The BOG cites several institutes or agreements that address Cuban or Russian language or culture, including at the University of South Florida, the University of North Florida, and Florida Agricultural and Mechanical University. BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021), at 6.
[65] BOG, *Senate Bill 2010 Agency Bill Analysis* (March 9, 2021) (on file with Senate Committee on Education), at 10.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Compliance with gift reporting, applicant screening, and travel approval as specified may result in indeterminate costs to institutions required to arrange or conduct these activities. Implementing travel review and approval processes and eliminating existing cultural agreements with countries of concern may reduce business and academic exchange between Florida and such countries. Given that the annual cost to the U.S. economy of counterfeit goods, pirated software, and theft of trade secrets is between $225 billion and $600 billion; however, enhanced integrity and security of Florida's research environment should offset any reduction in foreign donations or contracts the bill may cause.

The Board of Governors (BOG) has identified incremental costs to state universities in order to comply with foreign gift tracking and reporting, application screening, and travel approval provisions as specified. In addition, the BOG has identified the need for one auditor position to begin initial work to implement the requirements of this bill, at the estimated cost of $129,900 to cover salary, benefits, and expenses.[66]

Requiring state agencies or political subdivisions to report to the Department of Financial Services (DFS) any gift or grant of $50,000 or more from a foreign source as specified may result in increases in workload or personnel costs. Workload and personnel costs for the Department of Management Services to screen each vendor as specified every five years in the online procurement system could also increase, and publishing disclosures as specified could generate additional expenditures.[67]

In addition, requirements to disclose to DFS any gifts or grants of $50,000 or more from any foreign source may remove confidentiality of donors, with the potential to discourage some foreign donations or grants if anonymity or secrecy is important to the donor.[68]

Failure of a state agency or political subdivision to provide records requested due to reasonable suspicion of a violation of obtaining the disclosures constitutes a $5,000 fine for the first violation and a $10,000 fine for any subsequent violation.[69]

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[66] *Id.*, at 9.
[67] DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021) (on file with Senate Committee on Education), at 4.
[68] Florida House of Representatives, *Staff Analysis of HB 7017* (2021), *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7017a.EEC.DOCX&DocumentType=Analysis&BillNumber=7017&Session=2021, at 7.
[69] DMS, *Senate Bill 2010 Agency Bill Analysis* (March 22, 2021) (on file with Senate Committee on Education), at 5.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 286.101, 288.860, 1010.25, 1010.35, and 1010.36.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:
The committee substitute modifies requirements concerning disclosure and reporting of foreign gifts and grants, international cultural agreements, and foreign travel.

Specifically, the committee substitute:

- Adds to the exemption from disclosure requirements a proposal to sell commodities to a university pursuant to Board of Governors (BOG) Regulation 18.001.
- Modifies the provision related to sponsored research and trade secrets in the section relating to university foreign gift reporting, to remove the exception relating to divisions of sponsored research or trade secrets and specify that information as a part of required disclosures are not confidential and exempt.
- Modifies a definition to clarify that political subdivision includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.
- Modifies the provision that a state agency, political subdivision, public school, state college, or state university authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern, if such agreement:
  - Constrains the freedom of contract of such public entity;
  - Allows the curriculum or values of a program in Florida to be directed or controlled by the foreign country of concern; or
  - Promotes an agenda detrimental to the safety or security of the United States or its residents.
- Additionally specifies that, prior to the execution of any cultural exchange agreement with a foreign country of concern, the substance of the agreement must be shared with federal agencies concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. If such federal agency provides information suggesting such agreement promotes an agenda detrimental to

the safety or security of the U.S. or its residents, the public entity may not enter the agreement.
- Modifies the requirement for the Inspector General of BOG or of the Department of Education, to, within existing resources, randomly inspect or audit at least 10 percent of the total number of gifts or gift agreements received from institutions of higher education during the previous year, changing the audit amount to a minimum of 5 percent.
- Removes the requirement for the inspection or audit to examine the extent to which the institution of higher education exercised due diligence with respect to whether the gift was received from a foreign source, as well as the institution of higher education's compliance with the requirements.
- Modifies the civil penalty of 105 percent of the amount of the undisclosed gifts to which an institution of higher education that knowingly, willfully, or negligently fails to disclose required information must be subjected, to exclude the lesser penalty of at least 5 percent of the amount of the undisclosed gift imposed if a negligent failure is not a result of negligent management or is de minimis.
- Modifies provisions around disclosure of gifts to add a provision protecting a whistle-blower who reports a failure to disclose a gift to the appropriate inspector general, Attorney General, or CFO. The bill states that such a whistle-blower is entitled to receive a reward in the amount of 25 percent of any penalty recovered by the BOG, the State Board of Education, the Attorney General, or the CFO, who is authorized to incur expenditures to provide such reward from the penalty recovery.
- Modifies the exception on information and records that may be confidential or exempt, to specify that information reported under disclosure requirements for gifts from a foreign source is not confidential or exempt from specified law, except for information protected by any statute that is a trade secret as defined in s. 688.002(4) or s. 812.081(1)(c), F.S.
- Modifies the requirement that each state university, or entity specified in law, with a research budget of $10 million or more, establish an international travel approval and monitoring program, which must require preapproval and screening by a designated research integrity office for any foreign travel and activities that are employment-related.

CS by Education on March 30, 2021:
The committee substitute modifies requirements concerning disclosure and reporting of foreign gifts and grants, screening of foreign researchers, and foreign travel.

The committee substitute adds:
- To the requirement that entities applying for a contract or grant disclose foreign contracts, gifts, or grants a specification of items to report, including the name and mailing address of the disclosing entity, amount, source country, and contract terms.
- Exemptions to the disclosure requirements including gifts or grants that would already be reported by a state agency or political subdivision, and an application or proposal by a public or not-for-profit research institution.
- To the provision relating to an exemption from public records to allow university divisions of research records or trade secrets to remain confidential.

- DSOs as entities with restrictions on foreign gifts and grants.
- Authorization for colleges and universities to consolidate gift reporting with all affiliate organizations.
- Authorization for a division of sponsored research to submit an abstract and redacted copy providing all required information related to a gift report.
- A lesser penalty for failure to disclose, if the failure is not negligent management or if the gift amount is minimal.
- University divisions of sponsored research to screening requirements.
- Detailed criteria to determine those under screening requirements, to replace general language, and authorizes the university or entity to screen others for such research positions.
- Authorization for the university to destroy the copy of the visa application after extraction of all relevant information.
- Application requirements to include additional information about past research and disclosure of non-university professional activities.
- Additional requirements to "reasonable steps" taken by the research integrity office.
- Authorization for the university or entity to direct approval of an applicant based on a risk-based determination.

The committee substitute further specifies that:

- The disclosure requirements for a gift or grant of $50,000 is a direct or indirect gift or grant.
- Information to be included in the gift or grant disclosure must include the amount and name and country of residence or domicile of the foreign source.
- The provision relating to an exemption from public records to allow university divisions of research records or trade secrets must remain confidential.
- Instead of keeping records of all teaching, presentations, and other activities related to the individual traveler's professional, research, and academic activities undertaken during foreign travel, a university or entity must keep records of the purpose of the travel and any records related to the foreign activity review.
- Specified information regarding foreign travel no longer is required to be retained, and lowers retention time from 10 to 3 years.
- Annual report of foreign travel is limited to countries of concern, and removes the requirement that the report be posted on the relevant website.
- The Auditor General or specified entity is required to perform an operational audit by July 1, 2025.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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04/17/2021	.	
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The Committee on Appropriations (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 286.101, Florida Statutes, is created to read:

286.101 Foreign gifts and contracts.—

(1) As used in this section, the term:

(a) "Contract" means any agreement for the direct benefit or use of any party to such agreement, including an agreement

for the sale of commodities or services.

(b) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(c) "Foreign government" means the government of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or the government of a state or political subdivision, including any agent of such foreign government.

(d) "Foreign source" means any of the following:

1. A foreign government or an agency of a foreign government.

2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.

3. An individual who is not a citizen or a national of the United States or a territory or protectorate of the United States.

4. An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(e) "Gift" means any transfer of money or property from one entity to another without compensation.

(f) "Grant" means a transfer of money for a specified purpose, including a conditional gift.

(g) "Interest" in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more

of the entity's net worth or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.

(h) "State agency" means any agency or unit of state government created or established by law.

(2) Any state agency or political subdivision that receives directly or indirectly any gift or grant with a value of $50,000 or more from any foreign source shall disclose such gift or grant to the Department of Financial Services within 30 days after receiving such gift or grant. Such disclosure shall include the date of the gift or grant, the amount of the gift or grant, and the name and country of residence or domicile of the foreign source. Disclosure is not required if such gift or grant is disclosed under s. 1010.25.

(3)(a) Any entity that applies to a state agency or political subdivision for a grant or proposes a contract having a value of $100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern if such interest, contract, or grant or gift has a value of $50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest

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holder. Within 1 year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services.

(b) Disclosure under this subsection is not required with respect to:

1. A proposal to sell commodities through the online procurement program established pursuant to s. 287.057(22);

2. A proposal to sell commodities to a university pursuant to Board of Governors Regulation 18.001;

3. An application or proposal from an entity that discloses foreign gifts or grants under subsection (2) or s. 1010.25;

4. An application or proposal from a foreign source that, if granted or accepted, would be disclosed under subsection (2) or s. 1010.25; or

5. An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

(c) A disclosure published online pursuant to subsection (5) is deemed disclosed to every state agency and political subdivision for purposes of paragraph (a). From the time a disclosure is made under paragraph (a) through the term of any awarded state grant or contract, the entity must revise its disclosure within 30 days after entering into a contract with or receiving a grant or gift from a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern.

(4) At least once every 5 years, the Department of Management Services shall screen each vendor of commodities participating in the online procurement system if such vendor

has the capacity to fill an order of $100,000 or more. Screening must be conducted through federal agencies responsible for identifying persons and organizations subject to trade sanctions, embargoes, or other restrictions under federal law. If a vendor is identified as being subject to any such sanctions, embargoes, or other restrictions, the vendor must make the disclosures required under subsection (3) until such restriction expires. A notification regarding the applicability of the disclosure requirement in subsection (3) to the vendor must be included on the online procurement system when applicable. The Department of Management Services must ensure that purchasers through the online procurement system may easily access all disclosures made by vendors participating in the system.

(5) The Department of Financial Services must establish and maintain an Internet website to publish the disclosures required under this section. The Department of Financial Services may establish an online system for making such disclosures. The Department of Management Services may coordinate with the Department of Financial Services to establish the online system.

(6)(a) Upon receiving a referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint based upon substantive information and reasonable belief, the Department of Financial Services must investigate an allegation of a violation of this section.

(b) The Department of Financial Services, an inspector general, or any other agent or compliance officer authorized by a state agency or political subdivision may request records

relevant to any reasonable suspicion of a violation of this section. An entity must provide the required records within 30 days after such request or at a later time agreed to by the investigating state agency or political subdivision.

(7)(a) Failure to make a disclosure required under this section or failure to provide records requested under paragraph (6)(b) constitutes a civil violation punishable upon a final order of the Department of Financial Services by an administrative fine of $5,000 for a first violation or $10,000 for any subsequent violation.

(b) In addition to any fine assessed under paragraph (a), a final order determining a third or subsequent violation by a state agency or political subdivision must include a determination of the identity of the officer responsible for acceptance of the undisclosed grant or gift. Such order must also include a referral by the Department of Financial Services to the Governor or other officer authorized to suspend or remove the officer responsible for acceptance of the undisclosed grant or gift from public office. A copy of such referral must be provided to the President of the Senate and the Speaker of the House of Representatives for oversight of such suspension and removal authority.

(c) In addition to any fine assessed under paragraph (a), a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause. The Department of

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Financial Services shall include and maintain an active and current list of such ineligible entities on the Internet website maintained under subsection (5).

(8) Information disclosed under subsections (2) and (3) is not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(9)(a) The Department of Management Services may adopt rules necessary to carry out its responsibilities under this section. The rules may identify the federal agencies to be consulted under subsection (4) and the procedure for notifying a vendor of the disclosure requirements under this section when applicable. The Department of Management Services may also adopt rules providing for the application of this section to the online procurement system.

(b) The Department of Financial Services may adopt rules necessary to carry out its responsibilities under this section.

(c) Any rules necessary to implement this section must be published by December 31, 2021, unless the applicable department head certifies in writing that a delay is necessary and the date by which the proposed rules will be published. Such certification must be published in the Florida Administrative Register and a copy provided to the Joint Administrative Procedures Committee.

Section 2. Section 288.860, Florida Statutes, is created to read:

288.860 International cultural agreements.—

(1) As used in this section, the term:

(a) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic

of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(b) "Political subdivision" has the same meaning as in s. 1.01(8) and includes any entity under the control of or established for the benefit of the political subdivision.

(c) "Public school" means any education institution under the supervision of a school district and any entity under the control of or established for the benefit of a public school or school district.

(d) "State agency" means any agency or unit of state government created or established by law and any entity under the control of or established for the benefit of a state agency.

(e) "State college" means any postsecondary education institution under the supervision of the State Board of Education, including any entity under the control of or established for the benefit of a state college.

(f) "State university" means any state university under the supervision of the Board of Governors, including any entity under the control of or established for the benefit of a state university.

(2) A state agency, political subdivision, public school, state college, or state university authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern, which:

(a) Constrains the freedom of contract of such public

entity;

(b) Allows the curriculum or values of a program in the state to be directed or controlled by the foreign country of concern; or

(c) Promotes an agenda detrimental to the safety or security of the United States or its residents. Prior to the execution of any cultural exchange agreement with a foreign country of concern, the substance of the agreement shall be shared with federal agencies concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law. If such federal agency provides information suggesting that such agreement promotes an agenda detrimental to the safety or security of the United States or its residents, the public entity may not enter into the agreement.

(3) A state agency, political subdivision, public school, state college, or state university may not accept anything of value conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern.

Section 3. Section 1010.25, Florida Statutes, is created to read:

1010.25 Foreign gift reporting.—

(1) As used in this section, the term:

(a) "Affiliate organization" means any entity under the control of or established for the benefit of an organization required to report under this section, including a direct-support organization.

(b) "Contract" means any agreement for the acquisition by

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purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties, and any purchase, lease, or barter of property or services from a foreign country of concern as defined in s. 286.101(1)(b).

(c) "Direct-support organization" has the same meaning as provided in ss. 1004.28(1)(a), 1004.70(1)(a), and 1004.71(1)(a).

(d) "Foreign government" means the government of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or the government of a state or political subdivision, including any agent of such foreign government.

(e) "Foreign source" means any of the following:

1. A foreign government or an agency of a foreign government.

2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.

3. An individual who is not a citizen or a national of the United States or a territory or protectorate of the United States.

4. An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(f) "Gift" means any contract, gift, grant, endowment, award, or donation of money or property of any kind, or any combination thereof, including a conditional or an unconditional pledge of such contract, gift, grant, endowment, award, or donation. For purposes of this paragraph, the term "pledge" means a promise, an agreement, or an expressed intention to give

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a gift.

(g) "Institution of higher education" means a state university, an entity listed in subpart B of part II of chapter 1004 that has its own governing board, a Florida College System institution, an independent nonprofit college or university that is located in and chartered by the state and grants baccalaureate or higher degrees, any other institution that has a physical presence in the state and is required to report foreign gifts or contracts pursuant to 20 U.S.C. s. 1011f, or an affiliate organization of an institution of higher education.

(2) Each institution of higher education must semiannually report, each January 31 and July 31, any gift received directly or indirectly from a foreign source with a value of $50,000 or more during the fiscal year. If a foreign source provides more than one gift directly or indirectly to an institution of higher education in a single fiscal year and the total value of those gifts is $50,000 or more, all gifts received from that foreign source must be reported. For purposes of this subsection, a gift received from a foreign source through an intermediary shall be considered an indirect gift to the institution of higher education. An institution of higher education may consolidate its report with that of all its affiliate organizations. A report required under this subsection must be made to the following entities:

(a) The Board of Governors, if the recipient is a state university, an entity listed in subpart B of part II of chapter 1004 that has its own governing board, or an affiliate organization of such university or entity.

(b) Unless already reported to the Board of Governors

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pursuant to paragraph (a), the State Board of Education, if the recipient is any other institution of higher education or an affiliate organization of such institution.

(3) For each gift subject to the reporting requirement in subsection (2), the report of the institution of higher education must provide all of the following information, unless otherwise prohibited or deemed confidential under federal law having no exemption applicable to such reporting:

(a) The amount of the gift and the date it was received.

(b) The contract start and end date if the gift is a contract.

(c) The name of the foreign source and, if not a foreign government, the country of citizenship, if known, and the country of principal residence or domicile of the foreign source.

(d)1. A copy of a gift agreement between the foreign source and the institution of higher education, signed by the foreign source and the chief administrative officer of the institution of higher education, or their respective designees, which must include a detailed description of the purpose for which the gift will be used by the institution of higher education, the identification of the persons for whom the gift is explicitly intended to benefit, and any applicable conditions, requirements, restrictions, or terms made a part of the gift regarding the control of curricula, faculty, student admissions, student fees, or contingencies placed upon the institution of higher education to take a specific public position or to award an honorary degree. With respect to an agreement containing information protected from disclosure under s. 1004.22(2), an

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abstract and redacted copy providing all required information that is not so protected may be submitted in lieu of a copy of the agreement.

2. Beginning July 1, 2022, the Inspector General of the Board of Governors or the Inspector General of the Department of Education, as applicable, shall annually, within existing resources, randomly inspect or audit at least 5 percent of the total number of gifts disclosed by or gift agreements received from institutions of higher education pursuant to this paragraph during the previous year to determine an institution's compliance with the requirements of this section with respect to the gifts and gift agreements reviewed.

3. Upon the request of the Governor, the President of the Senate, or the Speaker of the House of Representatives, the Inspector General of the Board of Governors or the Inspector General of the Department of Education, as applicable, must inspect or audit a gift or gift agreement.

(4) The State Board of Education or the Board of Governors, as applicable, shall exercise the authority provided pursuant to s. 1008.32 or s. 1008.322, respectively, to sanction an institution of higher education that fails to report a reportable gift within 60 days after the reporting deadlines established in subsection (2).

(5)(a) An institution of higher education that knowingly, willfully, or negligently fails to disclose the information required by this section shall be subject to a civil penalty of 105 percent of the amount of the undisclosed gift, payable only from nonstate funds of the institution of higher education or the affiliate organization that received such gift. The

recovered funds must be deposited into the General Revenue Fund. The Board of Governors and the State Board of Education, as applicable, may administratively enforce this section and impose the civil penalty as an administrative penalty.

(b) In the absence of enforcement by the Board of Governors or the State Board of Education, as applicable, the Attorney General or the Chief Financial Officer may bring a civil action to enforce this section. If such action is successful, the Attorney General or the Chief Financial Officer, as applicable, is entitled to reasonable attorney fees and costs.

(c) A whistle-blower who reports an undisclosed foreign gift to the appropriate inspector general may also report such undisclosed foreign gift to the Attorney General or the Chief Financial Officer and retain whistle-blower protection under s. 112.3188. Such whistle-blower shall be entitled to receive a reward in the amount of 25 percent of any penalty recovered by the Board of Governors, the State Board of Education, the Attorney General, or the Chief Financial Officer under this section. The Chief Financial Officer is authorized to incur expenditures to provide such reward from the penalty recovery. The reward may be paid through an intermediary attorney or trustee designated by the whistle-blower.

(6) Information reported under subsection (3) is not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as provided in s. 1004.22(2) or unless protected by any statute as a trade secret as defined in s. 688.002 or s. 812.081(1)(c).

(7) The Board of Governors may adopt regulations, and the State Board of Education may adopt rules, to implement this

section.

Section 4. Section 1010.35, Florida Statutes, is created to read:

1010.35 Screening foreign researchers.—

(1) Each state university or entity listed in subpart A or subpart B of part II of chapter 1004 that receives state appropriations or state tax revenue and has a research budget of $10 million or more must screen applicants seeking employment in research or research-related support positions, graduate and undergraduate students applying for research or research-related support positions, and applicants for positions of visiting researcher who are citizens of a foreign country and who are not permanent residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least 1 year of prior employment or training, excepting employment or training by an agency of the United States government, in a foreign country of concern as defined in s. 286.101. Such screening is required prior to interviewing such applicant or offering to such applicant a position of employment or of visiting researcher. At the discretion of the university or entity, other applicants for such positions may be screened.

(2) In addition to satisfying all employment and enrollment qualifications imposed by federal law, the Board of Governors or the governing board of the applicable entity must require the following of applicants included in subsection (1):

(a) A foreign applicant must submit a complete copy of the applicant’s passport and most recently submitted Online Nonimmigrant Visa Application, DS-160. After extraction of all

information relevant to the requirements of this section, a university or entity may destroy or return the copy of the DS-160 submitted by an applicant.

(b) All applicants described in subsection (1) must submit a complete resume and curriculum vitae, including every institution of higher education attended; all previous employment since the applicant's 18th birthday; a list of all published material for which the applicant received credit as an author, a researcher, or otherwise or to which the applicant contributed significant research, writing, or editorial support; a list of the applicant's current and pending research funding from any source, including funder, amount, applicant's role on the project, and brief description of the research; and a full disclosure of nonuniversity professional activities, including any affiliation with an institution or program in a foreign country of concern. For applicants who have been continually employed or enrolled in a postsecondary education institution in the United States for 20 years or more, the resume may, but need not, include employment history before the most recent 20 years.

(3) The president or chief administrative officer of the state university or applicable entity shall designate a research integrity office to review all materials required in subsection (2) and take reasonable steps to verify all attendance, employment, publications, and contributions listed in the application required in subsection (2) prior to any interview of or offer of a position to the applicant. Reasonable steps include searching public databases for research publications and presentations and public conflict of interest records to identify any research publication or presentation that may have

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been omitted from the application, contacting all employers of the most recent 10 years to verify employment, contacting all institutions of higher education attended to verify enrollment and educational progress, searching public listings of persons subject to sanctions or restrictions under federal law, submitting the applicant's name and other identifying information to the Federal Bureau of Investigation or any federal agency reasonably willing to scrutinize such applicant for national security or counterespionage purposes, and any other steps deemed appropriate to the office. The state university or applicable entity may also direct the office to approve applicants for hire based on a risk-based determination considering the nature of the research and the background and ongoing affiliations of the applicant.

(4) The requirements of this section must be completed before interviewing or offering any position to an individual described in subsection (1) in any research or research-related support position and before granting such individual any access to research data or activities or other sensitive data. An applicant who must be screened under this section may not be employed in any research or research-related support position if he or she fails to disclose a substantial educational, employment, or research-related activity or publication or presentation at the time of submitting the application required in subsection (2), unless the department head, or a designee, certifies in writing the substance of the nondisclosure and the reasons for disregarding such failure to disclose. A copy of such certification must be kept in the investigative file of the research integrity office and must be submitted to the nearest

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Federal Bureau of Investigation field office.

(5) The research integrity office must report to the nearest Federal Bureau of Investigation field office, and to any law enforcement agency designated by the Governor or the Board of Governors and the governing board of the applicable entity described in subsection (1), the identity of any applicant who was rejected for employment based on the scrutiny required by this section or other risk-based screening.

(6) By July 1, 2025, the Inspector General of the Board of Governors, the inspector general of an entity described in subsection (1), or the Auditor General must perform an operational audit regarding the implementation of this section.

Section 5. Section 1010.36, Florida Statutes, is created to read:

1010.36 Foreign travel; research institutions.—

(1) By January 1, 2022, each state university or entity listed in subpart A or subpart B of part II of chapter 1004 that receives state appropriations or state tax revenue and has a research budget of $10 million or more must establish an international travel approval and monitoring program. The program must require preapproval and screening by a research integrity office designated by the president or chief administrative officer of the state university or entity for any employment-related foreign travel and employment-related foreign activities engaged in by all faculty, researchers, and research department staff. Such requirement is in addition to any other travel approval process applicable to the state university or entity.

(2)(a) Preapproval by the research integrity office must be

based on the applicant's review and acknowledgement of guidance published by the employing state university or entity which relates to countries under sanctions or other restrictions of the state or the United States government, including any federal license requirement; customs rules; export controls; restrictions on taking state university or entity property, including intellectual property, abroad; restrictions on presentations, teaching, and interactions with foreign colleagues; and other subjects important to the research and academic integrity of the state university or entity.

(b) Preapproval must be based on the binding commitment of the individual traveler not to violate the state university's or entity's limitations on travel and activities abroad and to obey all applicable federal laws.

(3) The state university or entity must maintain records of all foreign travel requests and approvals; expenses reimbursed by the university or entity during such travel, including for travel, food, and lodging; and payments and honoraria received during such travel and activities, including for travel, food, and lodging. The state university or entity must also keep records of the purpose of the travel and any records related to the foreign activity review. Such records must be retained for at least 3 years or any longer period of time required by any other applicable state or federal law.

(4) The state university or entity must provide an annual report of foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited to the Board of Governors or the governing board of the applicable entity.

(5) By July 1, 2025, the Inspector General of the Board of Governors, the inspector general of an entity described in subsection (1), or the Auditor General must perform an operational audit regarding the implementation of this section.

Section 6. This act shall take effect July 1, 2021.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to foreign influence; creating s. 286.101, F.S.; providing definitions; requiring any state agency or political subdivision to disclose certain gifts or grants received from any foreign source to the Department of Financial Services within a specified timeframe; providing an exception; requiring any entity that applies for a certain grant or proposes a certain contract to disclose to a state agency or political subdivision any current or prior interest of, contract with, or grant or gift received from a foreign country of concern under certain circumstances; specifying information to be included in the disclosure; requiring such entity to provide a copy of such disclosure to the department within a specified timeframe before applying for any grant or proposing any contract; requiring such entity to revise its disclosure within a specified timeframe under certain circumstances; providing exceptions to

disclosure requirements; requiring the Department of Management Services to periodically screen certain vendors; requiring certain notification on the online procurement system; requiring the Department of Financial Services to establish and maintain an Internet website to publish the disclosures; authorizing the department to establish an online system for making such disclosures; authorizing the Department of Management Services to coordinate with the Department of Financial Services to establish such online system; requiring the Department of Financial Services to investigate allegations of certain violations under certain circumstances; authorizing the department or specified persons to request certain records; providing for the assessment of fines and penalties under certain circumstances; requiring the department to include and maintain a list of ineligible entities on a certain Internet website; providing that certain information relating to a gift or grant from a foreign source is not confidential or exempt from public records requirements; authorizing rulemaking; creating s. 288.860, F.S.; providing definitions; prohibiting certain agencies and entities from participating in agreements with or accepting grants received from foreign countries of concern under certain circumstances; prohibiting such agencies and entities from accepting anything of value as a condition for participation in certain programs or endeavors that promote the language or culture of

foreign countries of concern; creating s. 1010.25, F.S.; providing definitions; requiring institutions of higher education to semiannually report to certain entities regarding certain gifts they received directly or indirectly from a foreign source; authorizing the report to be consolidated with affiliate organizations; requiring such institutions to provide certain information regarding such gifts; requiring random annual inspections or audits of gifts or gift agreements by certain inspectors general; providing requirements for such inspections or audits; requiring the Board of Governors or State Board of Education, as applicable, to sanction institutions that fail to report certain gifts within a specified timeframe; providing for a civil penalty for willful violations; requiring that the proceeds from such penalty be deposited in a specified fund; authorizing the Attorney General or the Chief Financial Officer to bring a civil action under certain circumstances; providing for attorney fees and costs; authorizing a whistle-blower to report an undisclosed foreign gift to the Attorney General or the Chief Financial Officer; providing that such whistle-blower retains certain protections and is entitled to a reward; authorizing the Chief Financial Officer to incur expenditures to provide such reward from the penalty recovery; authorizing payment of such reward through an intermediary attorney or trustee designated by the whistle-blower; providing that certain information

relating to a gift from a foreign source is not confidential or exempt from public records requirements; providing exceptions; authorizing the Board of Governors and State Board of Education to adopt regulations and rules, respectively; creating s. 1010.35, F.S.; requiring certain state universities and other entities to screen certain foreign applicants seeking employment in specified research positions; requiring such applicants to provide additional specified information as part of the application process; requiring screening to be completed before an interview or offer of employment; requiring the president or chief administrative officer of the state university or entity to designate a research integrity office to verify certain information contained in such applications, search certain public databases, and submit certain information to specified federal agencies; specifying the conditions under which a state university may approve a hire based on a risk-based determination; prohibiting the employment of an applicant who fails to make certain disclosures; providing an exception; requiring certain records to be maintained by the research integrity office; requiring such office to report the identity of any applicant who was rejected for employment to certain law enforcement agencies; requiring certain inspectors general or the Auditor General to perform an operational audit by a specified date; creating s. 1010.36, F.S.; requiring certain

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state universities and other entities to establish an international travel approval and monitoring program; providing requirements for such program; providing requirements for preapproval and screening for employment-related foreign travel and employment-related foreign activities engaged in by faculty, researchers, and research department staff; requiring state universities and entities to maintain certain records relating to foreign travel and activities for at least 3 years; requiring a state university or entity to provide a certain annual report to the Board of Governors or the governing board of the applicable entity; requiring certain inspectors general or the Auditor General to perform an operational audit by a specified date; providing an effective date.

By the Committee on Education; and Senator Diaz

581-03563A-21 20212010c1

A bill to be entitled

An act relating to foreign influence; creating s. 286.101, F.S.; providing definitions; requiring any state agency or political subdivision to disclose certain gifts or grants received from any foreign source to the Department of Financial Services within a specified timeframe; providing an exception; requiring any entity that applies for a certain grant or proposes a certain contract to disclose to a state agency or political subdivision any current or prior interest of, contract with, or grant or gift received from a foreign country of concern under certain circumstances; specifying information to be included in the disclosure; requiring such entity to provide a copy of such disclosure to the department within a specified timeframe before applying for any grant or proposing any contract; requiring such entity to revise its disclosure within a specified timeframe under certain circumstances; providing exceptions to disclosure requirements; requiring the Department of Management Services to screen certain vendors periodically; requiring certain notification on the online procurement system; requiring the Department of Financial Services to establish and maintain an Internet website to publish the disclosures; authorizing the department to establish an online system for making such disclosures; authorizing the Department of Management Services to coordinate with the Department of Financial Services to establish such

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online system; requiring the Department of Financial Services to investigate allegations of certain violations under certain circumstances; authorizing the department or specified persons to request certain records; providing for the assessment of fines and penalties under certain circumstances; requiring the department to include and maintain a list of ineligible entities on a certain Internet website; providing that certain information and records relating to a gift or grant from a foreign source are not confidential or exempt from public records requirements; providing exceptions; authorizing rulemaking; creating s. 288.860, F.S.; providing definitions; prohibiting certain agencies and entities from participating in agreements with or accepting grants received from foreign countries of concern under certain circumstances; prohibiting such agencies and entities from accepting anything of value as a condition for participation in certain programs or endeavors that promote the language or culture of foreign countries of concern; creating s. 1010.25, F.S.; providing definitions; requiring institutions of higher education to semiannually report to certain entities regarding certain gifts they received directly or indirectly from a foreign source; authorizing the report to be consolidated with affiliate organizations; requiring such institutions to provide certain information regarding such gifts; requiring random inspections or audits of gifts or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

gift agreements by certain inspectors general; providing requirements for such inspections or audits; requiring the Board of Governors or State Board of Education, as applicable, to sanction institutions that fail to report certain gifts within a specified timeframe; providing for a civil penalty for willful violations; requiring that the proceeds from such penalty be deposited in a specified fund; providing a lesser civil penalty under specified conditions; authorizing the Attorney General or Chief Financial Officer to bring a civil action under certain circumstances; providing for attorney fees and costs; providing that certain information and records relating to a gift from a foreign source are not confidential or exempt from public records requirements; providing exceptions; authorizing the Board of Governors and State Board of Education to adopt regulations and rules, respectively; creating s. 1010.35, F.S.; requiring certain state universities and other entities to screen certain foreign applicants seeking employment in specified research positions; requiring such applicants to provide additional specified information as part of the application process; requiring screening to be completed before an interview or offer of employment; requiring the president or chief administrative officer of the state university or entity to designate a research integrity office to verify certain information contained in such applications, search

certain public databases, and submit certain information to specified federal agencies; specifying the conditions under which a university may approve a hire based on a risk-based determination; prohibiting the employment of an applicant who fails to make certain disclosures; providing an exception; requiring certain records to be maintained by the research integrity office; requiring such office to report the identity of any applicant who was rejected for employment to certain law enforcement agencies; requiring certain inspectors general or the Auditor General to perform an operational audit by a specified date; creating s. 1010.36, F.S.; requiring certain state universities and other entities to establish an international travel approval and monitoring program; providing requirements for such program; providing requirements for preapproval and screening for foreign travel and foreign employment-related activities engaged in by faculty, researchers, and research department staff; requiring state universities and entities to maintain certain records relating to foreign travel and activities for at least 3 years; requiring a state university or entity to provide a certain annual report to the Board of Governors or the governing board of the applicable entity; requiring a specified entity to conduct an operational audit of institutions by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 286.101, Florida Statutes, is created to read:

286.101 Foreign gifts and contracts.—

(1) As used in this section, the term:

(a) "Contract" means any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services.

(b) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(c) "Foreign government" means the government of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or the government of a state or political subdivision, including any agent of such foreign government.

(d) "Foreign source" means any of the following:

1. A foreign government or an agency of a foreign government.

2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.

3. An individual who is not a citizen or a national of the United States or a territory or protectorate of the United States.

4. An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(e) "Gift" means any transfer of money or property from one entity to another without compensation.

(f) "Grant" means a transfer of money for a specified purpose, including a conditional gift.

(g) "Interest" in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity's net worth or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.

(h) "State agency" means any agency or unit of state government created or established by law.

(2) Any state agency or political subdivision that receives directly or indirectly any gift or grant with a value of $50,000 or more from any foreign source shall disclose such gift or grant to the Department of Financial Services within 30 days after receiving such gift or grant. Such disclosure shall include the date of the gift or grant, the amount of the gift or grant and the name and country of residence or domicile of the foreign source. Disclosure is not required if such gift or grant is disclosed under s. 1010.25.

(3)(a) Any entity that applies to a state agency or political subdivision for a grant or proposes a contract having a value of $100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern if such interest, contract, or grant or gift has a value of $50,000 or more and such interest existed at any

time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract, grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. Within 1 year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services.

(b) Disclosure under this subsection is not required with respect to:

1. A proposal to sell commodities through the online procurement program established pursuant to s. 287.057(22);

2. An application or proposal from an entity that discloses foreign gifts or grants under subsection (2) or s. 1010.25;

3. An application or proposal from a foreign source that, if granted or accepted, would be disclosed under subsection (2) or s. 1010.25; or

4. An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

(c) A disclosure published online pursuant to subsection (5) is deemed disclosed to every state agency and political subdivision for purposes of paragraph (a). From the time a disclosure is made under paragraph (a) through the term of any awarded state grant or contract, the entity must revise its disclosure within 30 days after entering into a contract with or

receiving a grant or gift from a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern.

(4) At least once every 5 years, the Department of Management Services shall screen each vendor of commodities participating in the online procurement system if such vendor has the capacity to fill an order of $100,000 or more. Screening must be conducted through federal agencies responsible for identifying persons and organizations subject to trade sanctions, embargoes, or other restrictions under federal law. If a vendor is identified as being subject to any such sanctions, embargoes, or other restrictions, the vendor must make the disclosures required under subsection (3) until such restriction expires. A notification regarding the applicability of the disclosure requirement in subsection (3) to the vendor must be included on the online procurement system when applicable. The Department of Management Services must ensure that purchasers through the online procurement system may easily access all disclosures made by vendors participating in the system.

(5) The Department of Financial Services must establish and maintain an Internet website to publish the disclosures required under this section. The Department of Financial Services may establish an online system for making such disclosures. The Department of Management Services may coordinate with the Department of Financial Services to establish the online system.

(6)(a) Upon receiving a referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint based upon substantive

information and reasonable belief, the Department of Financial Services must investigate an allegation of a violation of this section.

(b) The Department of Financial Services, an inspector general, or any other agent or compliance officer authorized by a state agency or political subdivision may request records relevant to any reasonable suspicion of a violation of this section. An entity must provide the required records within 30 days after such request or at a later time agreed to by the investigating state agency or political subdivision.

(7)(a) Failure to make a disclosure required under this section or failure to provide records requested under paragraph (6)(b) constitutes a civil violation punishable upon a final order of the Department of Financial Services by an administrative fine of $5,000 for a first violation or $10,000 for any subsequent violation.

(b) In addition to any fine assessed under paragraph (a), a final order determining a third or subsequent violation by a state agency or political subdivision must include a determination of the identity of the officer responsible for acceptance of the undisclosed grant or gift. Such order must also include a referral by the Department of Financial Services to the Governor or other officer authorized to suspend or remove the officer responsible for acceptance of the undisclosed grant or gift from public office. A copy of such referral must be provided to the President of the Senate and the Speaker of the House of Representatives for oversight of such suspension and removal authority.

(c) In addition to any fine assessed under paragraph (a), a

final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause. The Department of Financial Services shall include and maintain an active and current list of such ineligible entities on the Internet website maintained under subsection (5).

(8) Except as provided in s. 1004.22(2), or information protected by any statute that is a trade secret as defined in s. 812.081(1)(c) or s. 688.002(4), information and records relating to a gift or grant from a foreign source are not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(9)(a) The Department of Management Services may adopt rules necessary to carry out its responsibilities under this section. The rules may identify the federal agencies to be consulted under subsection (4) and the procedure for notifying a vendor of the disclosure requirements under this section when applicable. The Department of Management Services may also adopt rules providing for the application of this section to the online procurement system.

(b) The Department of Financial Services may adopt rules necessary to carry out its responsibilities under this section.

(c) Any rules necessary to implement this section must be published by December 31, 2021, unless the applicable department head certifies in writing that a delay is necessary and the date by which the proposed rules will be published. Such

certification must be published in the Florida Administrative Register and a copy provided to the Joint Administrative Procedures Committee.

Section 2. Section 288.860, Florida Statutes, is created to read:

288.860 International cultural agreements.—

(1) As used in this section, the term:

(a) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(b) "Political subdivision" includes any entity under the control of or established for the benefit of a political subdivision.

(c) "Public school" means any education institution under the supervision of a school district and any entity under the control of or established for the benefit of a public school or school district.

(d) "State agency" means any agency or unit of state government created or established by law and any entity under the control of or established for the benefit of a state agency.

(e) "State college" means any postsecondary education institution under the supervision of the State Board of Education, including any entity under the control of or established for the benefit of a state college.

(f) "State university" means any state university under the supervision of the Board of Governors, including any entity

under the control of or established for the benefit of a state university.

(2) A state agency, political subdivision, public school, state college, or state university authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern, which establishes a program or other endeavor to promote the language or culture of a foreign country of concern.

(3) A state agency, political subdivision, public school, state college, or state university may not accept anything of value conditioned upon participation in a program or other endeavor to promote the language or culture of a foreign country of concern.

Section 3. Section 1010.25, Florida Statutes, is created to read:

1010.25 Foreign gift reporting.—

(1) As used in this section, the term:

(a) "Affiliate organization" means any entity under the control of or established for the benefit of an organization required to report under this section, including a direct-support organization.

(b) "Contract" means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties, and any purchase, lease or barter of property or services from a foreign country of concern as defined in s. 286.101(1)(b).

(c) "Direct-support organization" has the same meaning as

provided in ss. 1004.28(1)(a), 1004.70(1)(a), and 1004.71(1)(a).

(d) "Foreign government" means the government of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or the government of a state or political subdivision, including any agent of such foreign government.

(e) "Foreign source" means any of the following:

1. A foreign government or an agency of a foreign government.

2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.

3. An individual who is not a citizen or a national of the United States or a territory or protectorate of the United States.

4. An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(f) "Gift" means any contract, gift, grant, endowment, award, or donation of money or property of any kind, or any combination thereof, including a conditional or an unconditional pledge of such contract, gift, grant, endowment, award, or donation. For purposes of this paragraph, the term "pledge" means a promise, an agreement, or an expressed intention to give a gift.

(g) "Institution of higher education" means a state university, an entity listed in subpart B of part II of chapter 1004 that has its own governing board, a Florida College System institution, an independent nonprofit college or university that is located in and chartered by the state and grants

baccalaureate or higher degrees, any other institution that has a physical presence in the state and is required to report foreign gifts or contracts pursuant to 20 U.S.C. s. 1011f, or an affiliate organization of an institution of higher education.

(2) Each institution of higher education must semiannually report, each January 31 and July 31, any gift received directly or indirectly from a foreign source with a value of $50,000 or more during the fiscal year. If a foreign source provides more than one gift directly or indirectly to an institution of higher education in a single fiscal year and the total value of those gifts is $50,000 or more, all gifts received from that foreign source must be reported. For purposes of this subsection, a gift received from a foreign source through an intermediary shall be considered an indirect gift to the institution of higher education. An institution of higher education may consolidate its report with that of all its affiliate organizations. A report required under this subsection must be made to the following entities:

(a) The Board of Governors, if the recipient is a state university, an entity listed in subpart B of part II of chapter 1004 that has its own governing board, or an affiliate organization of such university or entity.

(b) Unless already reported to the Board of Governors pursuant to paragraph (a), the State Board of Education, if the recipient is any other institution of higher education or an affiliate organization of such institution.

(3) For each gift subject to the reporting requirement in subsection (2), the report of the institution of higher education must provide all of the following information, unless

otherwise prohibited or deemed confidential under federal law having no exemption applicable to such reporting:

(a) The amount of the gift and the date it was received.

(b) The contract start and end date if the gift is a contract.

(c) The name of the foreign source and, if not a foreign government, the country of citizenship, if known, and the country of principal residence or domicile of the foreign source.

(d)1. A copy of a gift agreement between the foreign source and the institution of higher education, signed by the foreign source and the chief administrative officer of the institution of higher education, or their respective designees, which must include a detailed description of the purpose for which the gift will be used by the institution of higher education, the identification of the persons for whom the gift is explicitly intended to benefit, and any applicable conditions, requirements, restrictions, or terms made a part of the gift regarding the control of curricula, faculty, student admissions, student fees, or contingencies placed upon the institution of higher education to take a specific public position or to award an honorary degree. With respect to an agreement containing information protected from disclosure under s. 1004.22(2), an abstract and redacted copy providing all required information that is not so protected may be submitted in lieu of a copy of the agreement.

2. Beginning July 1, 2022, the Inspector General of the Board of Governors or the Inspector General of the Department of Education, as applicable, shall, within existing resources,

randomly inspect or audit at least 10 percent of the total number of gifts or gift agreements received from institutions of higher education pursuant to this paragraph during the previous year. The inspection or audit shall examine the extent to which the institution of higher education exercised due diligence with respect to whether the gift was received from a foreign source, as well as the institution of higher education's compliance with the requirements of this section.

3. Upon the request of the Governor, the President of the Senate, or the Speaker of the House of Representatives, the Inspector General of the Board of Governors or the Inspector General of the Department of Education, as applicable, must inspect or audit a gift or gift agreement.

(4) The State Board of Education or the Board of Governors, as applicable, shall exercise the authority provided pursuant to s. 1008.32 or s. 1008.322, respectively, to sanction an institution of higher education that fails to report a reportable gift within 60 days after the reporting deadlines established in subsection (2).

(5)(a) An institution of higher education that knowingly, willfully, or negligently fails to disclose the information required by this section shall be subject to a civil penalty of 105 percent of the amount of the undisclosed gift, payable only from nonstate funds of the institution of higher education or the affiliate organization that received such gift. The recovered funds must be deposited into the General Revenue Fund. The Board of Governors and the State Board of Education, as applicable, may administratively enforce this section and impose the civil penalty as an administrative penalty. A lesser

penalty, but at least 5 percent of the amount of the undisclosed gift may be imposed if a negligent failure is not a result of negligent management or is de minimis.

(b) In the absence of enforcement by the Board of Governors or the State Board of Education, as applicable, the Attorney General or Chief Financial Officer may bring a civil action to enforce this section. If such action is successful, the Attorney General or Chief Financial Officer, as applicable, is entitled to reasonable attorney fees and costs.

(6) Except as provided in s. 1004.22(2), or information protected by any statute that is a trade secret as defined in s. 812.081(1)(c) or s. 688.002(4), information and records relating to a gift from a foreign source are not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(7) The Board of Governors may adopt regulations, and the State Board of Education may adopt rules, to implement this section.

Section 4. Section 1010.35, Florida Statutes, is created to read:

1010.35 Screening foreign researchers.—

(1) Each state university or entity listed in subpart A or subpart B of part II of chapter 1004 that receives state appropriations or state tax revenue and has a research budget of $10 million or more must screen applicants seeking employment in research or research-related support positions, graduate and undergraduate students applying for research or research support positions, and applicants for positions of visiting researcher, who are citizens of a foreign country and who are not permanent

residents of the United States, or who are citizens or permanent residents of the United States who have any affiliation with an institution or program, or at least 1 year of prior employment or training, excepting employment or training by an agency of the United States government, in a foreign country of concern as defined in s. 286.101. Such screening is required prior to interviewing such applicant or offering to such applicant a position of employment or of visiting researcher. At the discretion of the university or entity, other applicants for such positions may be screened.

(2) In addition to satisfying all employment and enrollment qualifications imposed by federal law, the Board of Governors or the governing board of the applicable entity must require the following of applicants included in subsection (1):

(a) A foreign applicant must submit a complete copy of the applicant's passport and most recently submitted Online Nonimmigrant Visa Application, DS-160. After extraction of all information relevant to the requirements of this section a university or entity may destroy or return the copy of the DS-160 submitted by an applicant.

(b) All applicants described in subsection (1) must submit a complete resume and curriculum vitae, including every institution of higher education attended; all previous employment since the applicant's 18th birthday; a list of all published material for which the applicant received credit as an author, a researcher, or otherwise or to which the applicant contributed significant research, writing, or editorial support; a list of the applicant's current and pending research funding from any source, including funder, amount, applicant's role on

the project, and brief description of the research; and a full disclosure of non-university professional activities including any affiliation with an institution or program in a foreign country of concern. For applicants who have been continually employed or enrolled in a postsecondary education institution in the United States for 20 years or more, the resume may, but need not, include employment history before the most recent 20 years.

(3) The president or chief administrative officer of the state university or applicable entity shall designate a research integrity office to review all materials required in subsection (2) and take reasonable steps to verify all attendance, employment, publications, and contributions listed in the application required in subsection (2) prior to any interview of or offer of a position to the applicant. Reasonable steps include searching public databases for research publications and presentations and public conflict of interest records to identify any research publication or presentation that may have been omitted from the application, contacting all employers of the most recent 10 years to verify employment, contacting all institutions of higher education attended to verify enrollment and educational progress, searching public listings of persons subject to sanctions or restrictions under federal law, and submitting the applicant's name and other identifying information to the Federal Bureau of Investigation or any federal agency reasonably willing to scrutinize such applicant for national security or counterespionage purposes, and any other steps deemed appropriate to the office. The university or applicable entity may also direct the office to approve applicants for hire based on a risk-based determination

considering the nature of the research and the background and ongoing affiliations of the applicant.

(4) The requirements of this section must be completed before interviewing or offering any position to an individual described in subsection (1) in any research or research-related support position and before granting such individual any access to research data or activities or other sensitive data. An applicant who must be screened under this section may not be employed in any research or research-related support position if he or she fails to disclose a substantial educational, employment, or research-related activity or publication or presentation at the time of submitting the application required in subsection (2), unless the department head, or a designee, certifies in writing the substance of the nondisclosure and the reasons for disregarding such failure to disclose. A copy of such certification must be kept in the investigative file of the research integrity office and must be submitted to the nearest Federal Bureau of Investigation field office.

(5) The research integrity office must report to the nearest Federal Bureau of Investigation field office, and to any law enforcement agency designated by the Governor or the Board of Governors and the governing board of the applicable entity described in subsection (1), the identity of any applicant who was rejected for employment based on the scrutiny required by this section or other risk-based screening.

(6) By July 1, 2025, the Inspector General of the Board of Governors, the inspector general of an entity described in subsection (1), or the Auditor General must perform an operational audit regarding the implementation of this section.

Section 5. Section 1010.36, Florida Statutes, is created to read:

1010.36 Foreign travel; research institutions.—

(1) By January 1, 2022, each state university or entity listed in subpart A or subpart B of part II of chapter 1004 that receives state appropriations or state tax revenue and has a research budget of $10 million or more must establish an international travel approval and monitoring program. The program must require preapproval and screening by a research integrity office designated by the president or chief administrative officer of the state university or entity for any foreign travel and foreign employment-related activities engaged in by all faculty, researchers, and research department staff. Such requirement is in addition to any other travel approval process applicable to the state university or entity.

(2)(a) Preapproval by the research integrity office must be based on the applicant's review and acknowledgement of guidance published by the employing state university or entity which relates to countries under sanctions or other restrictions of the state or the United States government, including any federal license requirement; customs rules; export controls; restrictions on taking state university or entity property, including intellectual property, abroad; restrictions on presentations, teaching, and interactions with foreign colleagues; and other subjects important to the research and academic integrity of the state university or entity.

(b) Preapproval must be based on the binding commitment of the individual traveler not to violate the state university's or entity's limitations on travel and activities abroad and to obey

all applicable federal laws.

(3) The state university or entity must maintain records of all foreign travel requests and approvals; expenses reimbursed by the university or entity during such travel, including for travel, food, and lodging; and payments and honoraria received during such travel and activities, including for travel, food, and lodging. The state university or entity must also keep records of the purpose of the travel and any records related to the foreign activity review. Such records must be retained for at least 3 years or any longer period of time required by any other applicable state or federal law.

(4) The state university or entity must provide an annual report of foreign travel to countries of concern listing individual travelers, foreign locations visited, and foreign institutions visited to the Board of Governors or the governing board of the applicable.

(5) By July 1, 2025, the Inspector General of the Board of Governors, the inspector general of an entity described in subsection (1), or the Auditor General must perform an operational audit regarding the implementation of this section.

Section 6. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 7060 (574708)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Environment and Natural Resources Committee
SUBJECT:	Biosolids
DATE:	April 14, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	Reagan	Betta	AEG	**Recommend: Fav/CS**
2.	Reagan	Sadberry	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7060 ratifies the Department of Environmental Protection's (DEP's) revisions to their biosolids rules, chapter 62-640 of the Florida Administrative Code. The bill exempts the rules from review and approval by the Environmental Regulation Commission.

Chapter 2020-150, Laws of Florida, required the DEP to adopt rules for biosolids management and included provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
  - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
  - Prohibit applying biosolids to land with a seasonal high water table within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

The bill provides a declaratory statement and determination by the Legislature that the rule ratification fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

The bill will have an indeterminate negative fiscal impact on the DEP due to increased inspections and monitoring of application sites.

II. Present Situation:

Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after the implementation of the rule.[1]

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.[2]

Statement of Estimated Regulatory Costs Requirements

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. A SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the state within one year after the implementation of the rule.[3]

A SERC must include:

[1] Section 120.541(2)(a), F.S.
[2] Section 120.541(3), F.S.
[3] Section 120.54(3)(b)1., F.S.

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.[4]

Biosolids

When domestic wastewater is treated, a solid, semisolid, or liquid byproduct, known as biosolids,[5] accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.[6] Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the Department of Environmental Protection (DEP).[7] The collected material is high in organic content and contains moderate amounts of nutrients that are needed by plants.[8]

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.[9] Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.[10] About one-third of the total amount of biosolids produced is used for land application[11] and is subject to regulatory requirements established by the DEP to protect public health and the environment.[12]

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[4] Section 120.541(2), F.S.
[5] Section 373.4595, F.S.; *see also* Fla. Admin. Code R. 62-640.200(6). Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.
[6] Department of Environmental Protection (DEP), *Domestic Wastewater Biosolids*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Mar. 5, 2021).
[7] Fla. Admin. Code R. 62-640.200(6).
[8] DEP, *Domestic Wastewater Biosolids*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Mar. 5, 2021).
[9] DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) *available at* http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), *available at* https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 5, 2021).
[10] *Id*. at 4.
[11] *Id*. at 5.
[12] Fla. Admin. Code R. 62-640.

Biosolids may be used by land application in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[13] There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.[14] The map below shows the permitted sites.

Typically, Class B biosolids are used in land application.[15] The highest quality of biosolids, known in Florida as "Class AA," are distributed and marketed like other commercial fertilizers. The DEP does not track the sale of commercial fertilizers.

Biosolids are regulated under chapter 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including pollutant limits and monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, appliers, and distributors[16] and include permit requirements for both treatment facilities and biosolids application sites.[17]

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[13] *Id.* at 20.
[14] DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) *available at* http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), *available at* https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 5, 2021). Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.
[15] *Id.* at 6.
[16] Fla. Admin. Code R. 62-640.100.
[17] Fla. Admin. Code R. 62-640.300.

The application of Class A and Class B biosolids is banned in South Florida within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed.[18] However, other communities have expressed concerns that runoff from farms and ranches that use biosolids can lead to toxic blue-green algae blooms and have sought bans locally.[19]

Rule 62-640, Florida Administrative Code

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to evaluate current biosolids management practices and explore opportunities to better protect Florida's water resources. The TAC convened four times in 2018 and 2019 and discussed current options for biosolids management in the state, potential improvements in biosolids management to protect our water resources, and looked at what research is necessary for successful improvements.[20] The DEP issued its first draft rule in October 2019 after the TAC disbanded, but withdrew the rule following the passage of the Clean Waterways Act.[21]

The Clean Waterways Act (Ch. 2020-150, Laws of Florida)

The Clean Waterways Act required the DEP to adopt rules for biosolids management and specified that any rules adopted may not take effect until ratified by the Legislature. Section 403.0855, F.S., includes provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
  - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
  - Prohibit applying biosolids to land with a seasonal high water table[22] within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services (DACS) Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and

[18] Section 373.4595, F.S.
[19] TCPalm, *Ban biosolids use along upper St. Johns River, Indian River County administrator tells DEP*, https://www.tcpalm.com/story/news/local/indian-river-lagoon/health/2019/06/27/ban-biosolids-use-along-upper-st-johns-river-irc-official-tells-dep/1581585001/ (last visited Mar. 6, 2021). Local bans on the land application of biosolids have been established in Indian River County and the City of Fellsmere. *See* Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), *available at* http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Mar. 6, 2021); Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), *available at* https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf (last visited Mar. 6, 2021).
[20] DEP, *DEP Biosolids Technical Advisory Committee*, https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Mar. 5, 2021).
[21] Chapter 2020-150, Laws of Fla.
[22] "Seasonal high water" means the elevation to which the ground and surface water may be expected to rise due to a normal wet season. Chapter 2020-150, Laws of Fla.

- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

The DEP published its proposed rule implementing the provisions of s. 403.0855, F.S., on December 3, 2020. In addition to the requirements in the Clean Waterways Act, the proposed rule issued by the DEP:

- Revises the provisions for determining biosolids land application rates to include basing rates on nitrogen and phosphorus levels;
- Imposes groundwater and surface water monitoring requirements for land application sites; and
- Considers biosolids permit applications as projects of heightened public interest.

DEP Statement of Estimated Regulatory Costs

The DEP anticipates the rule costing in excess of $1 million in the next five years. The DEP published a SERC on December 3, 2020.[23] The DEP projects the following changes would increase costs due to the revised rule:

- A significant reduction (estimated 75 percent) in biosolids land application which could lead to permitting more land to accommodate the current quantity of biosolids;
- Longer hauling distances to newly permitted land application sites;
- Additional site monitoring requirements and increased operational costs at land application sites;
- Loss of fertilizer cost savings by not being able to land apply biosolids;[24] and
- Possible transfer of biosolids out-of-state for management or disposal.

The DEP estimates that the cost of the proposed rule over the next five years will be $310,000,000 to continue land application of Class B biosolids, and $450,000,000-$600,000,000 to convert to Class AA biosolids (fertilizer).[25] There are innovative technologies to process biosolids for energy or fuel as an alternative to land application, but the DEP stated that there is limited evidence that these methods could serve as feasible alternatives and the costs are higher than the costs for conversion to Class AA biosolids.[26]

In the SERC, the DEP states that the majority of biosolids are generated by utilities owned and operated by local government entities. Therefore, estimates for one-time capital costs and recurring costs will primarily affect local government entities. This includes 104 domestic wastewater treatment facilities that treat and land apply biosolids, and unknown numbers of small wastewater treatment facilities that send biosolids to larger treatment facilities and biosolids treatment facilities that treat and land apply biosolids.[27]

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[23] DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), *available at* https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 5, 2021).
[24] DEP states in the SERC that it is unlikely that all of the approximately 94,000 dry tons of Class B biosolids currently land applied in the state will continue to be land applied. *Id*. at 6.
[25] *Id*. at 4.
[26] *Id*. at 11. DEP states in the SERC that it does not have enough information to make an analysis on innovative technologies. *Id*. at 8.
[27] *Id*. at 5.

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) is an unpaid seven-member board within the DEP.[28] Under specified statutory provisions and with certain exceptions, the ERC must exercise the standard-setting authority of the DEP – approving, modifying, or disapproving proposed rules that contain standards.[29] In exercising its authority to set standards, the ERC must consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment.[30]

The ERC is composed of seven state residents, appointed by the Governor for four-year terms, subject to confirmation by the Senate.[31] The appointees must provide reasonable representation from all sections of the state, and be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise related to water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.[32] Most issues that go before the ERC relate to air pollution, water quality, or waste management.[33] The ERC is scheduled to meet monthly, but has not met since 2019.[34] According to the DEP's website, two of the memberships to the ERC are vacant and the terms of the five listed members have lapsed.[35] However, the Governor recently appointed four members to the ERC.[36]

III. Effect of Proposed Changes:

The bill ratifies the rules comprising ch. 62-640 of the Florida Administrative Code, titled "Biosolids," for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. Chapter 62-640 of the Florida Administrative Code, proposed by the Department of Environmental Protection (DEP) and published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297, consists of rules:

- 62-640.100, entitled Scope, Intent, Purpose, and Applicability;
- 62-640.200, entitled Definitions;
- 62-640.210, entitled General Technical Guidance and Forms;
- 62-640.300, entitled General Requirements;
- 62-640.400, entitled Prohibitions;
- 62-640.500, entitled Nutrient Management Plan (NMP);

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[28] Section 20.255(6), F.S., DEP, *Environmental Regulation Commission*, https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission (last visited Mar. 5, 2021).
[29] Sections 403.803(13), 403.804, and 403.805(1), F.S. "Standard" is defined as any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substations. The term does not include rules relating to internal management or procedural matters.
[30] Section 403.804, F.S.
[31] Section 20.255(6), F.S.
[32] *Id.*
[33] DEP, *Environmental Regulation Commission*, https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission (last visited Mar. 4, 2021).
[34] *Id.*
[35] DEP, *ERC Members*, https://floridadep.gov/ogc/ogc/content/erc-members (last visited Mar. 5, 2021).
[36] News Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Four to the Environmental Regulation Commission* (Mar. 12, 2021), https://www.flgov.com/2021/03/12/governor-ron-desantis-appoints-four-to-the-environmental-regulation-commission/ (last visited Mar. 15, 2021).

- 62-640.600, entitled Pathogen Reduction and Vector Attraction Reduction;
- 62-640.650, entitled Monitoring, Record Keeping, Reporting, and Notification;
- 62-640.700, entitled Requirements for Land Application of Class AA, A, and B Biosolids;
- 62-640.800, entitled Additional Requirements for Land Application at Reclamation Sites;
- 62-640.850, entitled Distribution and Marketing of Class AA Biosolids; and
- 62-640.880, entitled Additional Requirements Related to Biosolids Treatment Facilities.

The bill:

- Exempts the rules from review and approval by the Environmental Regulation Commission (ERC) under s. 403.804(1), F.S.;
- Directs that section one of the bill serves no other purpose and may not be codified in the Florida Statutes;
- Requires the DEP to publish a notice of the enactment of the exemption from review and approval by the ERC in the Florida Administrative Register; and
- Provides that section one of the bill does not:
  - Alter rulemaking authority delegated by prior law;
  - Constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule cited; and
  - Does not cure any rulemaking defect or preempt any challenge on lack of authority or a violation of the legal requirements governing adoption of any rule cited.

The bill provides a declaratory statement and determination by the Legislature that section 1 of the bill fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to manage biosolids under the new requirements of the rule. The bill includes a legislative finding that the rule ratification fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Environmental's (DEP's) statement of estimated regulatory costs (SERC), there will likely be increased operational costs to biosolids treatment facilities and septage management facilities. There will also likely be impacts to biosolids haulers and the ranchers and farmers who own land application sites. Utility ratepayers and homeowners may ultimately bear the increased operational costs of wastewater treatment facilities.[37] *See discussion of SERC in Section II on page six of the analysis.*

C. Government Sector Impact:

According to the DEP's statement of estimated regulatory costs, there will likely be increased operational costs to wastewater treatment facilities.[38] *See discussion of SERC in Section II on page six of the analysis.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.0855 of the Florida Statutes.

[37] DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), *available at* https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 5, 2021).
[38] *Id*.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:
The committee substitute:

- Deletes the provision of the bill that requires the DEP to provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

574708

576-03931-21

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Agriculture, Environment, and General Government)

A bill to be entitled

An act relating to ratification of Department of Environmental Protection rules; ratifying specified rules relating to biosolids management for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; exempting the rules from certain review and approval by the Environmental Regulation Commission; providing applicability; providing construction; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rules 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.400, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, 62-640.880, Florida Administrative Code, entitled Scope, Intent, Purpose, and Applicability; Definitions; General Technical Guidance and Forms; General Requirements; Prohibitions; Nutrient Management Plan (NMP); Pathogen Reduction and Vector Attraction Reduction; Monitoring, Record Keeping,

574708

576-03931-21

Reporting, and Notification; Requirements for Land Application of Class AA, A, and B Biosolids; Additional Requirements for Land Application at Reclamation Sites; Distribution and Marketing of Class AA Biosolids; and Additional Requirements Related to Biosolids Treatment Facilities, respectively, as published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297.

(2) The rules in subsection (1) proposed by the Department of Environmental Protection pursuant to s. 403.0855(2), Florida Statutes, are exempt from review and approval by the Environmental Regulation Commission under s. 403.804(1), Florida Statutes.

(3) This section serves no other purpose and may not be codified in the Florida Statutes. At the time of filing this rule for adoption, or as soon thereafter as practicable, the department shall publish a notice of the enactment of this exemption in the Florida Administrative Register. This section does not alter rulemaking authority delegated by prior law and does not constitute legislative preemption of or exception to any other provision of law governing adoption or enforcement of the rule cited. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

(4) The Legislature determines and declares that this section fulfills an important state interest.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7060
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Environment and Natural Resources Committee
SUBJECT:	Biosolids
DATE:	April 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	Reagan	Betta	AEG	**Recommend: Fav/CS**
2.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7060 ratifies the Department of Environmental Protection's (DEP's) revisions to their biosolids rules, chapter 62-640 of the Florida Administrative Code. The bill exempts the rules from review and approval by the Environmental Regulation Commission.

Chapter 2020-150, Laws of Florida, required the DEP to adopt rules for biosolids management and included provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
  - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
  - Prohibit applying biosolids to land with a seasonal high water table within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

The bill provides a declaratory statement and determination by the Legislature that the rule ratification fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

The bill will have an indeterminate negative fiscal impact on the DEP due to increased inspections and monitoring of application sites.

II. Present Situation:

Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after the implementation of the rule.[1]

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.[2]

Statement of Estimated Regulatory Costs Requirements

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. A SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the state within one year after the implementation of the rule.[3]

A SERC must include:

[1] Section 120.541(2)(a), F.S.
[2] Section 120.541(3), F.S.
[3] Section 120.54(3)(b)1., F.S.

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.[4]

Biosolids

When domestic wastewater is treated, a solid, semisolid, or liquid byproduct, known as biosolids,[5] accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.[6] Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the Department of Environmental Protection (DEP).[7] The collected material is high in organic content and contains moderate amounts of nutrients that are needed by plants.[8]

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.[9] Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.[10] About one-third of the total amount of biosolids produced is used for land application[11] and is subject to regulatory requirements established by the DEP to protect public health and the environment.[12]

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[4] Section 120.541(2), F.S.
[5] Section 373.4595, F.S.; *see also* Fla. Admin. Code R. 62-640.200(6). Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.
[6] Department of Environmental Protection (DEP), *Domestic Wastewater Biosolids*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Mar. 5, 2021).
[7] Fla. Admin. Code R. 62-640.200(6).
[8] DEP, *Domestic Wastewater Biosolids*, https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Mar. 5, 2021).
[9] DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) *available at* http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), *available at* https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 5, 2021).
[10] *Id*. at 4.
[11] *Id*. at 5.
[12] Fla. Admin. Code R. 62-640.

Biosolids may be used by land application in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[13] There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.[14] The map below shows the permitted sites.

Typically, Class B biosolids are used in land application.[15] The highest quality of biosolids, known in Florida as "Class AA," are distributed and marketed like other commercial fertilizers. The DEP does not track the sale of commercial fertilizers.

Biosolids are regulated under chapter 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including pollutant limits and monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, appliers, and distributors[16] and include permit requirements for both treatment facilities and biosolids application sites.[17]

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[13] *Id.* at 20.
[14] DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) *available at* http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), *available at* https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 5, 2021). Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.
[15] *Id.* at 6.
[16] Fla. Admin. Code R. 62-640.100.
[17] Fla. Admin. Code R. 62-640.300.

The application of Class A and Class B biosolids is banned in South Florida within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed.[18] However, other communities have expressed concerns that runoff from farms and ranches that use biosolids can lead to toxic blue-green algae blooms and have sought bans locally.[19]

Rule 62-640, Florida Administrative Code

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to evaluate current biosolids management practices and explore opportunities to better protect Florida's water resources. The TAC convened four times in 2018 and 2019 and discussed current options for biosolids management in the state, potential improvements in biosolids management to protect our water resources, and looked at what research is necessary for successful improvements.[20] The DEP issued its first draft rule in October 2019 after the TAC disbanded, but withdrew the rule following the passage of the Clean Waterways Act.[21]

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  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services (DACS) Best Management Practices program;
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[19] TCPalm, *Ban biosolids use along upper St. Johns River, Indian River County administrator tells DEP*, https://www.tcpalm.com/story/news/local/indian-river-lagoon/health/2019/06/27/ban-biosolids-use-along-upper-st-johns-river-irc-official-tells-dep/1581585001/ (last visited Mar. 6, 2021). Local bans on the land application of biosolids have been established in Indian River County and the City of Fellsmere. *See* Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), *available at* http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Mar. 6, 2021); Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), *available at* https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf (last visited Mar. 6, 2021).
[20] DEP, *DEP Biosolids Technical Advisory Committee*, https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Mar. 5, 2021).
[21] Chapter 2020-150, Laws of Fla.
[22] "Seasonal high water" means the elevation to which the ground and surface water may be expected to rise due to a normal wet season. Chapter 2020-150, Laws of Fla.

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[27] *Id*. at 5.

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) is an unpaid seven-member board within the DEP.[28] Under specified statutory provisions and with certain exceptions, the ERC must exercise the standard-setting authority of the DEP – approving, modifying, or disapproving proposed rules that contain standards.[29] In exercising its authority to set standards, the ERC must consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment.[30]

The ERC is composed of seven state residents, appointed by the Governor for four-year terms, subject to confirmation by the Senate.[31] The appointees must provide reasonable representation from all sections of the state, and be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise related to water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.[32] Most issues that go before the ERC relate to air pollution, water quality, or waste management.[33] The ERC is scheduled to meet monthly, but has not met since 2019.[34] According to the DEP's website, two of the memberships to the ERC are vacant and the terms of the five listed members have lapsed.[35] However, the Governor recently appointed four members to the ERC.[36]

III. Effect of Proposed Changes:

The bill ratifies the rules comprising ch. 62-640 of the Florida Administrative Code, titled "Biosolids," for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. Chapter 62-640 of the Florida Administrative Code, proposed by the Department of Environmental Protection (DEP) and published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297, consists of rules:

- 62-640.100, entitled Scope, Intent, Purpose, and Applicability;
- 62-640.200, entitled Definitions;
- 62-640.210, entitled General Technical Guidance and Forms;
- 62-640.300, entitled General Requirements;
- 62-640.400, entitled Prohibitions;
- 62-640.500, entitled Nutrient Management Plan (NMP);

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[28] Section 20.255(6), F.S., DEP, *Environmental Regulation Commission*, https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission (last visited Mar. 5, 2021).
[29] Sections 403.803(13), 403.804, and 403.805(1), F.S. "Standard" is defined as any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substations. The term does not include rules relating to internal management or procedural matters.
[30] Section 403.804, F.S.
[31] Section 20.255(6), F.S.
[32] *Id.*
[33] DEP, *Environmental Regulation Commission*, https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission (last visited Mar. 4, 2021).
[34] *Id.*
[35] DEP, *ERC Members*, https://floridadep.gov/ogc/ogc/content/erc-members (last visited Mar. 5, 2021).
[36] News Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Four to the Environmental Regulation Commission* (Mar. 12, 2021), https://www.flgov.com/2021/03/12/governor-ron-desantis-appoints-four-to-the-environmental-regulation-commission/ (last visited Mar. 15, 2021).

- 62-640.600, entitled Pathogen Reduction and Vector Attraction Reduction;
- 62-640.650, entitled Monitoring, Record Keeping, Reporting, and Notification;
- 62-640.700, entitled Requirements for Land Application of Class AA, A, and B Biosolids;
- 62-640.800, entitled Additional Requirements for Land Application at Reclamation Sites;
- 62-640.850, entitled Distribution and Marketing of Class AA Biosolids; and
- 62-640.880, entitled Additional Requirements Related to Biosolids Treatment Facilities.

The bill:

- Exempts the rules from review and approval by the Environmental Regulation Commission (ERC) under s. 403.804(1), F.S.;
- Directs that section one of the bill serves no other purpose and may not be codified in the Florida Statutes;
- Requires the DEP to publish a notice of the enactment of the exemption from review and approval by the ERC in the Florida Administrative Register; and
- Provides that section one of the bill does not:
  - Alter rulemaking authority delegated by prior law;
  - Constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule cited; and
  - Does not cure any rulemaking defect or preempt any challenge on lack of authority or a violation of the legal requirements governing adoption of any rule cited.

The bill provides a declaratory statement and determination by the Legislature that section 1 of the bill fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to manage biosolids under the new requirements of the rule. The bill includes a legislative finding that the rule ratification fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Environmental's (DEP's) statement of estimated regulatory costs (SERC), there will likely be increased operational costs to biosolids treatment facilities and septage management facilities. There will also likely be impacts to biosolids haulers and the ranchers and farmers who own land application sites. Utility ratepayers and homeowners may ultimately bear the increased operational costs of wastewater treatment facilities.[37] *See discussion of SERC in Section II on page six of the analysis.*

C. Government Sector Impact:

According to the DEP's statement of estimated regulatory costs, there will likely be increased operational costs to wastewater treatment facilities.[38] *See discussion of SERC in Section II on page six of the analysis.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.0855 of the Florida Statutes.

[37] DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), *available at* https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 5, 2021).
[38] *Id*.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute deletes the provision of the bill that requires the DEP to provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environment and Natural Resources

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A bill to be entitled

An act relating to biosolids; ratifying specified rules relating to biosolids management for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; exempting the rules from certain review and approval by the Environmental Regulation Commission; providing applicability; providing construction; providing a declaration of important state interest; amending s. 403.0855, F.S.; requiring the Department of Environmental Protection to provide notice to and receive consent from private property owners before entering onto private property for specified biosolids testing; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rules 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.400, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, 62-640.880, Florida Administrative Code, entitled Scope, Intent, Purpose, and Applicability; Definitions; General Technical Guidance and Forms; General Requirements; Prohibitions; Nutrient Management Plan (NMP); Pathogen Reduction

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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and Vector Attraction Reduction; Monitoring, Record Keeping, Reporting, and Notification; Requirements for Land Application of Class AA, A, and B Biosolids; Additional Requirements for Land Application at Reclamation Sites; Distribution and Marketing of Class AA Biosolids; and Additional Requirements Related to Biosolids Treatment Facilities, respectively, as published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297.

(2) The rules in subsection (1) proposed by the Department of Environmental Protection pursuant to s. 403.0855(2), Florida Statutes, are exempt from review and approval by the Environmental Regulation Commission under s. 403.804(1), Florida Statutes.

(3) This section serves no other purpose and may not be codified in the Florida Statutes. At the time of filing this rule for adoption, or as soon thereafter as practicable, the department shall publish a notice of the enactment of this exemption in the Florida Administrative Register. This section does not alter rulemaking authority delegated by prior law and does not constitute legislative preemption of or exception to any other provision of law governing adoption or enforcement of the rule cited. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

(4) The Legislature determines and declares that this section fulfills an important state interest.

Section 2. Subsection (7) is added to section 403.0855, Florida Statutes, to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

403.0855 Biosolids management.—

(7) The department shall provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

Section 3. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 8, 2021

I respectfully request that **Senate Bill 7060**, relating to the **Ratification of Department of Environmental Protection Rules**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7062
INTRODUCER:	Appropriations Committee and Environment and Natural Resources Committee
SUBJECT:	Central Florida Water Initiative
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	Reagan	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7062 ratifies the Department of Environmental Protection (DEP)'s rules for the Central Florida Water Initiative (CFWI), Rules 62-41.300, 62-41.301, 62.41.302, 62-41.303, 62-41.304, and 62-41.305, Florida Administrative Code.

Chapter 2016-1, Laws of Florida, required the DEP to establish:

- Uniform processes for conducting permit reviews, setting minimum flows and minimum water levels within the boundaries of the CFWI Area, and establishing a variance process;
- Uniform methods for calculating residential per capita water use;
- A uniform definition of the term "harmful to water resources;" and
- Annual conservation and residential per capita water use goals for consumptive use permits.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

Additionally, the bill:

- Provides a declaratory statement and determination by the Legislature that the act fulfills an important state interest.
- Revises the required rulemaking to include an annual supplemental irrigation requirement allocation for agricultural uses and a process for examining an agriculture user's average annual supplemental irrigation needs.

- Provides that these rules may not be construed to limit the ability of the department or a water management district to establish different supplemental irrigation requirements.
- Establishes a grant program within the DEP, subject to appropriation, for the CFWI, which will promote alternative water supply and protect groundwater resources. The bill requires the DEP to give priority to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or that can demonstrate a significant financial hardship exists as a result of complying with the rules applicable to the CFWI Area.
- Revises the priority system for the Drinking Water State Revolving Loan Fund to give special consideration to projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer under the CFWI.

The estimated cost to the St. Johns River, Southwest Florida, and South Florida Water Management Districts of implementing the proposed rule is $637,000 and the estimated cost of monitoring and enforcing the proposed rule is $64,000.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

II. Present Situation:

Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within five years after the implementation of the rule.[1]

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.[2]

Statement of Estimated Regulatory Costs Requirements

A Statement of Estimated Regulatory Costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. An SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or

[1] Section 120.541(2)(a), F.S.
[2] Section 120.541(3), F.S.

- Is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the state within one year after the implementation of the rule.[3]

An SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.[4]

Consumptive Use Permits

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Each CUP must be consistent with the objectives of the issuing Water Management District (WMD) or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area.[5] To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use";[6]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[7]

Drinking Water State Revolving Loan Fund

The Drinking Water State Revolving Loan Fund, administered by the DEP, provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities to provide safe drinking water and protect water quality.[8] An investor-owned public water system that is legally responsible for public water services and serves no more than 1,500 connections is eligible for a loan. An investor-owned public water system that serves more than 1,500

[3] Section 120.54(3)(b)1., F.S.
[4] Section 120.541(2), F.S.
[5] Section 373.219, F.S.
[6] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[7] Section 373.233(1), F.S.; Fla. Admin. Code R. 62-40.410(1).
[8] Section 403.8533, F.S.

connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.[9]

Loan funding is based on a priority system that takes into account public health considerations, compliance, and affordability.[10] The priority system shall give special consideration to:

- Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;
- Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and
- Projects that contribute to the sustainability of regional water sources.[11]

Central Florida Water Initiative

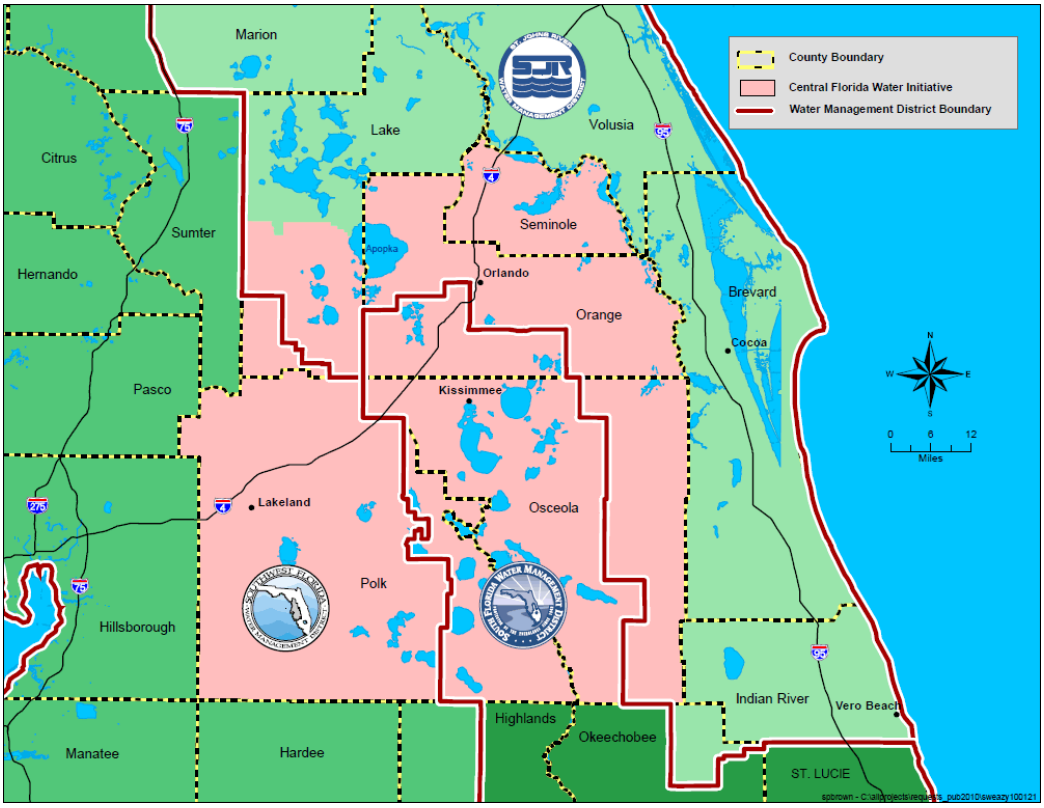
The Central Florida Water Initiative (CFWI) is a collaborative water supply planning effort involving the DEP, the St. Johns River Water Management District (SJRWMD), the South Florida Water Management District (SFWMD), the Southwest Florida Water Management District (SWFWMD), the Department of Agriculture and Consumer Services (DACS), regional public water supply utilities, and other stakeholders.[12] These groups have been tasked with addressing the current and long-term water supply needs of Central Florida without causing harm to the water resources and associated natural systems.[13]

The CFWI Planning Area covers five counties, including Orange, Osceola, Polk, Seminole, and southern Lake Counties.[14] The CFWI Planning Area is home to approximately 2.9 million people and supports tourism, agriculture, and an industrial and commercial sector.[15] The area's population is projected to reach 4.4 million by 2040. The total average (surface and ground) water use in the area is projected to increase from 667 million gallons per day (mgd) in 2015 to 908 mgd in 2040. Of this amount, groundwater represents 635 mgd and 855 mgd, respectively. Public supply constitutes the largest water use in the CFWI Area.[16]

The areas encompassed by the CFWI Planning Area have traditionally relied on groundwater from the Floridan aquifer system as the primary source of water. Evaluations predict that fresh groundwater resources alone will be insufficient to meet 2040 projected water demands and currently permitted allocations for withdrawal without resulting in unacceptable impacts to water resources and related natural systems.[17] These impacts can include drying out wetlands, reducing

[9] Section 403.8532(3), F.S
[10] Section 403.8532(9)(a), F.S.
[11] *Id*.
[12] Stakeholders include water utilities, environmental groups, business organizations, agricultural communities, and others.
[13] Section 373.0465(1)(c), F.S.
[14] Section 373.0465(2)(a), F.S.; Central Florida Water Initiative (CFWI), *What is CFWI?*, https://cfwiwater.com/what_is_CFWI.html (last visited Mar. 8, 2021).
[15] Central Florida Water Initiative (CFWI), *Regional Water Supply Plan 2020 Planning Document*, ii, *available at* https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Mar. 9, 2021).
[16] *Id*.
[17] *Id*. at 90.

spring flows, lowering lake levels, and degrading groundwater quality from saltwater intrusion.[18] Alternative water sources will need to be developed to meet the projected demands.



Map of the CFWI Area

In the past, the three WMDs worked independently to resolve water resource issues, but the decisions of one district can affect the water resources of another.[19] In 2006, the three WMDs agreed to a Central Florida Coordination Area (CFCA) Action Plan to address the near-term and long-term development of water supplies in the central Florida region.[20] The CFWI was created in 2009, building on the CFCA Action Plan.[21] In November 2015, the WMDs' respective governing boards approved the first ever joint regional water supply plan, the 2015 CFWI Regional Water Supply Plan (RWSP).[22]

The guiding principles for the CFWI process were initially designed to ensure sufficient water was available by:

[18] CFWI, *Value of Water*, https://cfwiwater.com/value_of_water.html (last visited Mar. 8, 2021).
[19] CFWI, *Regional Water Supply Plan 2020 Planning Document*, i, *available at* https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Mar. 9, 2021).
[20] CFWI, *Central Florida Water Initiative Guiding Document*, 2 (Jan. 30, 2015), *available at* https://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf (last visited Mar. 8, 2021).
[21] CFWI, *Regional Water Supply Plan 2020 Planning Document*, i, *available at* https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Mar. 9, 2021).
[22] *Id.*

- Identifying the sustainable quantities of traditional groundwater sources available for water supplies that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Developing strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establishing consistent rules and regulations for the three WMDs that meet their collective goals, and implement the results of the CFWI.[23]

The guidelines were updated in April 2016, and adopted in the CFWI 2020 Guiding Document. The revised guiding principles include the following principles and goals:

- Review and update the 2015 CFWI RWSP, as well as the sustainable quantities of traditional groundwater sources available in the CFWI Area that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Monitor progress of regional strategies and solutions identified in the 2015 CFWI Plan.
- Review and update strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establish consistent rules and regulations for the three WMDs that meet the specified goals and implement the results of the CFWI.
- Encourage funding for regional strategies necessary to achieve the objectives of the CFWI.[24]

Chapter 2016-1, Laws of Florida

The DEP, in consultation with the WMDs and DACS, is required to adopt uniform rules for application within the CFWI, to comply with requirements set forth in s. 373.0465(2)(d), F.S., enacted during the 2016 legislative session. The Legislature found that development of alternative water supply instead of a continued reliance on the Floridan aquifer would benefit existing and future water users and natural water systems.[25]

In developing the CFWI plan, the DEP, the WMDs, and the DACS are required to:

- Consider limitations on groundwater use and opportunities for new, increased, or redistributed groundwater uses that are consistent with CUP conditions;
- Establish a coordinated process for identifying water resources requiring new or revised conditions;
- Consider existing recovery or prevention strategies;
- Include a list of water supply options sufficient to meet the water needs of all existing and future reasonable-beneficial uses; and
- Identify, as necessary, which of the water supply sources are preferred water supply sources.[26]

The required rulemaking affects CUPs within the CFWI Area and provides for:

[23] CFWI, *Central Florida Water Initiative Guiding Document*, 2 (Jan. 30, 2015), *available at* https://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf (last visited Mar. 8, 2021).
[24] CFWI, *Central Florida Water Initiative 2020 Guiding Document*, 3 (July 2017), *available at* https://cfwiwater.com/pdfs/CFW-Guiding-Document%20-Oct-2018.pdf (last visited Mar. 10, 2021).
[25] Section 373.0465(1)(d), F.S.
[26] Section 373.0465(2)(c), F.S.

- Uniform processes for conducting permit reviews, setting minimum flows and minimum water levels for certain areas within the boundaries of the CFWI Area, and establishing a variance process;
- Uniform methods for calculating residential per capita water use;
- A uniform definition of the term "harmful to water resources"; and
- Establishing annual conservation and residential per capita water use goals for CUPs.[27]

Rules 62-41.300-305, Florida Administrative Code

The DEP issued its first notice of rule development on December 30, 2016. Between 2017 and 2020, the DEP hosted eight rule development workshops for different portions of the rule. The draft rule was published on November 19, 2020,[28] and a public hearing on the proposed rule was held on December 11, 2020.[29] The draft rule, which incorporates the CFWI Supplemental Applicant's Handbook, was revised on February 9, 2021, to incorporate certain lower cost regulatory alternatives submitted by stakeholders.[30]

The proposed rules apply to CUP applicants and permittees with withdrawal points within the CFWI Area. The proposed rule issued by the DEP:

- Provides that the cumulative use of the Upper Floridan aquifer across the CFWI Area has caused detrimental effects to other users and the water resources of the state.[31]
- Sets out methods for calculating per capita water use and annual conservation goals.[32]
- Limits water withdrawals from the Upper Floridan aquifer to the demonstrated 2025 demand (the existing permitted allocation) for public supply, industrial/commercial/institutional, and mining/dewatering water uses.[33]
- Requires existing CUPs with withdrawal points within the CFWI Area to be modified to be consistent with the new rules.[34]
- Provides for temporary allocations of water required to meet the applicant's reasonable demand beyond the demonstrated 2025 demand while implementing an offset, substitution credit, land use transition, or alternative water supply.[35]

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[27] Section 373.0465(2)(d), F.S.
[28] Florida Administrative Register, Notice of Proposed Rule 62-41.300-305, Volume 46, Number 226 at 5019 (Nov. 19, 2020), *available at* https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2020/46242/46242doc.pdf (last visited Mar. 9, 2021).
[29] Department of Environmental Protection (DEP), *Central Florida Water Initiative Rulemaking Presentation* (Dec. 11, 2020), *available at* https://floridadep.gov/sites/default/files/CFWI%20NOPR%20Rulemaking%20Hearing_Staff%20Presentation_0.pdf (last visited Mar. 9, 2021).
[30] Florida Administrative Register, Notice of Proposed Rule 62-41.300-305, Volume 47, Number 26 at 733 (Feb. 9, 2021), *available at* https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2021/4726/4726doc.pdf (last visited Mar. 10, 2021).
[31] Notice of Proposed Rule 62-41.301(4), *available at* https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Mar. 10, 2021).
[32] Proposed CFWI Supplemental Applicant's Handbook, 21-29, *available at* https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook (last visited Mar. 10, 2021).
[33] *Id*. at 30-31.
[34] Notice of Proposed Rule 62-41.301(4), *available at* https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Mar. 10, 2021).
[35] Proposed CFWI Supplemental Applicant's Handbook, 32, *available at* https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook (last visited Mar. 10, 2021).

- Provides for variances if there are unique circumstances or hydrogeological factors that make application of the rules unrealistic or impractical, meaning compliance with the rule would create a substantial hardship[36] or violate the principles of fairness.[37]
- Requires permit applicants to provide reasonable assurance that a proposed use will use the lowest quality water source suitable for the purpose.[38]
- Adopts existing recovery and prevention strategies.[39]

The DEP Statement of Estimated Regulatory Costs

The DEP published an SERC on November 7, 2020.[40] The DEP estimates that the transactional cost of the proposed rule over the next five years will be $18.6 million, in permittee, applicant, and consultant time spent in water supply, conservation planning, and investments by public supply utilities to reduce per capita water use, as well as materials.[41] However, according to the SERC, the costs to households and businesses located within the CFWI will be offset by the economic benefit to the CFWI economy, resulting in a net negative economic impact of less than $1,000,000 over the five-year period.[42]

According to the DEP's SERC, due to the temporary allocations allowed for under the proposed rule, there will be little prospect of water shortages or impacts to expanded business operations, no impact to the number of Florida visitors, and no losses to a consumer value from the water shortage. However, there may be some impact to new businesses applying for a CUP.[43]

The estimated cost to the SJRWMD, SWFWMD, and SFWMD of implementing the proposed rule is $637,000 and the estimated cost to agencies of monitoring and enforcing the proposed rule is $64,000.[44]

The rules are anticipated to affect CUPs in the CFWI Area due to the prohibition of additional permitted water withdrawals from the Upper Floridan aquifer after 2025 for public supply and industrial/commercial/institutional water use permittees and applicants.[45] Thereafter, applicants and permittees would need to meet additional water demands with water from alternative

[36] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.
[37] "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Notice of Proposed Rule 62-41.303(3), *available at* https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Mar. 10, 2021).
[38] Notice of Proposed Rule 62-41.301(2), *available at* https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Mar. 10, 2021).
[39] Notice of Proposed Rule 62-41.305, *available at* https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Mar. 10, 2021).
[40] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021), *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).
[41] *Id*. at ES-1.
[42] *Id*. at ES-1 – ES-2.
[43] *Id*. at ES-2.
[44] *Id*. at ES-6.
[45] DEP, *Water Policy Rulemaking*, https://floridadep.gov/water-policy/water-policy/content/office-water-policy-rulemaking (last visited Mar. 9, 2021); *see also* DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2, *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).

sources. The transactional cost of the proposed rule by the year 2040 is estimated to be $190 million annually.[46]

Agricultural Use Type Permittees and Applicants

Under the proposed rule, agricultural, landscape, and recreation use type permittees and applicants withdrawing water from the Upper Floridan Aquifer for irrigation are not limited to the demonstrated 2025 water demand. Instead, permitted quantities for supplemental irrigation are based on two thresholds of water use: a five-in-ten-year rainfall condition and a two-in-ten-year drought condition.[47]

An allocation using a five-in-ten-year rainfall condition represents the amount of water required to meet average annual water demands.[48] An allocation using a two-in-ten-year drought condition represents the amount of water required to meet water demands generated from a rainfall deficit during a drought with the probability of recurring twice every ten years.[49] Compliance with these annual allocations is based on the quantity withdrawn over a rolling average of the previous 12-month period.

According to the DEP's SERC, the five-in-ten-year rainfall condition is used to better match actual water demands to their corresponding rainfall conditions and the two-in-ten-year drought condition allows for unusual water needs caused by weather conditions.[50]

Concerns and Challenges

Several local governments and entities submitted lower cost regulatory alternatives (LCRA) and challenged the CFWI rule. The DEP accepted some of the LCRA submissions and issued a revised rule on February 9, 2021, that included modified language. The DEP rejected the remaining LCRA submissions, stating that they do not substantially accomplish the objectives of the law being implemented.[51] The issues raised in the LCRAs that were rejected by the DEP included requests to:

- Remove provisions limiting allocation for permittees and applicants to the demonstrated 2025 demand, and alternatively, continue current CUPs and expedite adoption of minimum flows and minimum water levels in the CFWI Area. The LCRAs suggested that the rule would result in the unnecessary implementation of alternative water supply projects and water rate increases.
- Amend the annual conservation goals for public supply use permittees and applicants to a more feasible goal.
- Exempt permittees and applicants in certain water use caution areas from the rules.

[46] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2 – ES-3, *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).
[47] Proposed CFWI Supplemental Applicant's Handbook, 14, *available at* https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook (last visited Mar. 10, 2021).
[48] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at 4-35, *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).
[49] *Id*.
[50] *Id*.
[51] *Id*. at 7-2.

In response to the rejected submissions, the DEP stated that:

- Existing and planned minimum flows and minimum water levels do not address all of the anticipated water resource impacts in the area and the proposed rules are designed to address harm to all water resources.[52]
- The need for implementation of alternative water supply projects has been known for over 10 years and all permittees were on notice that their permits could be modified.[53]
- The rule has to address both individual and cumulative harm to water resources in the CFWI Area.[54]
- The rule provides for numerous alternatives and accommodations to address hardships.[55]
- The suggested seven percent reduction in water use does not accomplish the objectives of the law being implemented.[56]
- The conservation goals are feasible and many permittees are already meeting the goals. If a permittee cannot meet the goal, a variance is available.[57]
- Exempting permittees and applicants from the rule is not consistent with legislative intent and the recovery strategies in the specific water use caution areas are not being met.[58]

As a result, on March 1, 2021, the local governments and entities submitted several rule challenges to the Division of Administrative Hearings. The final administrative hearing on the challenges was canceled, and the case has been placed in abeyance due to the parties reaching a tentative settlement agreement.[59] A revised rule is also expected from the DEP.

Water Use Caution Areas

A water use caution area (WUCA) is a geographic area identified by a WMD as having existing water resource problems or where water resource problems are projected to develop during the next 20 years.[60]

A WMD must determine, in its water supply assessment, whether sources of water are adequate to meet projected 20-year demands to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems.[61] If a determination is made that the sources of water supply are not adequate, a regional water supply plan must be developed and the region must be designated as a WUCA.[62]

[52] *Id*. at 7-4.
[53] *Id*. at 7-4 – 7-5.
[54] *Id*. at 7-5 – 7-6.
[55] *Id*. at 7-6.
[56] *Id*. at 7-11.
[57] *Id*. at 7-12.
[58] *Id*. at 7-15.
[59] Division of Administrative Hearings, Order Canceling Hearing and Placing Case in Abeyance (Mar. 19, 2021), *available at* https://www.doah.state.fl.us/DocDoc/2021/000791/21000791OCHA-031921-01483343.pdf (last visited Mar. 23, 2021).
[60] Fla. Admin. Code. R. 62-40.210(43).
[61] Fla. Admin. Code. R. 62-40.520(2).
[62] *Id*.

The CFWI Planning Area was identified as a WUCA in the 2015 CFWI RWSP and verified as a WUCA in the 2020 CFWI RWSP.[63] The CFWI includes two existing WUCAs: the Southern WUCA and the Dover/Plant City WUCA.

The Southern WUCA encompasses approximately 5,100 square miles and includes all of Manatee, Sarasota, Hardee, and DeSoto Counties and portions of Hillsborough, Charlotte, Polk, and Highlands Counties.[64] It was established by the SWFWMD in 1992, due to environmental concerns related to groundwater withdrawals from growing demands in the area, which caused depressed aquifer levels.[65]

The Dover/Plant City WUCA was established in 2011, following a historic freeze event in eastern Hillsborough County and western Polk County, when agricultural permittees pumped large quantities of groundwater to protect their crops from the freeze, resulting in declines in aquifer levels.[66] The DEP is currently evaluating both WUCAs to determine whether targets have been achieved.[67]

III. Effect of Proposed Changes:

CFWI Rule Ratification

Section 1 of the bill ratifies Rules 62-41.300, 62-41.301, 62.41.302, 62-41.303, 62-41.304, and 62-41.305, Florida Administrative Code, titled "Central Florida Water Initiative Area," (CFWI) adopted by the Department of Environmental Protection (DEP), for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. The rule, proposed by the DEP and published on November 19, 2020, in the Florida Administrative Register, Vol. 46, No. 226, pages 5019-5025; February 9, 2021, in the Florida Administrative Register, Vol. 47, No. 26, pages 733-734; and March 26, 2021, in the Florida Administrative Register, Vol. 47, N0. 59, pages 1506-1507, consists of rules:

- 62-41.300, entitled CFWI, Scope of Rule;
- 62-41.301, entitled CFWI, Uniform Conditions for Issuance of Permits;
- 62-41.302, entitled CFWI, Supplemental Applicant's Handbook;
- 62-41.303, entitled CFWI, Variances to the Uniform Rules;
- 62-41.304, entitled CFWI, Uniform Process for Setting Minimum Flows and Minimum Water Levels and Water Reservations; and
- 62-31.305, entitled CFWI, Applicability of the Dover/Plant City and Southern Water Use Caution Area Recovery Strategies.

The bill also:

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[63] CFWI, *Regional Water Supply Plan 2020 Planning Document*, 1, *available at* https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Mar. 9, 2021).
[64] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at 7-13, *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).
[65] *Id*; *see also* CFWI, *Regional Water Supply Plan 2020 Planning Document*, 106, *available at* https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Mar. 9, 2021).
[66] *Id*.
[67] *Id*.

- Directs that the ratification section of the bill serves no other purpose and shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Provides that the act does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect or preempt any challenge based on a violation of the legal requirements governing rule adoption.

Declaration of Important State Interest

The bill provides a declaratory statement and determination by the Legislature that the act fulfills an important state interest.

CFWI Rulemaking

Section 2 of the bill revises s. 373.0465, F.S. The bill revises the rulemaking authority to require the DEP, in consultation with the relevant water management districts and the Department of Agriculture and Consumer Services, to adopt uniform rules for application within the CFWI that include:

- A drought application for supplemental irrigation for agricultural uses which is based on a two-in-ten-year rainfall conditions or, if the applicant requests, is based on a five-in-ten-year rainfall condition alone or combined with the two-in-ten-year condition. The applicable water management district may also condition, for information purposes only, consumptive use permits to advise permittees that their annual use of water should be less than the drought condition that is the basis for the allocation or a more severe drought; and
- A process for the applicable water management district to annually examine an agricultural user's five year moving average supplemental irrigation water use against the annual supplemental irrigation needs in the five-in-ten-year rainfall condition beginning no earlier than five years following the effective date of the rules adopted under this section. If this annual examination indicates that the agricultural user's five year moving average use exceeds that needed in such rainfall condition for reasons other than prolonged periods of below average rainfall, the water management district may modify the agricultural user's permit to include an annual supplemental irrigation allocation based on both the amount of supplemental irrigation required during a two-in-ten-year rainfall condition and the amount of supplemental irrigation required during a five-in-ten-year rainfall condition as provided in rules adopted pursuant to this section. In such case, the supplemental irrigation allocation based on a five-in-ten-year rainfall condition shall be valid for only five years unless the agricultural user's five year moving average continues to exceed the amount of supplemental irrigation needed during the five-in-ten-year rainfall condition for reasons other than prolonged periods of drought.

The bill provides that the new rule requirements above may not be construed to limit the ability of the DEP or a water management district to establish different supplemental irrigation requirements as part of an existing or future recovery or prevention strategy adopted pursuant to s. 373.0363, s. 373.042, or s. 373.0421, F.S.

CFWI Grant Program

Section 3 of the bill establishes a grant program within the DEP, subject to appropriation, for the CFWI. The bill requires the DEP, in cooperation with the relevant water management districts, to provide grants for projects within the CFWI Area that will promote alternative water supplies and protect groundwater resources. The bill requires the DEP, in allocating grant program funds, to give priority to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or that are able to demonstrate that a significant financial hardship exists as a result of complying with the rules applicable to the CFWI Area.

Drinking Water State Revolving Loan Fund Priorities

Section 4 of the bill revises the priority system for the Drinking Water State Revolving Loan Fund to give special consideration to projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer under the CFWI.

Effective Date

Section 5 of the bill provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to develop alternative water supply under the new requirements of the rule. The bill includes a legislative finding that the act fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Environmental Protection's (DEP) statement of estimated regulatory costs, the estimated transactional cost of the proposed rule over the next five years will be $18.6 million to permittees and applicants.[68]

C. Government Sector Impact:

According to the DEP's statement of estimated regulatory costs, the estimated transactional cost of the proposed rule over the next five years will be $18.6 million to permittees and applicants.[69] The estimated cost to the St. Johns River, Southwest Florida, and South Florida Water Management Districts of implementing the proposed rule is $637,000 and the estimated cost of monitoring and enforcing the proposed rule is $64,000.[70]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 373.0465 and 403.8532.

The bill creates section 373.0466 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute:

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[68] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2 - ES-4, *available at* https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Mar. 9, 2021).
[69] *Id*.
[70] *Id*. at ES-6.

- Revises the rule publication date to reflect the Notice of Change published on March 26, 2021.
- Deletes the report to the Legislature required in the underlying bill which addresses practical and economic barriers to implementation of the Central Florida Water Initiative rules.
- Revises the supplemental irrigation requirement allocation for agricultural uses and the process for examining an agricultural user's supplemental irrigation water use required to be included in the uniform rules for the Central Florida Water Initiative Area.
- Authorizes the applicable water management district to condition and modify consumptive use permits under specified circumstances.
- Revises the grant program created under the bill to include and prioritize certain projects.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 133

and insert:

Water Initiative Area," as published on November 19, 2020, in the Florida Administrative Register, Vol. 46, No. 226, pages 5019-5025; February 9, 2021, in the Florida Administrative Register, Vol. 47, No. 26, pages 733-734; and March 26, 2021, in the Florida Administrative Register, Vol. 47, No. 59, pages 1506-1507.

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(2) This section serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes a law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This section does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This section does not cure any rulemaking defect or preempt any challenge based on a violation of the legal requirements governing the adoption of any rule cited.

(3) The Legislature determines and declares that this section fulfills an important state interest.

Section 2. Paragraph (d) of subsection (2) of section 373.0465, Florida Statutes, is amended to read:

373.0465 Central Florida Water Initiative.—

(2)

(d) The department, in consultation with the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, and the Department of Agriculture and Consumer Services, shall adopt uniform rules for application within the Central Florida Water Initiative Area that include:

1. A single, uniform definition of the term "harmful to the water resources" consistent with the term's usage in s. 373.219;

2. A single method for calculating residential per capita water use;

3. A single process for permit reviews;

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4. A single, consistent process, as appropriate, to set minimum flows and minimum water levels and water reservations;

5. A goal for residential per capita water use for each consumptive use permit; ~~and~~

6. An annual conservation goal for each consumptive use permit consistent with the regional water supply plan;~~.~~

7. A drought allocation for supplemental irrigation for agricultural uses which is based on a 2-in-10-year rainfall condition or, if the applicant so requests, is based on a 5-in-10-year rainfall condition alone or combined with the 2-in-10-year condition. The applicable water management district may also condition, for information only purposes, consumptive use permits to advise permittees that their annual use of water should be less than the drought allocation in all years except for the drought condition that is the basis for the allocation or a more severe drought; and

8. A process for the applicable water management district to annually examine an agricultural user’s 5-year moving average supplemental irrigation water use against the annual supplemental irrigation needs in the 5-in-10-year rainfall condition beginning no earlier than 5 years following the effective date of the rules adopted under this section. If this annual examination indicates that the agricultural user’s 5-year moving average use exceeds that needed in such rainfall condition for reasons other than prolonged periods of below average rainfall, the water management district may modify the agricultural user’s permit to include an annual supplemental irrigation allocation based on both the amount of supplemental irrigation required during a 2-in-10-year rainfall condition and

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the amount of supplemental irrigation required during a 5-in-10-year rainfall condition as provided in rules adopted pursuant to this section. In such case, the supplemental irrigation allocation based on the 5-in-10-year rainfall condition shall be valid for only 5 years unless the agricultural user's 5-year moving average use continues to exceed the amount of supplemental irrigation needed during a 5-in-10-year rainfall condition for reasons other than prolonged periods of drought.

Subparagraphs 7. and 8. may not be construed to limit the ability of the department or a water management district to establish different supplemental irrigation requirements as part of an existing or future recovery or prevention strategy adopted pursuant to s. 373.0363, s. 373.042, or s. 373.0421. The uniform rules must include existing recovery strategies within the Central Florida Water Initiative Area adopted before July 1, 2016. The department may grant variances to the uniform rules if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical.

Section 3. Section 373.0466, Florida Statutes, is created to read:

373.0466 Central Florida Water Initiative grant program.—Subject to appropriation, a grant program for the Central Florida Water Initiative is established within the Department of Environmental Protection.

(1) The department, in cooperation with the relevant water management districts, shall provide grants for projects that benefit the Central Florida Water Initiative Area which promote

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alternative water supplies and protect groundwater resources.

(2) In allocating such funds, priority must be given to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or are able to demonstrate that a significant financial hardship exists as a result of complying with rules applicable to the Central Florida Water Initiative Area.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 10 - 29

and insert:

providing a declaration of important state interest; amending s. 373.0465, F.S.; requiring the department, in consultation with specified water management districts, to adopt rules that include an annual drought allocation for supplemental irrigation for agricultural uses and a process for examining an agricultural user's supplemental irrigation needs as weighed against certain factors; providing for the applicability of specified rules to areas with certain existing recovery strategies; creating s. 373.0466, F.S.; establishing, subject to appropriation, a Central Florida Water Initiative grant program within the department; requiring the department, in cooperation with the relevant water management districts, to distribute appropriated funds for certain projects that benefit the Central Florida Water Initiative Area;

By the Committee on Environment and Natural Resources

592-03181-21 20217062__

A bill to be entitled

An act relating to the Central Florida Water Initiative; ratifying specified rules relating to the Central Florida Water Initiative, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; requiring the Department of Environmental Protection to provide reports relating to implementation of the requirements of the Central Florida Water Initiative rules to the Legislature by specified dates; providing a declaration of important state interest; amending s. 373.0465, F.S.; requiring the department, in consultation with specified water management districts, to adopt rules that include an annual supplemental irrigation requirement allocation for agricultural uses and a process for examining an agriculture user's average annual supplemental irrigation needs; providing for the applicability of specified rules to areas with certain existing recovery strategies; creating s. 373.0466, F.S.; establishing, subject to appropriation, a Central Florida Water Initiative grant program within the department; requiring the department, in cooperation with the relevant water management districts, to distribute appropriated funds for certain projects within the Central Florida Water Initiative Area;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03181-21 20217062__

providing requirements for the distribution; amending s. 403.8532, F.S.; requiring the department to give funding priority to certain projects relating to the Central Florida Water Initiative; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rules 62-41.300, 62-41.301, 62.41.302, 62-41.303, 62-41.304, and 62-41.305, Florida Administrative Code, titled "Central Florida Water Initiative Area," as published on February 9, 2021, in the Florida Administrative Register, Vol. 47, No. 26, pages 733-734.

(2) This section serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes a law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This section does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This section does not cure any rulemaking defect or preempt any challenge based on a violation of the legal requirements governing the adoption of any rule cited.

(3) By December 31, 2025, and December 31, 2030, the Department of Environmental Protection shall provide a report to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the President of the Senate and the Speaker of the House of Representatives which details methods the department has used to address practical and economic barriers to implementing the requirements of the Central Florida Water Initiative rules, including, but not limited to, variances, offsets, credits, and financial incentives. The report must include a list of the recipients of any such accommodations and the hardship addressed by each accommodation.

(4) The Legislature determines and declares that this section fulfills an important state interest.

Section 2. Paragraph (d) of subsection (2) of section 373.0465, Florida Statutes, is amended to read:

373.0465 Central Florida Water Initiative.—

(2)

(d) The department, in consultation with the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, and the Department of Agriculture and Consumer Services, shall adopt uniform rules for application within the Central Florida Water Initiative Area that include:

1. A single, uniform definition of the term "harmful to the water resources" consistent with the term's usage in s. 373.219;

2. A single method for calculating residential per capita water use;

3. A single process for permit reviews;

4. A single, consistent process, as appropriate, to set minimum flows and minimum water levels and water reservations;

5. A goal for residential per capita water use for each consumptive use permit; ~~and~~

6. An annual conservation goal for each consumptive use permit consistent with the regional water supply plan;

7. An annual supplemental irrigation requirement allocation for agricultural uses based on a 2-in-10-year drought condition, or a more frequently occurring drought condition if the applicant so requests; and

8. A process for the applicable water management district to examine an agriculture user's average annual supplemental irrigation water use over 5-year periods against the annual supplemental irrigation needs in the 5-in-10-year rainfall condition. If this examination indicates that the agricultural user's average annual use exceeds that needed in such rainfall condition for reasons other than prolonged periods of below average rainfall, the water management district may request that the agricultural user explain the reason for the exceedance and what measures that user will employ to reduce such future average annual water use to be no greater than that needed in the 5-in-10-year rainfall condition. However, nothing in this process shall be identified as an allocation.

Subparagraphs 7. and 8. do not apply to areas where existing recovery strategies within the Central Florida Water Initiative Area adopted before July 1, 2016, contain supplemental irrigation allocation requirements. The uniform rules must include existing recovery strategies within the Central Florida Water Initiative Area adopted before July 1, 2016. The department may grant variances to the uniform rules if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical.

Section 3. Section 373.0466, Florida Statutes, is created to read:

373.0466 Central Florida Water Initiative Grant Program.—Subject to appropriation, a grant program for the Central Florida Water Initiative is established within the Department of Environmental Protection.

(1) The department, in cooperation with the relevant water management districts, shall provide grants for projects within the Central Florida Water Initiative Area which promote alternative water supplies and protect groundwater resources.

(2) In allocating such funds, priority must be given to projects that use reclaimed water, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or are able to demonstrate that a significant financial hardship exists as a result of complying with rules applicable to the Central Florida Water Initiative Area.

Section 4. Paragraph (a) of subsection (9) of section 403.8532, Florida Statutes, is amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(9) The department may adopt rules regarding the procedural and contractual relationship between the department and the corporation under s. 403.1837 and to carry out the purposes of this section and the federal Safe Drinking Water Act, as amended. Such rules shall:

(a) Set forth a priority system for loans based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and

affordability. The priority system must ~~shall~~ give special consideration to:

1. Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;

2. Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; ~~and~~

3. Projects that contribute to the sustainability of regional water sources; and

4. Projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan Aquifer, pursuant to s. 373.0465.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 25, 2021

I respectfully request that **Senate Bill 7062**, relating to the **Central Florida Water Initiative**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Committee Code Not Found

BILL:	CS/SB 7076
INTRODUCER:	Appropriations Committee and Regulated Industries Committee
SUBJECT:	Gaming Enforcement
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7076 establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including the creation of the Florida Gaming Control Commission, and granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs.

CS/SB 7078, relating to Public Records and Public Meeting Exemptions/Florida Gaming Control Commission, is linked to this bill.

The bill will have an indeterminate fiscal impact on state government. *See* Section V, Fiscal Impact Statement.

Except as otherwise expressly provided in the bill, the bill takes effect July 1, 2021.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

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[1] *See* s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S.
[5] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] Section 849.086, F.S. *See* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also*, *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[12] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[19]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[20] two jai alai permitholders,[21] one limited thoroughbred permitholder,[22] and five quarter horse permitholders.[23]

Issuance of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

[13] *See* s. 849.085, F.S.
[14] *See* s. 849.0931, F.S.
[15] *See* s. 849.0935, F.S.
[16] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] *See* s. 849.141, F.S.
[18] *See* s. 546.10, F.S.
[19] *See* the 89th Annual Report for Fiscal Year 2019-2020 issued by the division at: AnnualReport-2019-2020--89th--20210224.pdf at page 5 (equivalent to page 3 of the printed Annual Report) (last visited Apr. 13, 2021).
[20] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[21] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[22] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.
[23] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 13, 2021).

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[24]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[25]

Pursuant to s. 550.054(9)(b), F.S., the division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Sections 551.104(3), 551.116, and 551.121, F.S., address slot machine gaming operations, and:

- Restrict the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;
- Limit slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays; and
- Prohibit the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.

[24] *See* s. 550.054(2), F.S.
[25] *See* s. 550.054(9)(a), F.S.

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[26] In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[27] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[28] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[29]

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[30] Such games must be played in a non-banking manner,[31] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[32]

Gaming Compacts with Seminole Tribe of Florida

In 2010, a gaming compact (2010 Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.[33] The 2010 Compact authorizes the Seminole Tribe to conduct certain Class III gaming for a 20-year period, and to offer banked card games for five years, through July 31, 2015. The 2010 Compact provides that any expanded gaming (beyond what is specifically acknowledged) allowed in the state relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.

Pursuant to s. 285.710(13), F.S., it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 Compact. The 2010 Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties.

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[26] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[27] *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 13, 2021).
[28] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[29] Section 849.086(7)(b), F.S.
[30] *See* s. 849.086(2)(a), F.S.
[31] *Id.*
[32] *See* s. 849.086(13)(d), F.S.
[33] Ch. 2010-29, Laws of Fla.

Section 285.710(9), F.S., provides that money received by the state from a gaming compact is to be deposited into the General Revenue Fund and provides for the distribution of three percent of the amount paid by the Seminole Tribe to the specified local governments. The percentage of the local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

The Seminole Tribe notified the state in May 2019, that it was discontinuing revenue share payments in accordance with the 2010 Compact, based on the results of federal litigation. The 2010 Compact remains in effect through July 31, 2030.

As designated in s. 285.710, F.S., the division of the DBPR carries out the state's oversight responsibilities under the 2010 Compact.

Class III Gaming under the Indian Gaming Regulatory Act

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[34] The 2010 Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[35]

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;
- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack (21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[36]

Amendment 3 to the State Constitution (Voter Control of Gambling)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified in the State Constitution as article X, section 30).[37]

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[34] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

[35] *See* paragraph F of Part III of the 2010 Compact. The Seminole Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Apr. 13, 2021).

[36] *See* 25 U.S.C. s. 2703.

[37] See the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Apr. 13, 2021).

Amendment 3 requires a vote proposed by citizen's initiative to amend the State Constitution pursuant to Article XI, section 3 to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 as:

- Any of the "types of games typically found in casinos" and that are:
  - Within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq; and
  - In 25 [Code of Federal Regulations] (C.F.R.) § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Section (b) of Amendment 3 provides that casino gambling includes, but is not limited to, the following:

- Any house banking game, including but not limited to, card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 [of the State Constitution, relating to state operated lotteries], whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

Section (b) of Amendment 3 also further defines "casino gambling" as including the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under [the Indian Gaming Regulatory Act].

Under Amendment 3, the term casino "casino gambling" does not include:

> …pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of [Amendment 3], "gambling" and "gaming" are synonymous.

Additionally, Amendment 3 provides:

> Nothing in [Amendment 3] shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing in [Amendment 3] shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to

> compacts executed by the state and Native American tribes pursuant to [the Indian Gaming Regulatory Act].

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given "the fullest possible force and effect."

United States Gaming Regulatory Agencies (Gaming Commissions)

The National Council of Legislators from Gaming States (NCLGS) is an organization of state lawmakers which meets to discuss gaming issues, and includes committees on lotteries, pari-mutuels, casinos, responsible gaming, Indian gaming issues, and telephone/internet wagering.[38]

Regulatory resources cited by NCLGS include the:

- Association of Racing Commissioners International, Inc. (ARCI), a non-profit corporation founded in the 1930's to uphold uniform pari-mutuel racing rules and practice, serves as a resource for pari-mutuel rulings, including equine medication issues. The ARCI works to preserve the integrity of horseracing, jai-alai, and dog-racing.[39]
- North American Gaming Regulators Association (NAGRA), created in 1984, includes as members federal, state, local, tribal, and provincial government gaming regulators.[40]
- National Indian Gaming Commission (NIGC), established under the Indian Gaming Regulatory Act, is an independent federal regulatory agency charged with the regulation of Indian gaming on Indian land, specifically to protect tribes from corrupt influences, including organized crime, to make sure it is tribes that are receiving the benefit of Indian gaming, and to ensure that fair playing practices that protect tribes and players are adhered to. The NIGC maintains a list of gaming tribes on its site, searchable by tribe or state.[41]
- International Association of Gaming Regulators (IAGR), which is an organization of international government agencies responsible for the regulation of gaming in their home jurisdictions concerned with sharing information and resources among each other on issues relevant to the regulation of gaming.[42]

According to NAGRA, there are approximately 75 gaming regulatory agencies in the United States and Canada, including lottery commissions, pari-mutuel commissions, racing commissions, casino control commissions, and gambling control commissions.[43] Two of the most well-known gaming control entities are the Nevada Gaming Commission and Gaming Control Board,[44] and the New Jersey Casino Control Commission.[45]

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[38] *See* https://www.nclgs.org/index.php/about-us (last visited Apr. 13, 2021).
[39] *See* http://arci.com/ (last visited Apr. 13, 2021).
[40] *See* https://www.nagra.org/default.aspx (last visited Apr. 13, 2021).
[41] *See* https://www.nigc.gov/ (last visited Apr. 13, 2021).
[42] *See* https://www.iagr.org/ (last visited Apr. 13, 2021).
[43] See links to the numerous state and province gaming regulatory agencies, commissions, control boards, and lotteries at https://www.nagra.org/State-and-Province-Gaming-Regulatory-Agencies (last visited Apr. 13, 2021).
[44] *See* https://gaming.nv.gov/ (last visited Apr. 13, 2021).
[45] *See* https://www.nj.gov/casinos/ (last visited Apr. 13, 2021).

In Nevada, members of the Board and Commission are appointed by the Governor of Nevada to four-year terms. In addition to other requirements, each member must be a resident of Nevada and no member may hold elective office while serving. Members are also not permitted to possess any direct pecuniary interest in gaming activities while serving in their capacity as members.[46]

The New Jersey Casino Control Commission (NJ commission) is the independent licensing authority of the state's casinos[47] and key employees[48], comprised of up to three members, appointed by the governor and confirmed by the state senate.[49] As a quasi-judicial panel, the NJ commission conducts hearings[50] on contested casino key employee license matters, and appeals[51] from decisions and penalties imposed by the state's division of gaming enforcement. Commissioners serve staggered, five-year terms and may only be removed for cause.[52] The commission notes:

> The success and ongoing viability of the gaming industry remains inextricably linked to the public's confidence that the State of New Jersey will ensure that people in the industry possess good character, honesty and integrity. Stewardship over that public confidence is a principal responsibility of the Commission and its Chairman.

The NJ commission's regulatory efforts through the years have helped create an environment in which New Jersey's casinos can prosper and from which the citizens of New Jersey benefit. With proper regulatory controls, the industry serves as a catalyst to create economic benefits for Atlantic City, the Greater Atlantic City Region, and the entire State of New Jersey.[53]

III. Effect of Proposed Changes:

Section 1 amends s. 16.56(1)(a), F.S., relating to the Office of Statewide Prosecution in the Department of Legal Affairs (office), to authorize the office to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation (DBPR), the Department of the Lottery, the Gaming Control Commission, or the Seminole Tribe of Florida.

Section 2 creates s. 16.71, F.S., to establish a Gaming Control Commission (commission), to be administratively housed in the Department Legal Affairs, Office of the Attorney General. The commission is a separate budget entity and serves as the agency head for all purposes. The

[46] *See* the Board Information Packet at p. 3, available at https://gaming.nv.gov/modules/showdocument.aspx?documentid=14995 (last visited Apr. 13, 2021).
[47] *See* https://www.nj.gov/casinos/services/info/index.html (last visited Apr. 13, 2021).
[48] *See* https://www.nj.gov/casinos/services/licensing/index.html (last visited Apr. 13, 2021).
[49] *See* https://www.nj.gov/casinos/about/overview/ (last visited Apr. 13, 2021).
[50] *See* https://www.nj.gov/casinos/services/hearings/index.html (last visited Apr. 13, 2021).
[51] *Id.*
[52] *See* https://www.nj.gov/casinos/about/overview/ (last visited Apr. 13, 2021).
[53] *Id.*

commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including but not limited to personnel, purchasing transactions involving real or personal property, and budget matters.

Under the bill, the commission is a criminal justice agency, as defined in s. 119.011(4), F.S., which states a criminal justice agency is:

- Any law enforcement agency, court, or prosecutor;
- Any other agency charged by law with criminal law enforcement duties;
- Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or
- The Department of Corrections.

Commissioners

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members, at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years. After initial appointments to create staggered terms, all members will serve four year terms, but may not serve more than 12 years. The salary of a member is the same as a commissioner serving on the Public Service Commission (approximately $136,000 annually). Vacancies must be filled for the unexpired portion of a term.

A person is ineligible for appointment to the commission if they have been convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction of:

- A felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud within the 10 years immediately preceding such appointment; or
- A forcible felony or a sexual predator crime.

A person is also ineligible if they have had a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), or a gaming license issued by any other jurisdiction denied, suspended, or revoked.

The Governor may remove a member for cause, including, but not limited to, circumstances in which the member:

- Commits gross misconduct or malfeasance in office;
- Substantially neglects or is unable to discharge duties as a member; or
- Is convicted of or found guilty of a felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud.

The Governor may remove a member without cause subject to approval by a majority of the Senate. Upon the resignation or removal from office of a member, the Governor must appoint a successor, subject to confirmation of the Senate, to serve the remainder of the unfinished term.

A person may not be appointed by the Governor to the commission until a background investigation of the person is conducted by the Florida Department of Law Enforcement (FDLE) and the investigation is forwarded to the Governor.

A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:

- Any person that holds a permit or license issued under chs. 550, 551, or 849, F.S., an officer, official, or employee of such permitholder or licensee, or an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee.
- Any officer, official, employee, contractor, or subcontractor of a tribe that has a valid and active compact with the state or an entity employed, licensed, or contracted by such tribe, or an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such entity.
- Any registered lobbyist for the executive or legislative branch that represents any person or entity identified above.

The commission must appoint an executive director, no later than July 1, 2022, to supervise, direct, coordinate, and administer the activities needed to fulfill the commission's responsibilities. The executive director serves at the pleasure of the commission, may not be a commissioner, and must reside in and maintain the commission's headquarters in Leon County. Similarly, the executive director's salary is the same as a commissioner serving on the Public Service Commission (approximately $136,000 annually).

Commission Employees

All commission employees, except the executive director and attorneys, are subject to part II of ch. 110, F.S., relating to the Career Service System, which provides uniform personnel rules, guidelines, records, and reports related to employees and positions in career service developed by the Department of Management Services in consultation with affected agencies.

The commission's executive director is subject to part III of ch. 110, F.S., relating to the Senior Management Service System. Section 110.401, F.S., provides:

> This part [III] creates a uniform system for attracting, retaining, and developing highly competent senior-level managers at the highest executive-management-level agency positions in order for the highly complex programs and agencies of state government to function effectively, efficiently, and productively. The Legislature recognizes that senior-level management is an established profession and that the public interest is best served by developing and refining the management skills of its Senior

> Management Service employees. Accordingly, training and management-development programs are regarded as a major administrative function within agencies.

Attorneys employed by the commission are subject to part V of ch. 110, F.S., relating to the Selected Exempt Service System. Section 110.601, F.S., provides:

> This part [V] creates a system of personnel management the purpose of which is to deliver high-quality performance by those employees in select exempt classifications by facilitating the state's ability to attract and retain qualified personnel in these positions, while also providing sufficient management flexibility to ensure that the workforce is responsive to agency needs. The Legislature recognizes that the public interest is best served by developing and refining the technical and managerial skills of its Selected Exempt Service employees, and, to this end, technical training and management development programs are regarded as a major administrative function within agencies.

For a period of two years immediately preceding appointment to, or employment with, the commission, and while appointed or employed with the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S.,[54] of such permitholder or licensee;
- Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such entity; or
- Be a registered lobbyist for the executive or legislative branch, except while a commissioner when officially representing the commission.

Persons who fail to meet or violate the above requirements are ineligible for appointment to or employment with the commission, or if, within the two years immediately preceding such appointment or employment, he or she has solicited or accepted employment with; acquired any direct or indirect interest in; has any direct or indirect business association, partnership, or financial relationship with; or is a relative of, any person or entity who is an applicant, licensee, or registrant with the commission or the Division of Pari-mutuel Wagering (division) in the DBPR.

The term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law,

[54] Section 550.002, F.S., defines the term "ultimate equitable owner" to mean "a natural person who, directly or indirectly, owns or controls five percent or more of an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of whether such person owns or controls such ownership through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof."

daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

A person is ineligible for employment with the commission if:
- Convicted of a felony within five years of the date of application;
- Convicted of a misdemeanor within five years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or
- Dismissed from prior employment for gross misconduct or incompetence or if he or she intentionally made a false statement concerning a material fact in connection with his or her application to the commission.

If an employee of the commission is charged with a felony while employed by the commission, the commission must suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee is charged with a misdemeanor while employed, the commission must suspend the employee, with or without pay, and may terminate employment upon conviction if the commission determines that the offense bears a close relationship to the duties and responsibilities of the position held with the commission.

A commissioner or an employee must notify the commission within three calendar days of arrest for any offense. In addition, a commissioner or an employee must provide detailed written notice of the circumstances to the commission if the member or employee is indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:
- A misdemeanor involving gambling, dishonesty, theft, or fraud;
- A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which substantially corresponds to a misdemeanor in Florida; or
- A felony under the laws of Florida or any other state, the United States, or any other jurisdiction.

All employees authorized by the commission must have access to and the right to inspect premises licensed by the division, to collect and remit taxes, and to examine the books and records of all licensees and permitholders. The authorized employees must require strict compliance by each licensee and permitholder with Florida law relating to such licenses and permits.

Restrictions After Appointment or Employment

For the two years immediately following the date of resignation or termination from the commission, a commissioner or an employee may not:
- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities), or ch. 849, F.S., (Gambling), be an officer, official, or employee of such permitholder or licensee, or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee.
- Appear before the commission representing any client or industry regulated by the commission.

- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

In addition, for the two years immediately following the date of resignation or termination from the commission, a commissioner may not accept employment by or compensation from:

- A business which, directly or indirectly, owns or controls a person regulated by the commission.
- A person regulated by the commission;
- A business entity which, directly or indirectly, is an affiliate or subsidiary of a person regulated by the commission, or
- A business entity or trade association that has been a party to a commission proceeding within the two years preceding the member's resignation or termination of service on the commission.

Violations are subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317, F.S., and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

Commission Law Enforcement Officers

Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer under s. 943.13, F.S., and be certified as a law enforcement officer by the Department of Law Enforcement under ch. 943, F.S. Upon certification, each law enforcement officer has statewide jurisdiction and is subject to and has the same authority provided in ch. 901, F.S., for law enforcement officers generally. Each officer also has arrest authority pursuant to s. 901.15, F.S., and possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The responsibilities of each officer are:

- Primarily, to investigate, enforce, and prosecute, throughout the state, violations and violators of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), and the rules adopted thereunder, as well as other state laws that the division officers or all state law enforcement officers are specifically authorized to enforce; and
- Secondarily, to enforce all other state laws, provided that the enforcement is incidental to exercising the officer's primary responsibilities described above.

The bill provides an officer may exercise the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff's office or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

Seizure of Contraband

The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2., F.S., which includes any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

The commission is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and to adopt rules and implement such authorization.

Commission's Powers and Duties

The commission must meet at the call of the chair, or at the request of a majority (three members constitute a quorum) of its members, and:

- Exercise all state regulatory and executive powers respecting gambling, including, without limitation, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the state constitution or law, but not lottery games operated by the state.
- Establish procedures consistent with ch. 120, F.S., (Administrative Procedure Act) to ensure adequate due process in exercising its regulatory and executive functions.
- Ensure that Florida law is not interpreted in any manner that expands the activities authorized in ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review any matter within the scope of the jurisdiction of the division.
- Review the regulation of licensees, permitholders, or persons regulated by the division and the procedures used by the division to implement and enforce the law.
- Review the procedures of the division used to qualify applicants for a license, permit, or registration.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature.

The bill authorizes the commission to subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the commission's duties or powers. The commission may meet in any city or county of the state.

The commission chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents from an abuse or misinterpretation of law that may expand gaming or gambling in this state. The chair may direct that a hearing be held before

one member or a panel of less than the full commission, and must adopt rules to provide for the filing of a report for hearings held by a single commissioner or a panel and prescribe the requirements for the content and filing of such reports.

The commission may submit written recommendations to enhance the enforcement of Florida gaming laws to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and is authorized to contract or consult with other state agencies as may be needed to discharge its duties.

The commission is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include all of the following:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new pending rules.
- Actions of the commission relative to the implementation and administration of this section.
- State revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering must be further lineated by the class of license.
- Performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- A summary of disciplinary actions taken by the commission.
- Receipts and disbursements of the commission,
- A summary of actions taken and investigations conducted by the commission.
- Any additional information and recommendations that the commission considers useful or that the Governor, the President of the Senate, or the Speaker of the House of Representatives requests.

The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing must conform to state law. The commission must develop annual budget requests pursuant to ch. 216, F.S., relating to Planning and Budgeting; while a budget is not subject to change by the Department of Legal Affairs or the Attorney General, it must be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

All rules adopted pursuant to ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), prior to the effective date of the act are preserved and remain in full force and effect.

The commission must exercise all of the regulatory and executive powers granted to it, and apply, construe, and interpret all laws and administrative rules, in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3), F.S.

The bill requires the commission to annually, prior to the issuance of an operating license, confirm that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require, that the permitholder continues to possess the qualifications prescribed by ch. 550, F.S., and that the permit has not been disapproved by voters in an election.

Section 3 creates s. 16.712, F.S., related to commission background screening. This section provides that prior to serving on the commission or being employed by the commission, a person must submit their fingerprints for a fingerprint-based search by the FDLE and the Federal Bureau of the Investigation (FBI) databases for state and national criminal arrest records. If the person is a foreign national, he or she must also submit any necessary documentation to allow the commission to conduct a criminal history records check in the person's home country.

The FDLE must retain and enroll all such submitted fingerprints in the national retained print arrest notification program at the FBI when the FDLE begins participation in the program. The commission must notify the FDLE when any person whose fingerprints have been retained is no longer a commissioner or employee of the commission. The costs of fingerprint processing, including the cost for retaining fingerprints, will be borne by the commission.

Section 4 creates s. 16.715, F.S., to provide standards of conduct for commissioners and employees and prohibit ex parte communications. Commissioners are public officers, and employees are public employees, subject to the Code of Ethics for Public Officers and Employees set forth in part III of ch. 112, F.S., (Code of Ethics). Commissioners and employees are also governed by standards of conduct and provisions limiting ex parte communications, as provided in the bill, similar to the standards applicable to commissioners serving on the Public Service Commission. Many of the prohibitions involve activities with persons regulated by the commission (regulated entity).

Standards of Conduct

Under the bill, a commissioner or a commission employee:

- May not accept anything from any business entity which, either directly or indirectly, owns or controls any regulated entity, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May attend conferences and associated meals and events that are generally available to all conference participants without payment of fees in addition to the conference fee.
- May attend meetings, meals, or events while attending a conference, that are not sponsored, in whole or in part, by any representative of any regulated entity and that are limited to commissioners only, committee members, or speakers, if the commissioner is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference;
- May attend a conference for which conference participants who are employed by a regulated entity have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee, and that is sponsored, in whole or in part, by a regulated entity.
    - If during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense; and

  - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.
- May not act in an unprofessional manner at any time during the performance of his or her official duties.
- Must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- May not directly or indirectly, through staff or other means, solicit anything of value from:
  - Any regulated entity;
  - Any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any regulated entity; or
  - Any party appearing in a proceeding considered by the commission in the last two years.
- Must annually complete at least four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state; this requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

While employed, and for two years after service or employment with the commission, a commissioner or employee:

- May not accept any form of employment with or engage in any business activity with:
  - Any business entity which, either directly or indirectly, owns or controls any regulated entity:
  - Any regulated entity; or
  - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May not have any financial interest, other than shares in a mutual fund, in:
  - Any regulated entity;
  - Any business entity which, either directly or indirectly, owns or controls any regulated entity; or
  - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- Must immediately sell any prohibited financial interest; if the commissioner, the employee, or a relative (defined in s. 16.71(2)(e), F.S., created by the bill) living in the same household as a commissioner or an employee acquires such prohibited financial interest during his or her term of office as a result of events or actions beyond the commissioner's, the employee's, or the relative's control.
- May not accept anything from a party in a proceeding currently pending before the commission.
  - If, during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.
  - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.

- May not personally represent before the commission another person or entity for compensation, unless employed by another state agency.

Under the bill, a commissioner:

- May not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.
- May not make any public comment, during his or her term of office, regarding the merits of any proceeding under ss. 120.569 and 120.57, F.S., relating to decisions affecting substantial interests and hearings involving disputed issues of material fact, currently pending before the commission.
- May not lobby the Governor or any state agency, members or employees or the Legislature, or any county or municipal government or governmental agency, except to represent the commission in an official capacity.

The above standards of conduct may be more restrictive than the Code of Ethics, but may not be construed to contravene that code's restrictions. In the event of a conflict, the more restrictive provision applies.

The Commission on Ethics must accept and investigate any alleged violations of the above standards of conduct pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S. The Commission on Ethics must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics.

A commissioner may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), F.S., regarding the standards of conduct or the prohibitions set forth in ss. 16.71 and 16.715, F.S., created by the bill.

A commissioner, commission employee, or a relative living in the same household may not place a wager in any facility licensed by the commission or operated by an Indian tribe that has a valid and active compact with the state.

Ex Parte Communications

The bill defines "ex parte communications" as any communication that is:

- Not served on all parties to a proceeding, if the communication is written or printed or in electronic form; or
- Made without adequate notice to the parties and without an opportunity for the parties to be present and heard, if it is an oral communication.

A commissioner may not initiate or consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission, or

that the commissioner knows or reasonably expects will be filed with the commission within 180 days after the communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. These prohibitions do not apply to commission staff.

If a commissioner knowingly receives a prohibited ex parte communication relative to a proceeding to which the commissioner is assigned, the commissioner must place on the record of the proceeding copies of:

- All written communications received;
- All written responses to the communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commissioner must give written notice to all parties to the ex parte communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if the commissioner deems it necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the chair must substitute another commissioner for the proceeding.

Any individual who makes an ex parte communication must submit to the commission a written statement describing the nature of such communication, to include:

- The name of the person making the communication;
- The name of the commissioner or commissioners receiving the communication;
- Copies of all written communications made and all written responses to such communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commission must place on the record of a proceeding all such communications. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of such communication, is subject to removal and may be assessed a civil penalty not to exceed $5,000.

The Commission on Ethics must receive and investigate sworn complaints of violations of the standards of conduct or prohibitions against ex parte communications, pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S.

If the Commission on Ethics finds that there has been a violation of the standards of conduct or prohibitions against ex parte communications by a commissioner, it must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics, and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards is subsection. The Governor must remove from office a

commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications, after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated the standards of conduct or the prohibitions against ex parte communications in a separate matter.

If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties for such violations, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

If, during the course of an investigation by the Commission on Ethics into an alleged violation of the standards of conduct or prohibitions against ex parte communications, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before that commission for a period of two years. **Section 5** amends s. 285.710, F.S., effective July 1, 2022, to provide that the commission is the state compliance agency designated as the state agency with authority to carry out the state's oversight responsibilities under the 2010 Compact with the Seminole Tribe, rather than the division.

Section 6 provides for a Type Two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers and duties, personnel, administrative rules, and funding of the DBPR, relating to the regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts. The Department of Legal Affairs will provide administrative support to the commission until the transfer is complete, but the commission is not subject to control, supervision, or direction by the Department of Legal Affairs, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. Those employees transferred from the DBPR to the commission retain and transfer accrued leave balances.

Section 7 amends s. 932.701, F.S., to include in the definition of "contraband article" certain gaming related terms, including, equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, and Internet domain name. This section also updates the violations in this section to include violations of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling).

Section 8 directs the Division of Law Revision to prepare a reviser's bill to conform the Florida Statutes to the Type Two transfer described in Section 6.

Section 9 provides that except as otherwise expressly provided in the bill, the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill establishes the Florida Gaming Control Commission (commission) within the Department of Legal Affairs, Office of the Attorney General. Estimated costs total $1 million in Fiscal Year 2021-2022, for the commission to begin operations and prepare for the Type Two transfer to take effect on July 1, 2022. The Department of Legal Affairs will submit a Legislative Budget Request for specific needs of the commission for Fiscal Year 2022-2023.

The Pari-Mutuel Wagering Trust Fund (trust fund) will transfer as part of the Type Two transfer. Projected revenues of the trust fund are sufficient to support the cost of the commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 285.710, and 932.701.

This bill creates the following sections of the Florida Statutes: 16.71, 16.712, and 16.715.

The bill creates undesignated sections of the Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute:

- Provides the Gaming Control Commission is a criminal justice agency under Florida law;
- Requires three of the commissioners to have a minimum 10 years' experience in the fields of law enforcement, accounting, or law;
- Provides that certain persons are disqualified from appointment as a commission member;
- Authorizes the Governor to remove commissioners for cause, such as misconduct, neglect, or conviction of a crime directly related to gambling, dishonesty, theft, or fraud;
- Imposes pre- and post- employment restrictions for commissioners and commission employees; similar to restrictions for Public Service Commission commissioners and employees, as well as background screening and fingerprinting;
- Authorizes the commission and its law enforcement officers to seize all contraband, in compliance with Florida law; and
- Requires the commission to provide a specified and detailed report to the Governor, President of the Senate President, and Speaker of the House of Representatives.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The

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office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act

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of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; ~~or~~

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787; or

16. Any violation of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Florida Gaming Control Commission, or the Seminole Tribe of Florida;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Section 16.71, Florida Statutes, is created to read:

16.71 Florida Gaming Control Commission.—

(1)(a) There is created within the Department of Legal Affairs, Office of the Attorney General, a Florida Gaming Control Commission, hereinafter referred to as the commission. The commission shall be a separate budget entity and the agency head for all purposes. The Florida Gaming Control Commission is a criminal justice agency as defined in s. 119.011.

(b) The commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including, but not limited to, personnel, purchasing transactions involving real or personal property, and budgetary matters.

(2)(a) The commission shall consist of five members appointed by the Governor, and subject to confirmation by the Senate, for terms of 4 years. Members of the commission must be appointed by January 1, 2022.

1. For the purpose of providing staggered terms, of the initial appointments, 2 members shall be appointed to 4-year terms, 2 members shall be appointed to 3-year terms, and 1 member shall be appointed to a 2-year term.

2. Of the five members at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years.

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3. Of the five members, each appellate district shall have one member appointed from the district to the commission who is a resident of the district at the time of the original appointment.

4. A person may not be appointed by the Governor to the commission until after a background investigation of the person is conducted by the Department of Law Enforcement and the investigation is forwarded to the Governor.

5. A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

6. The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:

a. Any person that holds a permit or license issued under chapter 550, or a license issued under chapter 551 or chapter 849; an officer, official, or employee of such permitholder or licensee; or an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Any officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Any registered lobbyist for the executive or legislative branch that represents any person or entity identified in sub-

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subparagraph a. and sub-subparagraph b.

(b)1. The Governor may remove a member for cause, including, but not limited to, circumstances in which the member commits gross misconduct or malfeasance in office, substantially neglects or is unable to discharge their duties as a member, or is convicted of or found guilty of or has plead nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud.

2. The Governor may remove a member without cause subject to approval by a majority of the Senate. Upon the resignation or removal from office of a member, the Governor shall appoint a successor pursuant to paragraph (a) who, subject to confirmation by the Senate, shall serve the remainder of the unfinished term.

(c) A commissioner shall serve until a successor is appointed, but commissioners may not serve more than 12 years. Vacancies shall be filled for the unexpired portion of the term. The salary of each commissioner is equal to that paid under state law to a commissioner on the Florida Public Service Commission. The commission shall elect a chair and a vice chair.

(d) To aid the commission in its duties, the commission must appoint a person who is not a member of the commission to serve as the executive director of the commission. The executive director shall supervise, direct, coordinate, and administer all activities necessary to fulfill the commission's responsibilities. The commission must appoint the executive director by July 1, 2022. The executive director, with the consent of the commission, shall employ such staff as are necessary to adequately perform the functions of the commission,

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within budgetary limitations. All employees, except the executive director and attorneys, are subject to part II of chapter 110. The executive director shall serve at the pleasure of the commission and be subject to part III of chapter 110. Attorneys employed by the commission shall be subject to part V of chapter 110. The executive director shall maintain headquarters in and reside in Leon County. The salary of the executive director is equal to that paid under state law to a commissioner on the Florida Public Service Commission.

(e)1. A person may not, for the 2 years immediately preceding the date of appointment to or employment with the commission and while appointed to or employed with the commission:

a. Hold a permit or license issued under chapter 550, or a license issued under chapter 551 or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Be a registered lobbyist for the executive or legislative branch, except while a commissioner when officially representing the commission.

2. A person is ineligible for appointment to or employment

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with the commission if, within the 2 years immediately preceding such appointment or employment, they violated subparagraph 1. or solicited or accepted employment with, acquired any direct or indirect interest in, or had any direct or indirect business association, partnership, or financial relationship with, or is a relative of, any person or entity who is an applicant, licensee, or registrant with the Division of Pari-mutuel Wagering or the commission.

For the purposes of this paragraph, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(f) A commissioner may not, for the 2 years immediately following the date of resignation or termination from the commission:

1. Appear before the commission representing any client or any industry regulated by the commission;

2. Accept employment by or compensation from a business entity which, directly or indirectly, owns or controls a person regulated by the commission, from a person regulated by the commission, from a business entity which, directly or indirectly, is an affiliate or subsidiary of a person regulated by the commission, or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's resignation or termination of service on the commission; or

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3. Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

(g) A person employed by the commission may not, for the 2 years immediately following the date of termination or resignation from employment with the commission:

1. Appear before the commission representing any client regulated by the commission on any matter which was pending at the time of termination or resignation and in which such former employee had participated; or

2. Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

(h) Any person violating paragraph (f) or paragraph (g) shall be subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317 and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

(i) A person is ineligible for appointment to the commission if he or she has:

1. Been convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to gambling, dishonesty, theft, or fraud within the 10 years immediately preceding such appointment;

2. Been convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction, a crime listed s. 775.21(4)(a)1. or s. 776.08; or

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3. Had a license or permit issued under chapter 550, chapter 551, or chapter 849 or a gaming license issued by any other jurisdiction denied, suspended, or revoked.

(j)1. A person is ineligible for employment with the commission if he or she has been convicted of a felony within 5 years of the date of application; convicted of a misdemeanor within 5 years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or dismissed from prior employment for gross misconduct or incompetence or intentionally making a false statement concerning a material fact in connection with the application for employment to the commission.

2. If an employee of the commission is charged with a felony while employed by the commission, the commission shall suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee of the commission is charged with a misdemeanor while employed by the commission, the commission shall suspend the employee, with or without pay, and may terminate employment with the commission upon conviction if the commission determines that the offense bears a close relationship to the duties and responsibilities of the position held with the commission.

(k) A commissioner or an employee of the commission must notify the commission within 3 calendar days of arrest for any offense.

(l) A commissioner or an employee must immediately provide detailed written notice of the circumstances to the commission if the member or employee is indicted, charged with, convicted

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of, pleads guilty or nolo contendere to, or forfeits bail for:

1. A misdemeanor involving gambling, dishonesty, theft, or fraud;

2. A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which substantially corresponds to a misdemeanor in this state; or

3. A felony under the laws of this or any other state, the United States, or any other jurisdiction.

(m)1. All employees authorized by the commission shall have access to, and shall have the right to inspect, premises licensed by the Department of Business and Professional Regulation, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons subject to chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849. The authorized employees shall require of each such person strict compliance with the laws of this state relating to the license or permit of the licensee.

2. Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of

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this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

a. The primary responsibility of each officer appointed under this paragraph is to investigate, enforce, and prosecute, throughout the state, violations and violators of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, and the rules adopted thereunder, as well as other state laws that the commission or all state law enforcement officers are specifically authorized to enforce.

b. The secondary responsibility of each officer appointed under this paragraph is to enforce all other state laws, provided that the enforcement is incidental to exercising the officer's primary responsibility and the officer exercises the powers of a deputy sheriff, only after consultation or coordination with the appropriate local sheriff's office or municipal police department or when the commission participates in the Florida Mutual Aid Plan during a declared state emergency.

(3)(a) The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, the term "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2.

(b) The commission is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision.

(c) The commission may adopt rules to implement this

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provision.

(d) This subsection does not limit the authority of any other person authorized by law to seize contraband.

(4) The commission shall convene at the call of its chair or at the request of a majority of the members of the commission. The presence of three members is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city or county of the state. The commission shall do all of the following:

(a) Exercise all of the regulatory and executive powers of the state with respect to gambling, including, without limitation thereto, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding games authorized by s. 15, Art. X of the State Constitution.

(b) Establish procedures consistent with chapter 120 to ensure adequate due process in the exercise of its regulatory and executive functions.

(c) Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849.

(d) Review any matter within the scope of the jurisdiction of the Division of Pari-mutuel Wagering.

(e) Review the regulation of licensees, permitholders, or persons regulated by the Division of Pari-mutuel Wagering and

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the procedures used by the division to implement and enforce the law.

(f) Review the procedures of the Division of Pari-mutuel Wagering which are used to qualify applicants applying for a license, permit, or registration.

(g) Refer criminal violations of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849 to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.

(h) Exercise all other powers and perform any other duties prescribed by the Legislature.

(i) The commission may adopt rules to implement this section.

The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the commission or to the exercise of its powers.

(5) Hearings shall be held before the commission, except that the chair may direct that any hearing be held before one member of the commission or a panel of less than the full commission. The commission shall adopt rules to provide for the filing of a report when hearings are held by a single commissioner or a panel, which rules shall prescribe the time for filing the report and the contents of the report. The chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents

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from abuse and misinterpretation of the law or create expansion of gaming or gambling in this state.

(6) The commission may submit written recommendations to enhance the enforcement of gaming laws of the state to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(7) The commission shall make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall, at a minimum, include all of the following:

(a) Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.

(b) Actions of the commission relative to the implementation and administration of this section.

(c) The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall be further delineated by the class of license.

(d) The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.

(e) A summary of disciplinary actions taken by the commission.

(f) The receipts and disbursements of the commission.

(g) A summary of actions taken and investigations conducted by the commission.

(h) Any additional information and recommendations that the commission considers useful or that the Governor, the President of the Senate, or the Speaker of the House of Representatives

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requests.

(8) The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law.

(9) The commission shall develop a budget request pursuant to chapter 216 annually. The budget is not subject to change by the Department of Legal Affairs or the Attorney General, but it shall be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

(10) The commission is authorized to contract or consult with appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties.

(11) All rules adopted pursuant to chapters 24, 285, 546, 550, 551, and 849 prior to the effective date of this act are preserved and remain in full force and effect.

(12) The commission shall exercise all of its regulatory and executive powers and shall apply, construe, and interpret all laws and administrative rules in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3).

(13) The commission shall confirm, prior to the issuance of an operating license, annually that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require; that the permitholder continues to possess the qualifications prescribed by chapter 550; and that the permit has not been disapproved by voters in an election.

Section 3. Section 16.712, Florida Statutes, is created to

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read:

16.712 Florida Gaming Control Commission background screening provisions.—

(1) Prior to serving as a commissioner on the Florida Gaming Control Commission or becoming an employee of the commission, a person must have his or her fingerprints taken by a vendor approved by the Department of Law Enforcement. The set of fingerprints must be electronically sent to the Department of Law Enforcement for state processing, and the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for national processing. Persons who are foreign nationals must submit such documents as necessary to allow the commission to conduct criminal history records checks in the person's home country.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) must be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation when the Department of Law Enforcement begins participation in the program. The commission must notify the Department of Law Enforcement when any person whose fingerprints have been retained is no longer a commissioner or employee of the commission.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the commission.

Section 4. Section 16.715, Florida Statutes, is created to read:

16.715 Florida Gaming Control Commission standards of

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conduct; ex parte communications.—

(1) STANDARDS OF CONDUCT.—

(a) In addition to the provisions of part III of chapter 112, which are applicable to commissioners on and employees with the Florida Gaming Control Commission by virtue of their being public officers and public employees, the conduct of commissioners and employees shall be governed by the standards of conduct provided in this subsection. Nothing shall prohibit the standards of conduct from being more restrictive than part III of chapter 112. Further, this subsection may not be construed to contravene the restrictions of part III of chapter 112. In the event of a conflict between this subsection and part III of chapter 112, the more restrictive provision shall apply.

(b)1. A commissioner or employee of the commission may not accept anything from any business entity which, either directly or indirectly, owns or controls any person regulated by the commission or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission.

2. A commissioner or an employee may attend conferences, along with associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Additionally, while attending a conference, a commissioner or an employee may attend meetings, meals, or events that are not sponsored, in whole or in part, by any representative of any person regulated by the commission and that are limited to commissioners or employees only, committee members, or speakers if the commissioner or employee is a member of a committee of the association of

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regulatory agencies that organized the conference or is a speaker at the conference. It is not a violation of this subparagraph for a commissioner or an employee to attend a conference for which conference participants who are employed by a person regulated by the commission have paid a higher conference registration fee than the commissioner or employee, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a person regulated by the commission.

3. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.

4. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

5. While employed, and for 2 years after service as a commissioner or for 2 years after employment with the commission, a commissioner or an employee may not accept any form of employment with or engage in any business activity with any business entity which, either directly or indirectly, owns or controls any person regulated by the commission; any person regulated by the commission; or any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission.

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6. While employed, and for 2 years after service as a commissioner or for 2 years after employment with the commission, a commissioner, an employee, or a relative living in the same household as a commissioner or an employee may not have any financial interest, other than shares in a mutual fund, in any person regulated by the commission; in any business entity which, either directly or indirectly, owns or controls any person regulated by the commission; or in any business entity which, either directly or indirectly, is an affiliate or a subsidiary of any person regulated by the commission. If a commissioner, an employee, or a relative living in the same household as a commissioner or an employee acquires any financial interest prohibited by this subsection during the commissioner's term of office or the employee's employment with the commission as a result of events or actions beyond the commissioner's, the employee's, or the relative's control, they shall immediately sell such financial interest. For the purposes of this subsection, the term "relative" has the same meaning as provided in s. 16.71(2)(e).

7. A commissioner or an employee may not accept anything from a party in a proceeding currently pending before the commission. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the

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commission or otherwise represent anyone before the commission for a period of 2 years.

8. A commissioner may not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.

9. A commissioner, during his or her term of office, may not make any public comment regarding the merits of any proceeding under ss. 120.569 and 120.57 currently pending before the commission.

10. A commissioner or an employee may not act in an unprofessional manner at any time during the performance of official duties.

11. A commissioner or an employee must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

12. A commissioner or an employee may not directly or indirectly, through staff or other means, solicit anything of value from any person regulated by the commission, or from any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission, or from any party appearing in a proceeding

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considered by the commission in the last 2 years.

13. A commissioner or an employee may not personally represent another person or entity for compensation before the commission for a period of 2 years following the commissioner's end of service or a period of 2 years following employment unless employed by another agency of state government.

14. A commissioner may not lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in an official capacity.

(c) A commissioner or an employee of the commission must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

(d) The Commission on Ethics shall accept and investigate any alleged violations of this subsection pursuant to the procedures contained in ss. 112.322-112.3241. The Commission on Ethics shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112. A commissioner or an employee of the commission may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a),

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regarding the standards of conduct or prohibitions set forth in this section or s. 16.71.

(e) A commissioner, an employee of the commission, or a relative living in the same household as a commissioner or an employee may not place a wager in any facility licensed by the commission or any facility in the state operated by an Indian tribe that has a valid and active compact with the state.

(2) EX PARTE COMMUNICATIONS.—

(a) As used in this section, the term "ex parte communication" means any communication that:

1. If it is a written or printed communication or is a communication in electronic form, is not served on all parties to a proceeding; or

2. If it is an oral communication, is made without adequate notice to the parties and without an opportunity for the parties to be present and heard.

(b) A commissioner may not initiate or consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. This paragraph does not apply to commission staff.

(c) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in paragraph (a), to which the commissioner is assigned, the commissioner must place on the record of the proceeding copies

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of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if deemed by such commissioner to be necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

(d) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(e) Any commissioner who knowingly fails to place on the record any such communications, in violation of this subsection, within 15 days of the date of such communication is subject to removal and may be assessed a civil penalty not to exceed $5,000.

(f)1. It shall be the duty of the Commission on Ethics to

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receive and investigate sworn complaints of violations of this subsection pursuant to the procedures contained in ss. 112.322-112.3241.

2. If the Commission on Ethics finds that there has been a violation of this subsection by a commissioner, it shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this subsection in a separate matter.

3. If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to this subsection, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

4. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subsection, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not

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appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

Section 5. Effective July 1, 2022, paragraph (f) of subsection (1) and subsection (7) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

(1) As used in this section, the term:

(f) "State compliance agency" means the Florida Gaming Control Commission ~~Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ which is designated as the state agency having the authority to carry out the state's oversight responsibilities under the compact.

(7) The Florida Gaming Control Commission ~~The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ is designated as the state compliance agency having the authority to carry out the state's oversight responsibilities under the compact authorized by this section.

Section 6. (1) Effective July 1, 2022, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds in the Department of Business and Professional Regulation related to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, Florida Statutes, the regulation of pari-mutuel wagering under chapter 550, Florida Statutes, the regulation of slot machines and slot machine gaming under chapter 551, Florida Statutes, and the regulation of cardrooms under s. 849.086,

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Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General.

(2) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Business and Professional Regulation to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General to fill positions transferred by this act, retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

(3) The Department of Legal Affairs shall provide administrative support to the Florida Gaming Control Commission until the transfer in subsection (1) is complete.

Section 7. Paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific

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narcotics transaction.

2. Any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, ~~was~~ attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida

Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to,

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any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

Section 8. The Division of Law Revision shall prepare a reviser's bill to conform the Florida Statutes to the transfer described in section 6 of this act.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to gaming enforcement; amending s. 16.56, F.S.; expanding the authority of the Office of Statewide Prosecution within the Department of Legal Affairs to investigate and prosecute the offenses of certain crimes; creating s. 16.71, F.S.; creating the Florida Gaming Control Commission within the Office of the Attorney General; providing for membership of the commission; authorizing the Governor to remove members of the commission under certain circumstances; providing rights for certain employees of the commission; providing requirements and prohibitions relating to commission members and employees;

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providing civil penalties; providing requirements and powers for employees serving as law enforcement officers for the commission; providing powers and duties of the commission; providing requirements for hearings relating to the commission; authorizing the commission to submit certain written recommendations to the Governor and the Legislature upon certain findings; requiring the commission to annually develop a budget request; requiring the department to submit the budget request to the Governor for transmittal to the Legislature; authorizing the commission to contract or consult with certain agencies; requiring the commission to provide an annual report to the Governor and the Legislature; specifying content required for the report; creating s. 16.712, F.S.; requiring a person to submit to certain background screening requirements before serving on or being employed with the commission; providing procedures and conditions for the retention of fingerprints; creating s. 16.715, F.S.; providing construction; providing standards of conduct for commissioners and employees of the commission; requiring commissioners and employees of the commission to complete specified annual training; requiring the Commission on Ethics to accept and investigate any alleged violations of the standards of conduct for commissioners and employees; providing requirements for such investigations; authorizing a commissioner or an employee of the commission to request an advisory opinion from the

Commission on Ethics; defining the term "ex parte communication"; providing requirements relating to ex parte communications; providing civil penalties; amending s. 285.710, F.S.; revising the definition of the term "state compliance agency"; designating the Florida Gaming Control Commission as the state compliance agency having authority to carry out certain responsibilities; transferring all powers, duties, functions, records, offices, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, trust funds, and unexpended balances of appropriations, allocations, and other funds of the Department of Business and Professional Regulation to the commission by a type two transfer, effective on a specified date; requiring the Department of Legal Affairs to provide administrative support to the commission until such transfer is complete; amending s. 932.701, F.S.; revising the definition of the term "contraband article"; providing a directive to the Division of Law Revision; providing effective dates.

949352

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
	.	
	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (309496)

Delete lines 203 - 224
and insert:
1. Hold a permit or license issued under chapter 550, or a license issued under chapter 551 or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;
2. Appear before the commission representing any client or

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any industry regulated by the commission;

3. Accept employment by or compensation from a business entity which, directly or indirectly, owns or controls a person regulated by the commission, from a person regulated by the commission, from a business entity which, directly or indirectly, is an affiliate or subsidiary of a person regulated by the commission, or from a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's resignation or termination of service on the commission; or

3. Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

(g) A person employed by the commission may not, for the 2 years immediately following the date of termination or resignation from employment with the commission:

1. Hold a permit or license issued under chapter 550, or a license issued under chapter 551 or chapter 849; be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

2. Appear before the commission representing any client regulated by the commission on any matter which was pending at the time of termination or resignation and in which such former employee had participated; or

3. Lobby the Governor or any agency of the state, members

By the Committee on Regulated Industries

580-04017-21 20217076__

A bill to be entitled

An act relating to gaming enforcement; amending s. 16.56, F.S.; expanding the authority of the Office of Statewide Prosecution within the Department of Legal Affairs to investigate and prosecute the offenses of certain crimes; creating s. 16.71, F.S.; creating the Florida Gaming Control Commission within the Office of the Attorney General; providing for membership of the commission; providing rights for certain employees of the commission; providing requirements and powers for employees serving as law enforcement officers for the commission; providing powers and duties of the commission; providing requirements for hearings relating to the commission; authorizing the commission to submit certain written recommendations to the Governor and the Legislature upon certain findings; requiring the commission to annually develop a budget request; requiring the department to submit the budget request to the Governor for transmittal to the Legislature; authorizing the commission to contract or consult with certain agencies; creating s. 16.715, F.S.; providing construction; providing standards of conduct for commissioners; requiring commissioners to complete specified annual training; requiring the Commission on Ethics to accept and investigate any alleged violations of the standards of conduct for commissioners; providing requirements for such investigations; authorizing a commissioner to request an advisory opinion from the Commission on Ethics;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-04017-21 20217076__

providing requirements relating to ex parte communications; providing civil penalties; amending s. 285.710, F.S.; revising the definition of the term "state compliance agency"; designating the Florida Gaming Control Commission as the state compliance agency having authority to carry out certain responsibilities; transferring all powers, duties, functions, records, offices, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, trust funds, and unexpended balances of appropriations, allocations, and other funds of the Department of Business and Professional Regulation to the commission by a type two transfer; requiring the Department of Legal Affairs to provide administrative support to the commission until such transfer is complete; providing a directive to the Division of Law Revision; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, and patient brokering;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the Florida Anti-Fencing Act;

5. Any violation of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; ~~or~~

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787; or

16. Any violation of chapter 24, chapter 546, chapter 550, chapter 551, or chapter 849, including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Florida Gaming Control Commission, the Seminole Tribe of Florida, or any person licensed under those chapters;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 2. Section 16.71, Florida Statutes, is created to

read:

16.71 Florida Gaming Control Commission.—

(1) There is created within the Department of Legal Affairs, Office of the Attorney General, a Florida Gaming Control Commission, hereinafter referred to as the commission. The commission shall be a separate budget entity and the agency head for all purposes. The commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including, but not limited to, personnel, purchasing transactions involving real or personal property, and budgetary matters.

(2)(a) The commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate, for terms of 4 years. For the purpose of providing staggered terms, of the initial appointments, 2 members shall be appointed to 4-year terms, 2 members shall be appointed to 3-year terms, and 1 member shall be appointed to a 2-year term. Of the five members at least one member must be experienced in law enforcement and criminal investigation, at least one member must be a certified public accountant licensed in this state and experienced in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state. Such appointments must be made by January 1, 2022.

(b) A commissioner shall serve until a successor is appointed, but commissioners may not serve more than 12 years. Vacancies shall be filled for the unexpired portion of the term. Of the five members, each appellate district shall have one member appointed from the district to the commission who is a

resident of the district at the time of the original appointment. The salary of each commissioner is equal to that paid under state law to a commissioner on the Florida Public Service Commission. The commission shall elect a chair and a vice chair.

(c) To aid the commission in its duties, the commission must appoint a person who is not a member of the commission to serve as the executive director of the commission. The executive director shall supervise, direct, coordinate, and administer all activities necessary to fulfill the commission's responsibilities. The commission must appoint the executive director by July 1, 2022. The executive director, with the consent of the commission, shall employ such staff as are necessary to adequately perform the functions of the commission, within budgetary limitations. All employees, except the executive director and attorneys, are subject to part II of chapter 110. The executive director shall serve at the pleasure of the commission and be subject to part III of chapter 110. Attorneys employed by the commission shall be subject to part V of chapter 110. The executive director shall maintain headquarters in and reside in Leon County. The salary of the executive director is equal to that paid under state law to a commissioner on the Florida Public Service Commission.

(d)1. A person may not, for the 2 years immediately preceding the date of appointment to or employment with the commission and while appointed to or employed with the commission:

a. Hold a permit or license issued under chapter 550, or a license issued under chapter 551, chapter 546, or chapter 849;

be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), of such permitholder or licensee;

b. Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), of such entity; or

c. Be a registered lobbyist for the executive or legislative branch, except when solely representing the commission.

2. A person is ineligible for appointment to or employment with the commission if, within the 2 years immediately preceding such appointment or employment, he or she has violated subparagraph 1. or has solicited or accepted employment with, acquired any direct or indirect interest in, or has had any direct or indirect business association, partnership, or financial relationship with, or is a relative of, any person or entity who is an applicant, licensee, or registrant with the Division of Pari-mutuel Wagering or the commission.

For the purposes of this paragraph, the term "relative" means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

(e)1. All employees authorized by the commission shall have access to, and shall have the right to inspect, premises licensed by the Department of Business and Professional Regulation, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons subject to chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849. The authorized employees shall require of each such person strict compliance with the laws of this state relating to the license or permit of the licensee.

2. Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

a. The primary responsibility of each officer appointed under this paragraph is to investigate, enforce, and prosecute, throughout the state, violations and violators of chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, and the rules adopted thereunder, as well as other state laws that the commission or all state law enforcement officers

are specifically authorized to enforce.

b. The secondary responsibility of each officer appointed under this paragraph is to enforce all other state laws, provided that the enforcement is incidental to exercising the officer's primary responsibility as provided in sub-subparagraph a., and the officer exercises the powers of a deputy sheriff, only after consultation or coordination with the appropriate local sheriff's office or municipal police department or when the commission participates in the Florida Mutual Aid Plan during a declared state emergency.

(3) The commission shall convene at the call of its chair or at the request of a majority of the members of the commission. The presence of three members is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city or county of the state. The commission shall do all of the following:

(a) Exercise all of the regulatory and executive powers of the state with respect to gambling, including, without limitation thereto, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the State Constitution or law, excluding games authorized by s. 15, Art. X of the State Constitution.

(b) Establish procedures consistent with chapter 120 to ensure adequate due process in the exercise of its regulatory and executive functions.

(c) Ensure that the laws of this state are not interpreted

in any manner that expands the activities authorized in chapter 24, chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849.

(d) Review any matter within the scope of the jurisdiction of the Division of Pari-mutuel Wagering.

(e) Review the regulation of licensees, permitholders, or persons regulated by the Division of Pari-mutuel Wagering and the procedures used by the division to implement and enforce the law.

(f) Review the procedures of the Division of Pari-mutuel Wagering which are used to qualify applicants applying for a license, permit, or registration.

(g) Refer criminal violations of chapter 24, chapter 546, chapter 550, chapter 551, or chapter 849 to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.

(h) Exercise all other powers and perform any other duties prescribed by the Legislature.

The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the commission or to the exercise of its powers.

(4) Hearings shall be held before the commission, except that the chair may direct that any hearing be held before one member of the commission or a panel of less than the full commission. The commission shall adopt rules to provide for the

filing of a report when hearings are held by a single commissioner or a panel, which rules shall prescribe the time for filing the report and the contents of the report. The chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents from abuse and misinterpretation of the law to create expansion of gaming or gambling in this state.

(5) The commission may submit written recommendations to enhance the enforcement of gaming laws of the state to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law.

(7) The commission shall develop a budget request pursuant to chapter 216 annually. The budget is not subject to change by the Department of Legal Affairs or the Attorney General, but it shall be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

(8) The commission is authorized to contract or consult with appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties.

(9) All rules adopted pursuant to chapters 285, 546, 550, 551, and 849 prior to the effective date of this act are preserved and remain in full force and effect.

(10) The commission shall exercise all of its regulatory and executive powers and shall apply, construe, and interpret all laws and administrative rules in a manner consistent with

the gaming compact ratified, approved, and described in s. 285.710(3).

Section 3. Section 16.715, Florida Statutes, is created to read:

16.715 Florida Gaming Control Commission standards of conduct; ex parte communications.—

(1) STANDARDS OF CONDUCT.—

(a) In addition to the provisions of part III of chapter 112, which are applicable to commissioners on the Florida Gaming Control Commission by virtue of their being public officers, the conduct of commissioners shall be governed by the standards of conduct provided in this subsection. Nothing shall prohibit the standards of conduct from being more restrictive than part III of chapter 112. Further, this subsection may not be construed to contravene the restrictions of part III of chapter 112. In the event of a conflict between this subsection and part III of chapter 112, the more restrictive provision shall apply.

(b)1. A commissioner may not accept anything from any business entity which, either directly or indirectly, owns or controls any person regulated by the commission or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission. A commissioner may attend conferences and associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee. Additionally, while attending a conference, a commissioner may attend meetings, meals, or events that are not sponsored, in whole or in part, by any representative of any person regulated by the commission and that are limited to

commissioners only, committee members, or speakers if the commissioner is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference. It is not a violation of this subparagraph for a commissioner to attend a conference for which conference participants who are employed by a person regulated by the commission have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a person regulated by the commission. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

2. A commissioner may not accept any form of employment with or engage in any business activity with any business entity which, either directly or indirectly, owns or controls any person regulated by the commission, any person regulated by the commission, or any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission.

3. A commissioner may not have any financial interest,

other than shares in a mutual fund, in any person regulated by the commission, in any business entity which, either directly or indirectly, owns or controls any person regulated by the commission, or in any business entity which, either directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission. If a commissioner acquires any financial interest prohibited by this subsection during his or her term of office as a result of events or actions beyond the commissioner's control, he or she shall immediately sell such financial interest or place such financial interest in a blind trust at a financial institution. A commissioner may not attempt to influence, or exercise any control over, decisions regarding the blind trust.

4. A commissioner may not accept anything from a party in a proceeding currently pending before the commission. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subparagraph, allegations are made as to the identity of the person giving or providing the prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

5. A commissioner may not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for

activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.

6. A commissioner, during his or her term of office, may not make any public comment regarding the merits of any proceeding under ss. 120.569 and 120.57 currently pending before the commission.

7. A commissioner may not conduct himself or herself in an unprofessional manner at any time during the performance of his or her official duties.

8. A commissioner must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

9. A commissioner may not directly or indirectly, through staff or other means, solicit anything of value from any person regulated by the commission, or from any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any person regulated by the commission, or from any party appearing in a proceeding considered by the commission in the last 2 years.

(c) A commissioner must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other

continuing professional education class, seminar, or presentation, if the required subjects are covered.

(d) The Commission on Ethics shall accept and investigate any alleged violations of this subsection pursuant to the procedures contained in ss. 112.322-112.3241. The Commission on Ethics shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112. A commissioner may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), regarding the standards of conduct or prohibitions set forth in this section or s. 16.71.

(2) EX PARTE COMMUNICATIONS.—

(a) A commissioner may not initiate or consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. This paragraph does not apply to commission staff.

(b) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in paragraph (a), to which he or she is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all

oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

(c) Any individual who makes an ex parte communication shall submit to the commission a written statement describing the nature of such communication, to include the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(d) Any commissioner who knowingly fails to place on the record any such communications, in violation of this subsection, within 15 days of the date of such communication is subject to removal and may be assessed a civil penalty not to exceed $5,000.

(e)1. It shall be the duty of the Commission on Ethics to receive and investigate sworn complaints of violations of this subsection pursuant to the procedures contained in ss. 112.322-

112.3241.

2. If the Commission on Ethics finds that there has been a violation of this subsection by a commissioner, it shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this subsection after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this subsection in a separate matter.

3. If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to this subsection, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

4. If, during the course of an investigation by the Commission on Ethics into an alleged violation of this subsection, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for a period of 2 years.

Section 4. Effective July 1, 2022, paragraph (f) of subsection (1) and subsection (7) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

(1) As used in this section, the term:

(f) "State compliance agency" means the Florida Gaming Control Commission ~~Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ which is designated as the state agency having the authority to carry out the state's oversight responsibilities under the compact.

(7) The Florida Gaming Control Commission ~~The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation~~ is designated as the state compliance agency having the authority to carry out the state's oversight responsibilities under the compact authorized by this section.

Section 5. (1) Effective July 1, 2022, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds in the Department of Business and Professional Regulation related to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, Florida Statutes, the regulation of pari-mutuel wagering under chapter 550, Florida Statutes, the regulation of slot machines and slot machine gaming under chapter 551, Florida Statutes, and the regulation of cardrooms under s. 849.086, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Florida Gaming

Control Commission within the Department of Legal Affairs, Office of the Attorney General.

(2) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Business and Professional Regulation to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General to fill positions transferred by this act, retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

(3) The Department of Legal Affairs shall provide administrative support to the Florida Gaming Control Commission until the transfer in subsection (1) is complete.

Section 6. The Division of Law Revision shall prepare a reviser's bill to conform the Florida Statutes to the transfer described in section 3 of this act.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Committee Code Not Found

BILL:	CS/SB 7078
INTRODUCER:	Appropriations Committee and Regulated Industries Committee
SUBJECT:	Public Records and Public Meetings Exemptions/Florida Gaming Control Commission
DATE:	April 18, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 7078, which is linked to the passage of SB 7076 (2021), related to Gaming Enforcement, makes confidential and exempt from public copying and inspection requirements certain information obtained by the Florida Gaming Control Commission (commission). Portions of the commission's meetings during which exempted or confidential and exempt information is discussed are also exempt from open meeting requirements.

This exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Section 24(c) of Article I of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is not expected to impact state or local revenues and expenditures.

The bill will become effective on the same date that SB 7076 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Public Records

Section 24(a) of Article I of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of section 24(a) of Article I of the State Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no broader than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; and
- Protect trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Open Meetings Laws

The State Constitution also provides that the public has a right to access governmental meetings.[7] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[8] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[9]

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[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I., s. 24(c).
[4] Section 119.15, F.S.
[5] Section 119.15(6)(b), F.S.
[6] Section 119.15(3), F.S.
[7] FLA. CONST. art. I, s. 24(b).
[8] *Id*.
[9] FLA. CONST. art. I, s. 24(b). Meetings of the Legislature are governed by section 4(e) of Article III of the State Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law,"[10] or the "Sunshine Law,"[11] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken, to be open to the public.[12] The board or commission must provide the public reasonable notice of such meetings.[13] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in a manner that unreasonably restricts the public's access to the facility.[14] Minutes of a public meeting must be promptly recorded and open to public inspection.[15]

Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[16] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[17]

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.[18] The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[19] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[20]

III. Effect of Proposed Changes:

Section 1 creates s. 16.71(14), F.S., to make information obtained by the Florida Gaming Control Commission (commission) that is exempt or confidential and exempt[21] from s. 119.07(1), F.S., or s. 24(a) Art I. of the State Constitution retains its exempt or confidential and exempt status. The information may be released by the commission to other governmental

representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

[10] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

[11] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

[12] Section 286.011(1)-(2), F.S.

[13] *Id*.

[14] Section 286.011(6), F.S.

[15] Section 286.011(2), F.S.

[16] Section 286.011(1), F.S.

[17] Section 286.011(3), F.S.

[18] FLA. CONST. art. I, s. 24(c).

[19] *Id*.

[20] *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999).

[21] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

entities as needed in the performance of its official duties and responsibilities, but such entities must maintain the exempt or confidential and exempt status of the information.

The bill provides portions of commission meetings during which information that is exempt or confidential and exempt is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art I. of the State Constitution.

The bill provides:

- The commission chair must advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss information that is exempt or confidential and exempt.
- The chair's declaration of necessity for closure and the specific reasons for such necessity must be stated in a document that is a public record that must be filed with the official records of the commission.
- The entire closed session must be recorded. The recording must be maintained by the commission and include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present. No portion of the session may be off the record.

Further, only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information may be allowed to attend the exempted portions of the commission meetings. The commission must assure that any authorized closure of its meetings is limited, in order to maintain the general policy in Florida in favor of public meetings.

The bill provides the recording of, and any minutes and notes generated during a closed portion of a commission meeting are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, until such time as the information discussed is no longer exempt or confidential and exempt.

This section provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

Section 2 provides public necessity statements as required by section 24(c) of Article I of the State Constitution. As to information obtained by the commission, the public necessity statement provides in the absence of this exemption, sensitive confidential or exempt information would be disclosed. As to portions of meetings of the commission at which confidential and exempt information is discussed, the public necessity statement provides the release of confidential and exempt information via a public meeting defeats the purpose of a public records exemption, and the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

Section 3 provides that this act takes effect on the same date that SB 7076 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c) of Article I of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions. Thus, the bill requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c) of Article I of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Section 24(c) of Article I of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for sensitive investigative materials, which does not appear to be broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The commission may experience increased workload and incur associated costs in complying with the exemptions created by the bill in handling public records requests, redacting confidential and exempt information prior to releasing a record, and closing portions of commission meetings. However, it is anticipated that any associated costs could be handled with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates a new subsection (14) in section 16.71 of the Florida Statutes, which is created by the linked bill, SB 7076.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute includes technical amendments related to:

- The type of information that is exempt or confidential and exempt;
- The persons who may attend portions of commission meetings that are closed; and
- The statement of public necessity required by the Open Sunset Review Act.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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	.	
	.	

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (14) is added to section 16.71, as created by SB 7076, 2021 Regular Session, to read:

16.71 Florida Gaming Control Commission.—

(14)(a) Information made exempt or confidential and exempt from s. 119.07(1) or s. 24(a) Art I. of the State Constitution which is obtained by the Florida Gaming Control Commission shall

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retain its exempt or confidential and exempt status. The information may be released by the commission to other governmental entities as needed in the performance of its official duties and responsibilities. The governmental entity shall maintain the exempt or confidential and exempt status of the information.

(b) Portions of meetings of the commission during which information made exempt or confidential and exempt is discussed are exempt from s. 286.011 and s. 24(b), Art I. of the State Constitution.

1. The chair of the commission shall advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss information that is exempt or confidential and exempt.

2. The chair's declaration of necessity for closure and the specific reasons for such necessity shall be stated in writing in a document that shall be a public record and shall be filed with the official records of the commission.

3. The entire closed session shall be recorded. The recording shall include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present. No portion of the session shall be off the record. Such recording shall be maintained by the commission.

(b) Only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information shall be allowed to attend the exempted portions of the commission

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meetings. The commission shall assure that any closure of its meetings as authorized by this paragraph is limited so that the general policy of this state in favor of public meetings is maintained.

(c) A recording of, and any minutes and notes generated during, that portion of a commission meeting which is closed to the public pursuant to this subsection are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the information discussed is no longer exempt or confidential and exempt.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.115 and is repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to maintain the exempt or confidential and exempt status of any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission. In the absence of this exemption, sensitive confidential or exempt information would be disclosed. In addition, the Legislature finds that it is a public necessity that portions of meetings of the Florida Gaming Control Commission wherein confidential and exempt information is discussed be made exempt from public meetings requirements. The release of confidential and exempt information via a public meeting defeats the purpose of a public records exemption. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

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Section 3. This act shall take effect on the same date that SB 7076 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records and public meetings; amending s. 16.71, F.S.; specifying that any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission retains its exempt or confidential and exempt status; providing an exemption from public meetings requirements for portions of meetings of the Florida Gaming Control Commission wherein exempt or confidential and exempt information is discussed; authorizing the commission to close portions of meetings during which certain matters are discussed if certain requirements are met; providing an exemption from public meetings requirements for such portions of meetings; providing an exemption from public records requirements for documents and recordings relating to such exempt portions of meetings; providing for future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

By the Committee on Regulated Industries

580-04018-21 20217078__

A bill to be entitled

An act relating to public records and public meetings exemptions; amending s. 16.71, F.S.; specifying that any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission retains its exempt or confidential and exempt status; providing an exemption from public meetings requirements for portions of meetings of the commission wherein confidential or exempt information is discussed; specifying the commission is a criminal justice agency; authorizing the commission to close portions of meetings during which certain criminal matters are discussed if certain requirements are met; providing an exemption from public meetings requirements for such portions of meetings; providing an exemption from public records requirements for documents and recordings relating to such exempt portions of meetings; providing for future review and repeal; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) is added to section 16.71, as created by SB 7076, 2021 Regular Session, to read:

16.71 Florida Gaming Control Commission.—

(11)(a)1. Information made exempt or confidential and exempt from s. 119.07(1) or s. 24(a) Art I. of the State Constitution which is obtained by the Florida Gaming Control

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-04018-21 20217078__

Commission shall retain its exempt or confidential and exempt status. The information may be released by the commission to other governmental entities as needed in the performance of its official duties and responsibilities. The governmental entity shall maintain the exempt or confidential and exempt status of the information.

2. Portions of meetings of the commission during which information made exempt or confidential and exempt is discussed are exempt from s. 286.011 and s. 24(b), Art I. of the State Constitution.

(b)1. The Florida Gaming Control Commission is a criminal justice agency as defined in s. 119.011.

2.a. The Florida Gaming Control Commission may close portions of meetings during which the commission will hear or discuss active criminal intelligence information or active criminal investigative information, as those terms are defined in s. 119.011(3), and such portions of meetings shall be exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that the following conditions are met:

(I) The chair of the commission shall advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss active criminal investigative information or active criminal intelligence information.

(II) The chair's declaration of necessity for closure and the specific reasons for such necessity shall be stated in writing in a document that shall be a public record and shall be filed with the official records of the commission.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(III) The entire closed session shall be recorded. The recording shall include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present. No portion of the session shall be off the record. Such recording shall be maintained by the commission.

b. Only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence has been authorized by the chair of the commission shall be allowed to attend the exempted portions of the commission meetings. The commission shall assure that any closure of its meetings as authorized by this paragraph is limited so that the general policy of this state in favor of public meetings is maintained.

3. A tape recording of, and any minutes and notes generated during, that portion of a Florida Gaming Control Commission meeting which is closed to the public pursuant to this paragraph are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the criminal investigative information or criminal intelligence information ceases to be active.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.115 and is repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to maintain the exempt or confidential and exempt status of any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission. In the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

absence of this exemption, sensitive confidential or exempt information would be disclosed. In addition, the Legislature finds that it is a public necessity that portions of meetings of the Florida Gaming Control Commission wherein confidential and exempt information is discussed be made exempt from public meetings requirements. The release of confidential and exempt information via a public meeting defeats the purpose of a public records exemption. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

(2) The Legislature finds that during limited portions of the meetings of the Florida Gaming Control Commission it is necessary that the commission be presented with and discuss details, information, and documents related to active criminal intelligence information or active criminal investigative information. These presentations and discussions are necessary for the commission to make its decisions for licensing of persons for pari-mutuel and gaming activities, and for decisions related to gaming enforcement and enforcement of gambling laws as required by the Legislature under this act. The Legislature finds that to reveal the contents of documents containing active criminal investigative or intelligence information or to allow active criminal investigative or active criminal intelligence matters to be discussed in a meeting open to the public negatively impacts the ability of law enforcement agencies to efficiently continue their investigative or intelligence gathering activities. The Legislature finds that information coming before the commission that pertains to active criminal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

investigations or intelligence should remain confidential and exempt from public disclosure. The Legislature finds that the Florida Gaming Control Commission may, by declaring only those portions of commission meetings in which active criminal investigative or active criminal intelligence information is to be presented or discussed closed to the public, assure an appropriate balance between the policy of this state that meetings be public and the policy of this state to facilitate efficient law enforcement efforts. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

Section 3. This act shall take effect on the same date that SB 7076 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Committee Code Not Found

BILL:	CS/SB 7080
INTRODUCER:	Appropriations Committee and Regulated Industries Committee
SUBJECT:	Requirements for Pari-mutuel Permitholders to Conduct Racing or Games
DATE:	April 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	Davis	Sadberry	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7080 updates provisions in Florida law that are inconsistent with the prohibition of racing of greyhounds codified in Article X, section 32 of the State Constitution, titled "Prohibition on Racing of and Wagering on Greyhounds or other Dogs."

The bill revises requirements for greyhound permitholders, jai alai permitholders, and harness horse permitholders to conduct live racing or games, by amending chapter 550, Florida Statutes (Pari-Mutuel Wagering), chapter 551, Florida Statutes (Slot Machines), and chapter 849, Florida Statutes (Gambling). The bill also includes technical drafting changes, conforming changes, and eliminates obsolete language related to requirements for live racing or games.

Under the bill, a permitholder or licensee may not conduct live greyhound racing or dogracing for wagering, and the Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) is authorized to deny, suspend, or revoke any permit or license under ch. 550, Florida Statutes, and impose a civil penalty of up to $5,000 for such conduct.

The bill provides a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold any type of operating license on January 1, 2021.

Under the bill, a permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by permitholders with permits on January 1, 2021, and new permits may not be approved or issued after January 1, 2021.

The bill revises racing requirements for thoroughbred and limited intertrack wagering license permitholders.

Under the bill as to cardroom licensing, such licenses may not be issued to any permitholder that did not hold a valid pari-mutuel wagering permit on January 1, 2021. In addition, the bill provides that only thoroughbred permitholders must conduct a minimum of live racing performances (known as the "90 percent rule") to renew a cardroom license.

The bill may have an indeterminate negative fiscal impact to state government revenues. *See* Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2021, but only if SB 7076 (2021) (Gaming Enforcement) or similar legislations is adopted in the same legislative sessions and becomes law.

II. Present Situation:

Background

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[10]

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[1] *See* s. 849.08, F.S.
[2] *See* s. 849.01, F.S.
[3] *See* s. 849.09, F.S.
[4] Section 849.16, F.S.
[5] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] Section 849.086, F.S. *See* s. 849.086(2)(c), F.S., which defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 12, 2021).
[10] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also, Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

Regulation of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[19]

1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose,* 122 Fla. 413, 165 So. 347 (1936).

[11] The pari-mutuel pools that were authorized by law on the effective date of the State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

[12] The Department of the Lottery is authorized by s. 15, Art. X of the State Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.

[13] *See* s. 849.085, F.S.

[14] *See* s. 849.0931, F.S.

[15] *See* s. 849.0935, F.S.

[16] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

[17] *See* s. 849.141, F.S.

[18] *See* s. 546.10, F.S.

[19] *See* the 89th Annual Report for Fiscal Year 2019-2020 issued by the division at: http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2019-2020--89th--20210224.pdf at page 5 (equivalent to page 3 of the printed Annual Report) (last visited Apr. 7, 2021).

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[20] two jai alai permitholders,[21] one limited thoroughbred permitholder,[22] and five quarter horse permitholders.[23]

Issuance of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[24]

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[25] Section 550.5251, F.S., specifies the requirements for annual operating licenses to be issued to thoroughbred permitholders by March 15 of each year, including the number and dates of all performances to be conducted for the racing season commencing the following July 1.

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[20] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[21] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[22] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate, and is not yet subject to annual application requirements for thoroughbred permitholders set forth in s. 550,5251, F.S.
[23] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).
[24] *See* s. 550.054(2), F.S.
[25] *See* s. 550.054(9)(a), F.S.

Pursuant to s. 550.054(9)(b), F.S., the division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.

Section 550.054(14), F.S., authorizes conversion of jai alai permits to greyhound permits, under limited conditions.

Limited Intertrack Wagering

Section 550.6308, F.S., relating to the conduct of limited intertrack wagering in support of thoroughbred breeding in Florida, requires:

- A minimum of 15 days of thoroughbred horse sales;
- The conduct of at least one day of nonwagering thoroughbred racing with a $250,000 purse per year for two consecutive years;
- Intertrack wagering to be conducted:
  - For up to 21 days in connection with sales;
  - Between November 1 and May 8;
  - Only with the consent of other permitholders that run live racing in the county, between May 9 and October 31; and
  - During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.
- The conduct of intertrack wagering by the limited intertrack license permitholder only on thoroughbred racing, unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- The payment of purses by limited intertrack license permitholder of 2.5 percent for its intertrack wagering on greyhound races or jai alai games.

Slot Machine Gaming Locations and Operations

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Sections 551.104, F.S., addresses slot machine gaming operations, and:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;
- Requires the licensee to be in compliance with chs. 551 and 550, F.S.;
- Conducts a full schedule of live racing or games as defined in s. 550.002(11), F.S.; and
- Provides other requirements regarding ownership, law enforcement access, computer systems, security, records, and audits.

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[26] In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[27] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[28] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[29] An initial cardroom license may be issued to a pari-mutuel permitholder only after its facilities are in place and it has conducted its first day of live racing. In order to renew a cardroom license, the licensee must have requested, as part of its annual pari-mutuel license application, to conduct at least 90 percent of the total performances it had conducted in the prior fiscal year.

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[30] Such games must be played in a non-banking manner,[31] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[32]

Prohibition on Racing of and Wagering on Greyhounds or other Dogs

Amendment 13 was adopted in 2018 with 69.06 percent support of the electorate. The amendment, titled "Prohibition on Racing of and Wagering on Greyhounds or other Dogs, is codified in s. 32, Art. X of the Florida Constitution.[33] The amendment bans all racing of and wagering on live dog racing in Florida after December 31, 2020, and allows greyhound permitholders to stop racing after December 31, 2018, without affecting other pari-mutuel activities as authorized by law. The Legislature is directed to specify civil or criminal penalties for violations.

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[26] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[27] *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[28] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936). *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[29] Section 849.086(7)(b), F.S.
[30] *See* s. 849.086(2)(a), F.S.
[31] *Id.*
[32] *See* s. 849.086(13)(d), F.S.
[33] *See* http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 1, 2021).

III. Effect of Proposed Changes:

Section 1 amends s. 550.002, F.S., to revise live racing requirements affected by the adoption of s. 32, Art. X of the State Constitution (popularly known as Amendment 13). The constitutional amendment prohibits, after December 31, 2020, the conduct of live racing of greyhounds in Florida by gaming or pari-mutuel permitholders, and wagering by any person on the outcome of such racing in the state. Technical drafting changes, conforming changes, and elimination of obsolete language are also included.

Section 2 of the bill is a technical revision amending s. 550.0115, F.S., relating to operating licenses, to clarify references to annual operating licenses.

Section 3 amends s. 550.01215, F.S., relating to operating license applications filed annually with the division of the DBPR, for the conduct of pari-mutuel wagering, including intertrack and simulcast wagering. The application of each permitholder must indicate whether the permitholder intends to accept wagers on intertrack and simulcast events.

The requirement for pari-mutuel permitholders to conduct live racing or games is revised by the bill to provide:

- A greyhound permitholder may not conduct live racing, as such racing is prohibited in Florida after December 31, 2020.
- A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games.
- A thoroughbred permitholder must conduct live racing.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

For a greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games, but has been issued a slot machine license, the facility where such permit is located:

- Remains an eligible facility as defined in s. 551.102(4), F.S.;
- Continues to be eligible for a slot machine license pursuant to s. 551.104(3), F.S.; and
- Is exempt from ss. 551.104(4)(c) and (10) and 551.114(2) and (4), F.S.

Under the bill, a permitholder or licensee may not conduct live greyhound racing or dogracing for wagering, and the division is authorized to deny, suspend, or revoke any permit or license under ch. 550, F.S., and impose a civil penalty of up to $5,000 for such conduct.

The bill provides a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold any type of operating license on January 1, 2021. This provision does not apply to limited thoroughbred permitholders issued permits pursuant to s. 550.3345, F.S.

Under the bill, the division may approve changes in racing dates after a license has been issued if there is no objection from any permitholder conducting live racing or games within 50 miles.

The bill further provides that for Fiscal Year 2021-2022 only, the division may approve changes to a permitholder's operating dates if the request is received before July 1, 2021.

The bill repeals an obsolete provision relating to greyhound racing permits.

Section 4 of the bill is a technical revision amending s. 550.0235, F.S., to substitute the term "a permitholder licensed to conduct pari-mutuel wagering," and delete the obsolete term "a permittee conducting a racing meet."

Section 5 amends s. 550.0351, F.S., to delete the authorization for a "dogracing permitholder" to hold charity or scholarship racing days. In addition, the authorization for "hound dog derby" racing events at greyhound permitholder facilities is deleted.

Section 6 amends s. 550.0425, F.S., relating to the attendance of minors to pari-mutuel events, to delete an exception granting access to kennel compound areas for the minor children of greyhound trainers, kennel operators, or other licensees employed in the kennel, when supervised by a parent or legal guardian.

Section 7 amends s. 550.054, F.S., to retain current law for existing permits converted to greyhound permits and remove this method of converting permits. Under the bill, a permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by permitholders with permits on January 1, 2021, and new permits may not be approved or issued after January 1, 2021.

Section 8 amends s. 550.09511(4), F.S., to delete a requirement for payment of daily license fees and tax on admissions and bets, if fewer than 100 live jai alai games are conducted in a calendar year.

Section 9 amends s. 550.09512, F.S., to amend a provision relating to taxes payable by harness horse permitholders who conduct live racing.

Section 10 is a technical revision amending s. 550.105, F.S., related to occupational licenses, to delete references to kennels, kennel helpers, and greyhound racing.

Section 11 is a technical revision amending s. 550.1155, F.S., related to stewards and judges, to delete references to dog tracks and dogtrack judges.

Section 12 is a technical revision amending s. 550.1647, F.S., related to unclaimed pari-mutuel tickets, to delete references to greyhound racing.

Section 13 repeals s. 550.1648, F.S., related to obsolete provisions concerning greyhound adoption booths at pari-mutuel facilities and associated charity racing days.

Section 14 is a technical revision amending s. 550.175, F.S., related to a county's revocation of a permit, to substitute the term "pari-mutuel wagering" for "racing."

Section 15 is a technical revision amending s. 550.1815, F.S., relating to a prohibition against holding a pari-mutuel permit, to substitute the term "greyhound permit" for "dogracing permit."

Section 16 amends s. 550.24055, F.S., relating to the prohibited use of controlled substances and alcohol by occupational licensees officiating at or participating in a race or game, to delete a reference to dogtracks.

Section 17 amends. s. 550.2415, F.S., relating to testing of racing animals for medications and other substances, to delete provisions relating to greyhounds and to training and euthanizing greyhounds.

Section 18 amends s. 550.334(8), F.S., to remove a live racing requirement for quarter horse permitholders to conduct intertrack wagering.

Section 19 amends s. 550.3551, F.S., relating to broadcasting of racing and jai alai information, to conform references to permitholders and to delete a limitation on the number of broadcasts that may be received from outside the state by certain greyhound permitholders. This section amends current law providing that all permitholders conduct at least eight live races or games on a race day, and meet certain minimum live racing or games requirements, to limit application of those requirements to permitholders who conduct live races or games. This section deletes the requirement that a permitholder obtain authorization from the division for special racing events, and deletes the associated approval process and limits on such authorization.

Section 20 amends s. 550.3615, F.S., relating to bookmaking on the grounds of a permitholder, to refer to tracks and frontons as pari-mutuel facilities.

Section 21 amends s. 550.475, F.S., relating to the leasing of pari-mutuel facilities by permitholders, to conform references to permitholders and to ensure a lessee may conduct intertrack wagering.

Section 22 amends s. 550.5251, F.S., relating to thoroughbred racing, to provide that a thoroughbred permitholder that has conducted live racing for at least five years prior to July 1, 2020, and that has not filed an application to conduct racing for the racing season commencing July 1, 2021, retains its permit; is a pari-mutuel facility as defined in s. 550.002(23), F.S.; if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), F.S., continues to be eligible for a slot machine license pursuant to s. 551.104(3), F.S., and is exempt from the requirements in ss. 551.104(4)(c) and (10), F.S., and 551.114(2), F.S.; is eligible, but not required, to be a guest track; and remains eligible for a cardroom license.

Section 23 amends s. 550.615, F.S., relating to intertrack wagering, to conform references to pari-mutuel facilities and live racing or games requirements, and to provide that a permitholder that has met the live racing or games requirement applicable to that permitholder under s. 550.01215(1)(b), F.S., is qualified to receive broadcasts of any class of pari-mutuel races or games and to accept wagers on such races or games. This section provides any greyhound permitholder licensed under ch. 550, F.S., to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts and accept wagers on any class of pari-mutuel race or game.

Section 24 is a technical revision amending s. 550.6305, F.S., relating to intertrack wagering, to delete certain pari-mutuel pool accounting requirements for greyhound permitholders.

Section 25 amends s. 550.6308, F.S., relating to limited intertrack wagering, by:

- Reducing the required number of days of sales to eight days from fifteen days.
- Removing the requirement to conduct at least one day of nonwagering thoroughbred racing with a $250,000 purse per year for two consecutive years.
- Removing the following restrictions and requirements for intertrack wagering to be conducted:
  - For up to 21 days in connection with sales;
  - Between November 1 and May 8;
  - Only with the consent of other permitholders that run live racing in the county, between May 9 and October 31; and
  - During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.
- Removing the restriction that intertrack wagering must be conducted by the limited intertrack license permitholder only on thoroughbred racing, unless the consent of all thoroughbred, jai alai, and greyhound racing permitholders in the same county is obtained; and
- Removing the purse pool requirement imposed on the limited intertrack license permitholder of 2.5 percent for its intertrack wagering on greyhound races or jai alai games, and other pro-rata allocations regarding intertrack wagering to thoroughbred permitholders.

Section 26 amends s. 551.104(4)(c), F.S., relating to the requirement that a permitholder conduct full schedule of live racing or games as a condition for eligibility to obtain a license to conduct slot machine gaming. The live racing requirements for such eligibility are applicable only to thoroughbred permitholders, as under the bill, greyhound permitholders may not conduct live racing, jai alai permitholders may elect not to conduct live games, and harness horse and quarter horse permitholders may elect not to conduct live racing.

Section 27 amends s. 551.114, F.S., relating to slot machine gaming areas, respecting the locations at which designated slot machine gaming areas may be located. The undefined term "live gaming facility" in current law is no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020. This section provides that slot machine gaming areas must be located at the address location specified in the licensed permitholder's slot machine license issued for fiscal year 2020-2021. Provisions relating to the types of buildings and the connection of such buildings to the live gaming facility are deleted as obsolete.

Section 28 amends s. 565.02, F.S., relating to the licensing of caterers, to confirm that catering licenses may be obtained for all licensed pari-mutuel facilities, whether or not they are conducting live racing or games.

Section 29 amends s. 849.086, F.S., relating to cardrooms, to:

- Revise provisions in current law that are no longer applicable to greyhound permitholders prohibited from conducting live racing after December 31, 2020;
- Revise provisions relating to required contributions to purse pools, and required horsemen's agreements, to clarify that such contributions and agreements are required only if a permitholder conducts live races or games;
- Provide that a cardroom license may not be issued to any permitholder that did not hold a valid pari-mutuel wagering permit on January 1, 2021; and
- Provide that only thoroughbred permitholders must conduct a minimum of live racing performances (known as the "90 percent rule") to renew a cardroom license.

Section 30 re-enacts s. 380.0651, F.S., relating to developments of regional impact, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. A pari-mutuel facility continues to be subject to certain statewide guidelines and standards for developments of regional impact, as set forth in s. 380.06, F.S.

Section 31 re-enacts s. 402.82, F.S., relating to the electronic benefits transfer program, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. The use of electronic benefits transfer cards continues to be prohibited at pari-mutuel facilities.

Section 320 re-enacts s. 480.0475, F.S., relating to certain overnight hours that massage establishments are prohibited from operating, for the purpose of incorporating the definitions in s. 550.002, F.S., amended by the bill. Massage establishments at pari-mutuel facilities continue to be exempt from the prohibition, and may operate between the hours of midnight and 5 a.m.

Section 33 provides the bill takes effect July 1, 2021, but only if SB 7076 (2021) (Gaming Enforcement) or similar legislation is adopted in the same legislative session and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons associated with jai alai, harness horse, and quarter horse racing will be affected by the election by permitholders to conduct or not conduct live racing or games.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact to state government revenues. The bill authorizes jai alai, harness horse, and quarter horse racing permitholders to elect whether or not to conduct live racing or games while retaining intertrack and simulcast wagering, cardrooms, and where relevant, slot machine facilities. Provisions of the bill, contingent upon the election of certain authorized permitholders to conduct or not conduct live racing or games, may reduce daily license fees and taxes on wagering payable by these affected permitholders. The Revenue Estimating Conference has not reviewed the fiscal impact of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 550.002, 550.0115, 550.01215, 550.0235, 550.0351, 550.0425, 550.054, 550.09511, 550.09512, 550.105, 550.1155, 550.1647, 550.175, 550.1815, 550.24055, 550.2415, 550.334, 550.3551, 550.3615, 550.475, 550.5251, 550.615, 550.6305, 550.6308, 551.104, 551.114, 565.02, and 849.086.

This bill repeals section 550.1648 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 380.0651, 402.82, and 480.0475.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 15, 2021:
The committee substitute:

- Prohibits a pari-mutuel permitholder or licensee from conducting greyhound or dog racing and authorizes the division to suspend or revoke permits and licenses and impose civil penalties up to $5,000;
- Provides that an operating license may not be issued if a permitholder did not hold a permit or a license on January 1, 2021;
- Provides that permits for pari-mutuel wagering activities may only be held by facilities with permits on January 1, 2021;
- Allows an inactive thoroughbred permitholder to retain its permits, under limited circumstances;
- Revises and removes restrictions for the conduct of limited intertrack wagering by the permitholder licensed for such wagering;
- Provides a cardroom license may not be issued to any permitholder that did not have a permit on January 1, 2021.
- Provides for a contingent effective date; the bill takes effect July 1, 2021, but only if SB 7076 (2021) (Gaming Enforcement) or similar legislation is adopted in the same legislative session and becomes law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (24) through (28) of section 550.002, Florida Statutes, are redesignated as subsections (25) through (29), respectively, a new subsection (24) is added to that section, and subsections (11), (17), (20), (21), (22), (23), and (31) and present subsections (26) and (29) of that section are amended, to read:

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550.002 Definitions.—As used in this chapter, the term:

(11) "Full schedule of live racing or games" means, for a ~~greyhound or~~ jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; for a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen's association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the 2010-2011 fiscal year, the conduct of at least 20 regular wagering performances,

in the 2011-2012 and 2012-2013 fiscal years, the conduct of at least 30 live regular wagering performances, and for every fiscal year after the 2012-2013 fiscal year, the conduct of at least 40 live regular wagering performances; for a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility; and for a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year. For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder. A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permitholder's licensed facility under a single admission charge.

(17) "Intertrack wager" or "intertrack wagering" means a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility.

(20) "Meet" or "meeting" means the conduct of live racing

or jai alai, or wagering on intertrack or simulcast events, for any stake, purse, prize, or premium.

(21) "Operating day" means a continuous period of 24 hours starting with the beginning of the first performance of a race or game, even though the operating day may start during one calendar day and extend past midnight except that no ~~greyhound race or~~ jai alai game may commence after 1:30 a.m.

(22) "Pari-mutuel" or "pari-mutuel wagering" means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.

(23) "Pari-mutuel facility" means the grounds or property of a cardroom, racetrack, fronton, or other facility used by a licensed permitholder ~~for the conduct of pari-mutuel wagering~~.

(24) "Permitholder" or "permittee" means a holder of a permit to conduct pari-mutuel wagering in this state as authorized in this chapter.

(27) ~~(26)~~ "Post time" means the time set for the arrival at the starting point of the horses ~~or greyhounds~~ in a race or the beginning of a game in jai alai.

~~(29) "Racing greyhound" means a greyhound that is or was used, or is being bred, raised, or trained to be used, in racing at a pari-mutuel facility and is registered with the National Greyhound Association.~~

(31) "Same class of races, games, or permit" means, with respect to a jai alai permitholder, jai alai games or other jai alai permitholders; with respect to a greyhound permitholder, ~~greyhound races or~~ other greyhound permitholders conducting

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pari-mutuel wagering; with respect to a thoroughbred permitholder, thoroughbred races or other thoroughbred permitholders; with respect to a harness permitholder, harness races or other harness permitholders; with respect to a quarter horse permitholder, quarter horse races or other quarter horse permitholders.

Section 2. Section 550.0115, Florida Statutes, is amended to read:

550.0115 Permitholder operating license.—After a permit has been issued by the division, and after the permit has been approved by election, the division shall issue to the permitholder an annual operating license to conduct pari-mutuel wagering ~~operations~~ at the location specified in the permit pursuant to the provisions of this chapter.

Section 3. Section 550.01215, Florida Statutes, is amended to read:

550.01215 License application; periods of operation; license fees; bond~~, conversion of permit~~.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering ~~to conduct performances during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

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(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that ~~which~~ elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances that ~~which~~ the permitholder intends to conduct.

(b)1. A greyhound permitholder may not conduct live racing. A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games. Except as provided in s. 550.5251(1)(b), a thoroughbred permitholder must conduct live racing. A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and

remains eligible for a cardroom license.

2. A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division may deny, suspend, or revoke any permit or license under this chapter if a permitholder or licensee conducts live greyhound racing or dogracing in violation of this subparagraph. In addition to, or in lieu of, denial, suspension, or revocation, the division may impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this subparagraph. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(d) Notwithstanding any other provision of law, other than a permitholder issued a permit pursuant to s. 550.3345, a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license on January 1, 2021.

(2) After the first license has been issued to a permitholder, all subsequent annual applications for a license shall be accompanied by proof, in such form as the division may by rule require, that the permitholder continues to possess the qualifications prescribed by this chapter, and that the permit has not been disapproved at a later election.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at

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the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2021-2022 state fiscal year only, the division may approve changes in operating dates for a jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder if the request for such changes is received before July 1, 2021.

(4) In the event that a permitholder fails to operate all performances specified on its license at the date and time specified, the division shall hold a hearing to determine whether to fine or suspend the permitholder's license, unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate all performances on the dates and at the times specified.

(5) In the event that performances licensed to be operated by a permitholder are vacated, abandoned, or will not be used

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for any reason, any permitholder shall be entitled, pursuant to rules adopted by the division, to apply to conduct performances on the dates for which the performances have been abandoned. The division shall issue an amended license for all such replacement performances which have been requested in compliance with ~~the provisions of~~ this chapter and division rules.

~~(6) Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.~~

Section 4. Section 550.0235, Florida Statutes, is amended to read:

550.0235 Limitation of civil liability.—No permitholder licensed to conduct pari-mutuel wagering ~~permittee conducting a racing meet~~ pursuant to the provisions of this chapter; no division director or employee of the division; and no steward, judge, or other person appointed to act pursuant to this chapter shall be held liable to any person, partnership, association, corporation, or other business entity for any cause whatsoever arising out of, or from, the performance by such permittee, director, employee, steward, judge, or other person of her or his duties and the exercise of her or his discretion with respect to the implementation and enforcement of the statutes and rules governing the conduct of pari-mutuel wagering, so long as she or he acted in good faith. This section shall not limit liability in any situation in which the negligent maintenance of the premises or the negligent conduct of a race contributed to an accident; nor shall it limit any contractual liability.

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Section 5. Subsections (1) and (7) of section 550.0351, Florida Statutes, are amended to read:

550.0351 Charity racing days.—

(1) The division shall, upon the request of a permitholder, authorize each horseracing permitholder~~, dogracing permitholder,~~ and jai alai permitholder up to five charity or scholarship days in addition to the regular racing days authorized by law.

~~(7) In addition to the charity days authorized by this section, any dogracing permitholder may allow its facility to be used for conducting "hound dog derbies" or "mutt derbies" on any day during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" if only dogs other than those usually used in dogracing (greyhounds) are permitted to race and if adults and minors are allowed to participate as dog owners or spectators. During these racing events, betting, gambling, and the sale or use of alcoholic beverages is prohibited.~~

Section 6. Subsection (4) of section 550.0425, Florida Statutes, is amended to read:

550.0425 Minors attendance at pari-mutuel performances; restrictions.—

~~(4) Minor children of licensed greyhound trainers, kennel operators, or other licensed persons employed in the kennel compound areas may be granted access to kennel compound areas without being licensed, provided they are in no way employed unless properly licensed, and only when under the direct supervision of one of their parents or legal guardian.~~

Section 7. Subsections (2) and (14) of section 550.054, Florida Statutes, are amended to read:

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550.054 Application for permit to conduct pari-mutuel wagering.—

(2) Upon each application filed and approved, a permit shall be issued to the applicant setting forth the name of the permitholder, the location of the pari-mutuel facility, the type of pari-mutuel activity desired to be conducted, and a statement showing qualifications of the applicant to conduct pari-mutuel performances under this chapter; however, a permit is ineffectual to authorize any pari-mutuel performances until approved by a majority of the electors participating in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. In addition, an application may not be considered, nor may a permit be issued by the division or be voted upon in any county, to conduct horseraces, harness horse races, or pari-mutuel wagering ~~dograces~~ at a location within 100 miles of an existing pari-mutuel facility, or for jai alai within 50 miles of an existing pari-mutuel facility; this distance shall be measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.

(14)(a) Notwithstanding any other provision of law, a permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by facilities with permits on January 1, 2021.

(b) ~~Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this~~

~~section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection~~.

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter.~~ The holder of a permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~pursuant to this subsection~~ or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~this subsection~~ and shall continue to apply to any permit which was previously included

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under and subject to such provisions before a conversion pursuant to this section occurred.

Section 8. Subsection (4) of section 550.09511, Florida Statutes, is amended to read:

550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.—

~~(4) A jai alai permitholder conducting fewer than 100 live performances in any calendar year shall pay to the state the same aggregate amount of daily license fees on live jai alai games, admissions tax, and tax on live handle as that permitholder paid to the state during the most recent prior calendar year in which the jai alai permitholder conducted at least 100 live performances.~~

Section 9. Paragraph (a) of subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)(a) The permit of a harness horse permitholder who is conducting live harness horse performances and who does not pay tax on handle for any such ~~live harness horse~~ performances conducted ~~for a full schedule of live races~~ during any 2 consecutive state fiscal years shall be void and may not be reissued ~~shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, pandemic, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate and pay tax on handle.

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Section 10. Subsections (2) and (9) of section 550.105, Florida Statutes, are amended to read:

550.105 Occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.—

(2)(a) The following licenses shall be issued to persons or entities with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels, or money room, or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories and with fees not to exceed the following amounts for any 12-month period:

1. Business licenses: any business such as a vendor, contractual concessionaire, ~~contract kennel,~~ business owning racing animals, trust or estate, totalisator company, stable name, or other fictitious name: $50.

2. Professional occupational licenses: professional persons with access to the backside of a racetrack or players' quarters in jai alai such as trainers, officials, veterinarians, doctors, nurses, EMT's, jockeys and apprentices, drivers, jai alai players, owners, trustees, or any management or officer or director or shareholder or any other professional-level person who might have access to the jockeys' room, the drivers' room, the backside, racing animals, ~~kennel compound,~~ or managers or supervisors requiring access to mutuels machines, the money room, or totalisator equipment: $40.

3. General occupational licenses: general employees with access to the jockeys' room, the drivers' room, racing animals,

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the backside of a racetrack or players' quarters in jai alai, such as grooms, ~~kennel helpers,~~ leadouts, pelota makers, cesta makers, or ball boys, or a practitioner of any other occupation who would have access to the animals or~~,~~ the backside, ~~or the kennel compound,~~ or who would provide the security or maintenance of these areas, or mutuel employees, totalisator employees, money-room employees, or any employee with access to mutuels machines, the money room, or totalisator equipment or who would provide the security or maintenance of these areas: $10.

The individuals and entities that are licensed under this paragraph require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a Federal Bureau of Investigation criminal records check.

(b) The division shall adopt rules pertaining to pari-mutuel occupational licenses, licensing periods, and renewal cycles.

(9) The tax imposed by this section is in lieu of all license, excise, or occupational taxes to the state or any county, municipality, or other political subdivision, except that, if a race meeting or game is held or conducted in a municipality, the municipality may assess and collect an additional tax against any person conducting live racing or games within its corporate limits, which tax may not exceed $150 per day for horseracing or $50 per day for ~~dogracing or~~ jai alai. Except as provided in this chapter, a municipality may not assess or collect any additional excise or revenue tax against

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any person conducting race meetings within the corporate limits of the municipality or against any patron of any such person.

Section 11. Section 550.1155, Florida Statutes, is amended to read:

550.1155 Authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.—

(1) The stewards at a horse racetrack~~; the judges at a dog track;~~ or the judges, a panel of judges, or a player's manager at a jai alai fronton may impose a civil penalty against any occupational licensee for violation of the pari-mutuel laws or any rule adopted by the division. The penalty may not exceed $1,000 for each count or separate offense or exceed 60 days of suspension for each count or separate offense.

(2) All penalties imposed and collected pursuant to this section at each horse ~~or dog~~ racetrack or jai alai fronton shall be deposited into a board of relief fund established by the pari-mutuel permitholder. Each association shall name a board of relief composed of three of its officers, with the general manager of the permitholder being the ex officio treasurer of such board. Moneys deposited into the board of relief fund shall be disbursed by the board for the specific purpose of aiding occupational licenseholders and their immediate family members at each pari-mutuel facility.

Section 12. Section 550.1647, Florida Statutes, is amended to read:

550.1647 Greyhound permitholders; unclaimed tickets; breaks.—All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has

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remained in the custody of or under the control of any greyhound permitholder authorized to conduct ~~greyhound racing~~ pari-mutuel wagering ~~pools~~ in this state for a period of 1 year after the date the pari-mutuel ticket was issued, if the rightful owner or owners thereof have made no claim or demand for such money or other property within that period of time, shall~~, with respect to live races conducted by the permitholder,~~ be remitted to the state pursuant to s. 550.1645; however, such permitholder shall be entitled to a credit in each state fiscal year in an amount equal to the actual amount remitted in the prior state fiscal year which may be applied against any taxes imposed pursuant to this chapter. In addition, each permitholder shall pay, from any source, ~~including the proceeds from performances conducted pursuant to s. 550.0351,~~ an amount not less than 10 percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of greyhounds. As used in this chapter, the term "bona fide organization that promotes or encourages the adoption of greyhounds" means any organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the Internal Revenue Service. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.

Section 13. Section 550.1648, Florida Statutes, is repealed.

Section 14. Section 550.175, Florida Statutes, is amended to read:

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550.175 Petition for election to revoke permit.—Upon petition of 20 percent of the qualified electors of any county wherein any pari-mutuel wagering ~~racing~~ has been licensed and conducted under this chapter, the county commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election the question of whether any permit or permits theretofore granted shall be continued or revoked, and if a majority of the electors voting on such question in such election vote to cancel or recall the permit theretofore given, the division may not thereafter grant any license on the permit so recalled. Every signature upon every recall petition must be signed in the presence of the clerk of the board of county commissioners at the office of the clerk of the circuit court of the county, and the petitioner must present at the time of such signing her or his registration receipt showing the petitioner's qualification as an elector of the county at the time of the signing of the petition. Not more than one permit may be included in any one petition; and, in all elections in which the recall of more than one permit is voted on, the voters shall be given an opportunity to vote for or against the recall of each permit separately. Nothing in this chapter shall be construed to prevent the holding of later referendum or recall elections.

Section 15. Subsection (1) of section 550.1815, Florida Statutes, is amended to read:

550.1815 Certain persons prohibited from holding racing or jai alai permits; suspension and revocation.—

(1) A corporation, general or limited partnership, sole proprietorship, business trust, joint venture, or unincorporated

association, or other business entity may not hold any horseracing or greyhound ~~dogracing~~ permit or jai alai fronton permit in this state if any one of the persons or entities specified in paragraph (a) has been determined by the division not to be of good moral character or has been convicted of any offense specified in paragraph (b).

(a)1. The permitholder;

2. An employee of the permitholder;

3. The sole proprietor of the permitholder;

4. A corporate officer or director of the permitholder;

5. A general partner of the permitholder;

6. A trustee of the permitholder;

7. A member of an unincorporated association permitholder;

8. A joint venturer of the permitholder;

9. The owner of more than 5 percent of any equity interest in the permitholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary; or

10. An owner of any interest in the permit or permitholder, including any immediate family member of the owner, or holder of any debt, mortgage, contract, or concession from the permitholder, who by virtue thereof is able to control the business of the permitholder.

(b)1. A felony in this state;

2. Any felony in any other state which would be a felony if committed in this state under the laws of this state;

3. Any felony under the laws of the United States;

4. A felony under the laws of another state if related to gambling which would be a felony under the laws of this state if committed in this state; or

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5. Bookmaking as defined in s. 849.25.

Section 16. Subsection (2) of section 550.24055, Florida Statutes, is amended to read:

550.24055 Use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.—

(2) The occupational licensees, by applying for and holding such licenses, are deemed to have given their consents to submit to an approved chemical test of their breath for the purpose of determining the alcoholic content of their blood and to a urine or blood test for the purpose of detecting the presence of controlled substances. Such tests shall only be conducted upon reasonable cause that a violation has occurred as shall be determined solely by the stewards at a horseracing meeting or the judges or board of judges at a ~~dogtrack or~~ jai alai meet. The failure to submit to such test may result in a suspension of the person’s occupational license for a period of 10 days or until this section has been complied with, whichever is longer.

(a) If there was at the time of the test 0.05 percent or less by weight of alcohol in the person’s blood, the person is presumed not to have been under the influence of alcoholic beverages to the extent that the person’s normal faculties were impaired, and no action of any sort may be taken by the stewards, judges, or board of judges or the division.

(b) If there was at the time of the test an excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the person’s blood, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic

beverages to the extent that the person's faculties were impaired, but the stewards, judges, or board of judges may consider that fact in determining whether or not the person will be allowed to officiate or participate in any given race or jai alai game.

(c) If there was at the time of the test 0.08 percent or more by weight of alcohol in the person's blood, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that the person's normal faculties were impaired, and the stewards or judges may take action as set forth in this section, but the person may not officiate at or participate in any race or jai alai game on the day of such test.

All tests relating to alcohol must be performed in a manner substantially similar, or identical, to the provisions of s. 316.1934 and rules adopted pursuant to that section. Following a test of the urine or blood to determine the presence of a controlled substance as defined in chapter 893, if a controlled substance is found to exist, the stewards, judges, or board of judges may take such action as is permitted in this section.

Section 17. Paragraph (d) of subsection (5), paragraphs (b) and (c) of subsection (6), paragraph (a) of subsection (9), and subsection (13) of section 550.2415, Florida Statutes, are amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(5) The division shall implement a split-sample procedure for testing animals under this section.

~~(d) For the testing of a racing greyhound, if there is an insufficient quantity of the secondary (split) sample for confirmation of the division laboratory's positive result, the division may commence administrative proceedings as prescribed in this chapter and consistent with chapter 120.~~

(6)

~~(b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.~~

~~(c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.~~

(9)(a) The division may conduct a postmortem examination of any animal that is injured at a permitted racetrack while in training or in competition and that subsequently expires or is destroyed. The division may conduct a postmortem examination of any animal that expires while housed at a permitted racetrack, association compound, or licensed ~~kennel or~~ farm. Trainers and owners shall be requested to comply with this paragraph as a condition of licensure.

~~(13) The division may implement by rule medication levels for racing greyhounds recommended by the University of Florida College of Veterinary Medicine developed pursuant to an agreement between the Division of Pari-mutuel Wagering and the University of Florida College of Veterinary Medicine. The University of Florida College of Veterinary Medicine may provide~~

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~~written notification to the division that it has completed research or review on a particular drug pursuant to the agreement and when the College of Veterinary Medicine has completed a final report of its findings, conclusions, and recommendations to the division.~~

Section 18. Subsection (8) of section 550.334, Florida Statutes, is amended to read

550.334 Quarter horse racing; substitutions.—

~~(8) To be eligible to conduct intertrack wagering, a quarter horse racing permitholder must have conducted a full schedule of live racing in the preceding year.~~

Section 19. Subsections (2) and (4), paragraph (a) of subsection (6), and subsection (11) of section 550.3551, Florida Statutes, are amended to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(2) Any horse track~~, dog track,~~ or fronton licensed under this chapter may transmit broadcasts of races or games conducted at the enclosure of the licensee to locations outside this state.

(a) All broadcasts of horseraces transmitted to locations outside this state must comply with the provisions of the Interstate Horseracing Act of 1978, 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

(b) Wagers accepted by any out-of-state pari-mutuel permitholder or licensed betting system on a race broadcasted under this subsection may be, but are not required to be, included in the pari-mutuel pools of the horse track in this state that broadcasts the race upon which wagers are accepted.

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The handle, as referred to in s. 550.0951(3), does not include any wagers accepted by an out-of-state pari-mutuel permitholder or licensed betting system, irrespective of whether such wagers are included in the pari-mutuel pools of the Florida permitholder as authorized by this subsection.

(4) Any greyhound permitholder or jai alai permitholder ~~dog track or fronton~~ licensed under this chapter may receive at its licensed location broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state ~~at the track enclosure of the licensee during its operational meeting~~. All forms of pari-mutuel wagering are allowed on dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

(6)(a) ~~A maximum of 20 percent of the total number of races on which wagers are accepted by a greyhound permitholder not located as specified in s. 550.615(6) may be received from locations outside this state.~~ A permitholder conducting live races or games may not conduct fewer than eight live races or games on any authorized race day except as provided in this subsection. A thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., unless it is determined by the department that another entity represents a majority of the thoroughbred racehorse owners and trainers in the state. If conducting live racing, a

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harness permitholder may conduct fewer than eight live races on any authorized race day.~~, except that such permitholder must conduct a full schedule of live racing during its race meet consisting of at least eight live races per authorized race day for at least 100 days~~. Any harness horse permitholder ~~that during the preceding racing season conducted a full schedule of live racing~~ may~~, at any time during its current race meet,~~ receive full-card broadcasts of harness horse races conducted at harness racetracks outside this state at the harness track of the permitholder and accept wagers on such harness races. ~~With specific authorization from the division for special racing events, a permitholder may conduct fewer than eight live races or games when the permitholder also broadcasts out-of-state races or games. The division may not grant more than two such exceptions a year for a permitholder in any 12-month period, and those two exceptions may not be consecutive.~~

(11) Greyhound permitholders ~~tracks~~ and jai alai permitholders ~~frontons~~ have the same privileges as provided in this section to horserace permitholders ~~horse tracks~~, as applicable, subject to rules adopted under subsection (10).

Section 20. Subsections (1), (3), (4), (5), and (6) of section 550.3615, Florida Statutes, are amended to read:

550.3615 Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.—

(1) Any person who engages in bookmaking, as defined in s. 849.25, on the grounds or property of a pari-mutuel facility commits ~~permitholder of a horse or dog track or jai alai fronton is guilty of~~ a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking in this state or any other state of the United States or any foreign country shall be denied admittance to and shall not attend any pari-mutuel facility ~~racetrack or fronton~~ in this state during its racing seasons or operating dates, including any practice or preparational days, for a period of 2 years after the date of conviction or the date of final appeal. Following the conclusion of the period of ineligibility, the director of the division may authorize the reinstatement of an individual following a hearing on readmittance. Any such person who knowingly violates this subsection commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the activities of a person show that this law is being violated, and such activities are either witnessed or are common knowledge by any pari-mutuel facility ~~track or fronton~~ employee, it is the duty of that employee to bring the matter to the immediate attention of the permitholder, manager, or her or his designee, who shall notify a law enforcement agency having jurisdiction. Willful failure by the pari-mutuel facility ~~on the part of any track or fronton~~ employee to comply with the provisions of this subsection is a ground for the division to suspend or revoke that employee's license for pari-mutuel facility ~~track or fronton~~ employment.

(5) Each permittee shall display, in conspicuous places at a pari-mutuel facility ~~track or fronton~~ and in all race and jai

alai daily programs, a warning to all patrons concerning the prohibition and penalties of bookmaking contained in this section and s. 849.25. The division shall adopt rules concerning the uniform size of all warnings and the number of placements throughout a pari-mutuel facility ~~track or fronton~~. Failure on the part of the permittee to display such warnings may result in the imposition of a $500 fine by the division for each offense.

(6) This section does not apply to any person ~~attending a track or fronton or~~ employed by or attending a pari-mutuel facility ~~a track or fronton~~ who places a bet through the legalized pari-mutuel pool for another person, provided such service is rendered gratuitously and without fee or other reward.

Section 21. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering ~~jai alai games, dogracing, or thoroughbred and standardbred horse racing~~ in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit ~~for jai alai games, dogracing, or thoroughbred or standardbred horse racing~~, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

Section 22. Subsection (1) of section 550.5251, Florida Statutes, is amended to read:

550.5251 Florida thoroughbred racing; certain permits;

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operating days.—

(1)(a) Each thoroughbred permitholder shall annually, during the period commencing December 15 of each year and ending January 4 of the following year, file in writing with the division its application to conduct one or more thoroughbred racing meetings during the thoroughbred racing season commencing on the following July 1. Each application shall specify the number and dates of all performances that the permitholder intends to conduct during that thoroughbred racing season. On or before March 15 of each year, the division shall issue a license authorizing each permitholder to conduct performances on the dates specified in its application. Up to February 28 of each year, each permitholder may request and shall be granted changes in its authorized performances; but thereafter, as a condition precedent to the validity of its license and its right to retain its permit, each permitholder must operate the full number of days authorized on each of the dates set forth in its license.

(b) A thoroughbred permitholder that has conducted live racing for at least 5 years prior to July 1, 2020, and that has not filed with the division an application to conduct one or more thoroughbred racing meetings under this section for the thoroughbred racing season commencing July 1, 2021, retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2); is eligible, but not required, to be a guest track; and remains

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eligible for a cardroom license.

Section 23. Subsections (2) and (8) of section 550.615, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

550.615 Intertrack wagering.—

(2) A pari-mutuel permitholder that has met the applicable requirement for that permitholder to conduct live racing or games under s. 550.01215(1)(b), if any, on January 1, 2021, ~~Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing~~ is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

(8) In any three contiguous counties of the state where there are only three permitholders, all of which are greyhound permitholders, if any permitholder leases the facility of another permitholder for all or any portion of the conduct of its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year~~, including while its live meet is being conducted at the leased facility, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof~~.

(11) Any greyhound permitholder licensed under this chapter to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of

permitholders licensed under this chapter.

Section 24. Subsection (2) of section 550.6305, Florida Statutes, is amended to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(2) For the purposes of calculation of odds and payoffs and distribution of the pari-mutuel pools, all intertrack wagers shall be combined with the pari-mutuel pools at the host track. ~~Notwithstanding this subsection or subsection (4), a greyhound pari-mutuel permitholder may conduct intertrack wagering without combining pari-mutuel pools on not more than three races in any week, not to exceed 20 races in a year. All other provisions concerning pari-mutuel takeout and payments, including state tax payments, apply as if the pool had been combined.~~

Section 25. Paragraph (c) of subsection (4) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(c) If a thoroughbred permitholder, conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's responsibility to conduct ~~such number of~~ live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder.

Section 26. Subsection (4) of section 551.114, Florida Statutes, is amended to read:

551.114 Slot machine gaming areas.—

(4) Designated slot machine gaming areas must ~~may~~ be located at the address specified in the licensed permitholder's slot machine license issued for fiscal year 2020-2021 ~~within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility. If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility~~.

Section 27. Subsection (5) of section 565.02, Florida Statutes, is amended to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(5) A caterer at a pari-mutuel facility licensed under chapter 550 ~~horse or dog racetrack or jai alai fronton~~ may obtain a license upon the payment of an annual state license tax of $675. Such caterer's license shall permit sales only within the enclosure in which pari-mutuel wagering is conducted ~~such races or jai alai games are conducted, and such licensee shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai~~ under the authority of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation ~~is conducted at such racetrack or jai alai fronton~~. Except as in this subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

Section 28. Subsection (5) and paragraph (d) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

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849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a) Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder and an authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities. An initial cardroom license shall be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of pari-mutuel activities on ~~live~~ racing or games.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant’s annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom.

(c) Notwithstanding any other provision of law, a cardroom license may not be issued to any permitholder that did not hold a cardroom license on January 1, 2021. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal~~

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~~year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.~~

(d) ~~(c)~~ Persons seeking a license or a renewal thereof to operate a cardroom shall make application on forms prescribed by the division. Applications for cardroom licenses shall contain all of the information the division, by rule, may determine is required to ensure eligibility.

(e) ~~(d)~~ The annual cardroom license fee for each facility shall be $1,000 for each table to be operated at the cardroom. The license fee shall be deposited by the division with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(13) TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and~~ jai alai permitholder that conducts live performances and operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound purses or~~ jai alai prize money~~, respectively,~~ during the permitholder's next ensuing pari-mutuel meet.

2. Each thoroughbred permitholder or ~~and~~ harness horse racing permitholder that conducts live performances and operates

a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing and conducting live performances unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

Section 29. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 380.0651, Florida Statutes, is reenacted to read:

380.0651 Statewide guidelines, standards, and exemptions.—

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

(c) Any proposed addition to an existing sports facility complex if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled

hours of operation of the existing facility;

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility; and

3. The sports facility complex property was owned by a public body before July 1, 1983.

This exemption does not apply to any pari-mutuel facility as defined in s. 550.002.

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 30. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 402.82, Florida Statutes, is reenacted to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(c) A pari-mutuel facility as defined in s. 550.002.

Section 31. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a

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reference thereto, subsection (1) of section 480.0475, Florida Statutes, is reenacted to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

Section 32. This act shall take effect July 1, 2021.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause

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and insert:

A bill to be entitled

An act relating to requirements for pari-mutuel permitholders to conduct racing or games; amending s. 550.002, F.S.; revising and providing definitions; amending s. 550.0115, F.S.; conforming provisions to changes made by the act; amending s. 550.01215, F.S.; revising the application requirements for an operating license to conduct pari-mutuel wagering for a pari-mutuel facility; prohibiting greyhound permitholders from conducting live racing; authorizing jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to elect not to conduct live racing or games; requiring certain thoroughbred permitholders to conduct live racing; specifying that certain permitholders that do not conduct live racing or games retain their permit and remain pari-mutuel facilities; specifying that, if such permitholder has been issued a slot machine license, the permitholder’s facility remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track, and, if the permitholder is a harness horse racing permitholder, is eligible to be a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; prohibiting a permitholder or licensee from conducting live greyhound racing or dogracing in connection with any

wager for money or any other thing of value in the state; providing administrative and civil penalties; prohibiting operating licenses from being issued unless a specified requirement is met; authorizing the Division of Pari-mutuel Wagering to approve a change in racing dates for certain permitholders if the request for a change is received before a specified date and under certain circumstances; deleting a provision authorizing the conversion of certain permits to a jai alai permit under certain circumstances; amending s. 550.0235, F.S.; conforming provisions to changes made by the act; amending s. 550.0351, F.S.; deleting a provision relating to hound dog derbies and mutt derbies; amending s. 550.0425, F.S.; deleting a provision authorizing certain children to be granted access to kennel compound areas under certain circumstances; amending s. 550.054, F.S.; revising requirements to hold a permit from the operation of a pari-mutuel facility, cardroom, or slot machine facility; prohibiting the relocation of certain facilities and cardrooms and the conversion of pari-mutuel wagering permits; deleting provisions relating to the conversion of jai alai permits to greyhound racing permits; conforming provisions to changes made by the act; amending s. 550.09511, F.S.; deleting a provision relating to the payment of certain taxes and fees by jai alai permitholders conducting fewer than a specified number of live performances; amending s. 550.09512, F.S.; revising

the circumstances for which a harness horse permitholder's permit is voided for failing to pay certain taxes; amending ss. 550.105, 550.1155, and 550.1647, F.S.; conforming provisions to changes made by the act; repealing s. 550.1648, F.S., relating to greyhound adoptions; amending ss. 550.175 and 550.1815, and 550.24055, F.S.; conforming provisions to changes made by the act; amending s. 550.2415, F.S.; deleting provisions relating to the testing, euthanasia, and training of racing greyhounds; amending ss. 550.334 and 550.3551, F.S.; conforming provisions to changes made by the act; amending s. 550.3615, F.S.; conforming provisions to changes made by the act; prohibiting a person convicted of bookmaking from attending or being admitted to a pari-mutuel facility; requiring pari-mutuel facility employees to notify certain persons of unlawful activities; providing civil penalties; requiring a permittee to display certain warnings relating to bookmaking at his or her pari-mutuel facility; revising applicability; amending s. 550.475, F.S.; revising provisions relating to leasing pari-mutuel facilities; amending s. 550.5251, F.S.; specifying that certain thoroughbred permitholders who have not filed an application to conduct specified thoroughbred racing meetings retain their permits and remain pari-mutuel facilities; specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible

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facility and continues to be eligible for a slot machine license; specifying that such permitholders are exempt from certain provisions of ch. 551, F.S., are eligible to be a guest track, and remains eligible for a cardroom license; amending s. 550.615, F.S.; revising requirements relating to intertrack wagering; specifying that greyhound permitholders are qualified to receive certain broadcasts and accept specified wagers; amending s. 550.6305, F.S.; conforming provisions to changes made by the act; amending s. 551.104, F.S.; conforming provisions to changes made by the act; amending s. 551.114, F.S.; revising requirements for the locations of designated slot machine gaming areas; amending s. 565.02, F.S.; conforming provisions to changes made by the act; amending s. 849.086, F.S.; prohibiting a cardroom license from being issued to certain permitholders; conforming provisions to changes made by the act; reenacting ss. 380.0651(2)(c), 402.82(4)(c), and 480.0475(1), F.S., relating to statewide guidelines, the electronic benefits transfer program, and massage establishments, respectively, to incorporate the amendments made to s. 550.002, F.S., in references thereto; providing an effective date.

601528

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (527596)

Delete lines 189 - 295
and insert:
there is no objection from any operating permitholder that is conducting live racing or games and that is located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the

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permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2021-2022 state fiscal year only, the division may approve changes in operating dates for a jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder if the request for such changes is received before July 1, 2021.

(4) In the event that a permitholder fails to operate all performances specified on its license at the date and time specified, the division shall hold a hearing to determine whether to fine or suspend the permitholder's license, unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate all performances on the dates and at the times specified.

(5) In the event that performances licensed to be operated by a permitholder are vacated, abandoned, or will not be used for any reason, any permitholder shall be entitled, pursuant to rules adopted by the division, to apply to conduct performances on the dates for which the performances have been abandoned. The division shall issue an amended license for all such replacement performances which have been requested in compliance with ~~the provisions of~~ this chapter and division rules.

~~(6) Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a~~

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~~period of 12 consecutive months.~~

Section 4. Section 550.0235, Florida Statutes, is amended to read:

550.0235 Limitation of civil liability.—No permitholder licensed to conduct pari-mutuel wagering ~~permittee conducting a racing meet~~ pursuant to the provisions of this chapter; no division director or employee of the division; and no steward, judge, or other person appointed to act pursuant to this chapter shall be held liable to any person, partnership, association, corporation, or other business entity for any cause whatsoever arising out of, or from, the performance by such permittee, director, employee, steward, judge, or other person of her or his duties and the exercise of her or his discretion with respect to the implementation and enforcement of the statutes and rules governing the conduct of pari-mutuel wagering, so long as she or he acted in good faith. This section shall not limit liability in any situation in which the negligent maintenance of the premises or the negligent conduct of a race contributed to an accident; nor shall it limit any contractual liability.

Section 5. Subsections (1) and (7) of section 550.0351, Florida Statutes, are amended to read:

550.0351 Charity racing days.—

(1) The division shall, upon the request of a permitholder, authorize each horseracing permitholder~~, dogracing permitholder,~~ and jai alai permitholder up to five charity or scholarship days in addition to the regular racing days authorized by law.

~~(7) In addition to the charity days authorized by this section, any dogracing permitholder may allow its facility to be used for conducting "hound dog derbies" or "mutt derbies" on any~~

601528

~~day during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" if only dogs other than those usually used in dogracing (greyhounds) are permitted to race and if adults and minors are allowed to participate as dog owners or spectators. During these racing events, betting, gambling, and the sale or use of alcoholic beverages is prohibited.~~

Section 6. Subsection (4) of section 550.0425, Florida Statutes, is amended to read:

550.0425 Minors attendance at pari-mutuel performances; restrictions.—

~~(4) Minor children of licensed greyhound trainers, kennel operators, or other licensed persons employed in the kennel compound areas may be granted access to kennel compound areas without being licensed, provided they are in no way employed unless properly licensed, and only when under the direct supervision of one of their parents or legal guardian.~~

Section 7. Subsections (2) and (14) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(2) Upon each application filed and approved, a permit shall be issued to the applicant setting forth the name of the permitholder, the location of the pari-mutuel facility, the type of pari-mutuel activity desired to be conducted, and a statement showing qualifications of the applicant to conduct pari-mutuel performances under this chapter; however, a permit is ineffectual to authorize any pari-mutuel performances until approved by a majority of the electors participating in a

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ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. In addition, an application may not be considered, nor may a permit be issued by the division or be voted upon in any county, to conduct horseraces, harness horse races, or pari-mutuel wagering ~~dograces~~ at a location within 100 miles of an existing pari-mutuel facility, or for jai alai within 50 miles of an existing pari-mutuel facility; this distance shall be measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.

(14)(a) Notwithstanding any other provision of law, a permit for the operation of a pari-mutuel facility, cardroom, or slot machine facility may only be held by permitholders with permits on January 1, 2021, and new permits may not be approved or issued after January 1, 2021.

480942

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (527596) (with title amendment)

Between lines 836 and 837
insert:

Section 25. Subsections (1), (4), and (5) of section 550.6308, Florida Statutes, are amended to read:

550.6308 Limited intertrack wagering license.—In recognition of the economic importance of the thoroughbred breeding industry to this state, its positive impact on tourism,

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and of the importance of a permanent thoroughbred sales facility as a key focal point for the activities of the industry, a limited license to conduct intertrack wagering is established to ensure the continued viability and public interest in thoroughbred breeding in Florida.

(1) Upon application to the division on or before January 31 of each year, any person that is licensed to conduct public sales of thoroughbred horses pursuant to s. 535.01 and~~,~~ that has conducted at least 8 ~~15~~ days of thoroughbred horse sales at a permanent sales facility in this state for at least 3 consecutive years~~, and that has conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least $250,000 per year for 2 consecutive years~~ before such application~~,~~ shall be issued a license, subject to the conditions set forth in this section, to conduct intertrack wagering at such a permanent sales facility ~~during the following periods:~~

~~(a) Up to 21 days in connection with thoroughbred sales;~~

~~(b) Between November 1 and May 8;~~

~~(c) Between May 9 and October 31 at such times and on such days as any thoroughbred, jai alai, or a greyhound permitholder in the same county is not conducting live performances; provided that any such permitholder may waive this requirement, in whole or in part, and allow the licensee under this section to conduct intertrack wagering during one or more of the permitholder's live performances; and~~

~~(d) During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet that is conducted before November 1 and after May 8~~.

480942

No more than one such license may be issued, and no such license may be issued for a facility located within 50 miles of any for-profit thoroughbred permitholder's track.

(4) ~~Intertrack wagering under this section may be conducted only on thoroughbred horse racing, except that intertrack wagering may be conducted on any class of pari-mutuel race or game conducted by any class of permitholders licensed under this chapter if all thoroughbred, jai alai, and greyhound permitholders in the same county as the licensee under this section give their consent.~~

~~(5)~~ The licensee shall be considered a guest track under this chapter. ~~The licensee shall pay 2.5 percent of the total contributions to the daily pari-mutuel pool on wagers accepted at the licensee's facility on greyhound races or jai alai games to the thoroughbred permitholder that is conducting live races for purses to be paid during its current racing meet. If more than one thoroughbred permitholder is conducting live races on a day during which the licensee is conducting intertrack wagering on greyhound races or jai alai games, the licensee shall allocate these funds between the operating thoroughbred permitholders on a pro rata basis based on the total live handle at the operating permitholders' facilities.~~

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Between lines 1122 and 1123

insert:

550.6308, F.S.; revising requirements for a limited

480942

intertrack wagering license; revising requirements for intertrack wagering; deleting requirements for limited intertrack wagering licensees to make specified payments; amending s.

455452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (527596) (with title amendment)

Delete line 1021
and insert:
Section 32. This act shall take effect July 1, 2021, but only if SB 7076 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

455452

11 ================= T I T L E A M E N D M E N T ================
12 And the title is amended as follows:
13 Delete line 1136
14 and insert:
15 thereto; providing a contingent effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2021	.	
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The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment to Amendment (527596)

Delete lines 905 - 913
and insert:
a valid pari-mutuel wagering permit on January 1, 2021. In order for a cardroom license to be renewed for a thoroughbred permitholder, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which

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its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. ~~If the application is for a harness permitholder~~

By the Committee on Regulated Industries

580-04019-21 20217080__

A bill to be entitled

An act relating to requirements for pari-mutuel permitholders to conduct live racing or games; amending s. 550.002, F.S.; revising definitions; defining the terms "permitholder" and "permittee"; deleting the term "racing greyhound"; amending s. 550.0115, F.S.; making technical changes; amending s. 550.01215, F.S.; revising the application requirements for an operating license to conduct pari-mutuel wagering for a pari-mutuel facility; prohibiting greyhound permitholders from conducting live racing; authorizing jai alai permitholders, harness horse racing permitholders, and quarter horse racing permitholders to elect not to conduct live racing or games; requiring thoroughbred permitholders to conduct live racing; specifying that certain permitholders that do not conduct live racing or games retain their permit and remain pari-mutuel facilities; specifying that, if such permitholder has been issued a slot machine license, the permitholder's facility remains an eligible facility, continues to be eligible for a slot machine license, is exempt from certain provisions of ch. 551, F.S., is eligible to be a guest track, and, if the permitholder is a harness horse racing permitholder, is eligible to be a host track for intertrack wagering and simulcasting, and remains eligible for a cardroom license; authorizing the Division of Pari-mutuel Wagering to approve a change in racing dates for a permitholder if the request for

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a change is received before a specified date and under certain circumstances; deleting a provision authorizing the conversion of certain permits to a jai alai permit under certain circumstances; amending s. 550.0235, F.S.; conforming provisions to changes made by the act; amending s. 550.0351, F.S.; deleting a provision relating to hound dog derbies and mutt derbies; amending s. 550.0425, F.S.; deleting a provision authorizing certain children to be granted access to kennel compound areas under certain circumstances; amending s. 550.054, F.S.; deleting provisions relating to the conversion of jai alai permits to greyhound racing permits; conforming provisions to changes made by the act; amending s. 550.09511, F.S.; deleting a provision relating to the payment of certain taxes and fees by jai alai permitholders conducting fewer than a specified number of live performances; amending s. 550.09512, F.S.; revising the circumstances for which a harness horse permitholder's permit is voided for failing to pay certain taxes; amending ss. 550.105 and 550.1155, F.S.; conforming provisions to changes made by the act; amending s. 550.1647, F.S.; conforming a provision to changes made by the act; repealing s. 550.1648, F.S., relating to greyhound adoptions; amending ss. 550.175 and 550.1815, F.S.; conforming provisions to changes made by the act; amending s. 550.24055, F.S.; conforming provisions to changes made by the act; amending s. 550.2415, F.S.; deleting

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provisions relating to the testing, euthanasia, and training of racing greyhounds; amending s. 550.334, F.S.; conforming provisions to changes made by the act; amending s. 550.3551, F.S.; making technical changes; conforming provisions to changes made by the act; amending s. 550.3615, F.S.; making technical changes; prohibiting a person convicted of bookmaking from attending or being admitted to a pari-mutuel facility; requiring pari-mutuel facility employees to notify certain persons of unlawful activities; providing civil penalties; requiring a permittee to display certain warnings relating to bookmaking at his or her pari-mutuel facility; revising applicability; amending s. 550.475, F.S.; revising provisions relating to leasing pari-mutuel facilities; amending s. 550.615, F.S.; revising requirements relating to intertrack wagering; specifying that greyhound permitholders are qualified to receive certain broadcasts and accept specified wagers; amending s. 550.6305, F.S.; conforming provisions to changes made by the act; amending s. 551.104, F.S.; conforming provisions to changes made by the act; amending s. 551.114, F.S.; revising requirements for the locations of designated slot machine gaming areas; amending s. 565.02, F.S.; conforming provisions to changes made by the act; amending s. 849.086, F.S.; revising requirements relating to the annual renewal of a cardroom license; conforming provisions to changes made by the act; reenacting ss. 380.0651(2)(c),

402.82(4)(c), and 480.0475(1), F.S., relating to statewide guidelines, the electronic benefits transfer program, and massage establishments, respectively, to incorporate the amendments made to s. 550.002, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (24) through (28) of section 550.002, Florida Statutes, are redesignated as subsections (25) through (29), respectively, a new subsection (24) is added to that section, and subsections (11), (17), (20), (21), (22), (23), and (31) and present subsections (26) and (29) of that section are amended, to read:

550.002 Definitions.—As used in this chapter, the term:

(11) "Full schedule of live racing or games" means, for a ~~greyhound or~~ jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at

least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; for a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen's association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the 2010-2011 fiscal year, the conduct of at least 20 regular wagering performances, in the 2011-2012 and 2012-2013 fiscal years, the conduct of at least 30 live regular wagering performances, and for every fiscal year after the 2012-2013 fiscal year, the conduct of at least 40 live regular wagering performances; for a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility; and for a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year. For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live

performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder. A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permitholder's licensed facility under a single admission charge.

(17) "Intertrack wager" or "intertrack wagering" means a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility.

(20) "Meet" or "meeting" means the conduct of live racing or jai alai, or wagering on intertrack or simulcast events, for any stake, purse, prize, or premium.

(21) "Operating day" means a continuous period of 24 hours starting with the beginning of the first performance of a race or game, even though the operating day may start during one calendar day and extend past midnight except that no ~~greyhound race or~~ jai alai game may commence after 1:30 a.m.

(22) "Pari-mutuel" or "pari-mutuel wagering" means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.

(23) "Pari-mutuel facility" means the grounds or property of a cardroom, racetrack, fronton, or other facility used by a licensed permitholder ~~for the conduct of pari-mutuel wagering~~.

(24) "Permitholder" or "permittee" means a holder of a permit to conduct pari-mutuel wagering in this state as authorized in this chapter.

(27)~~(26)~~ "Post time" means the time set for the arrival at the starting point of the horses ~~or greyhounds~~ in a race or the beginning of a game in jai alai.

~~(29) "Racing greyhound" means a greyhound that is or was used, or is being bred, raised, or trained to be used, in racing at a pari-mutuel facility and is registered with the National Greyhound Association.~~

(31) "Same class of races, games, or permit" means, with respect to a jai alai permitholder, jai alai games or other jai alai permitholders; with respect to a greyhound permitholder, ~~greyhound races or~~ other greyhound permitholders conducting pari-mutuel wagering; with respect to a thoroughbred permitholder, thoroughbred races or other thoroughbred permitholders; with respect to a harness permitholder, harness races or other harness permitholders; with respect to a quarter horse permitholder, quarter horse races or other quarter horse permitholders.

Section 2. Section 550.0115, Florida Statutes, is amended to read:

550.0115 Permitholder operating license.—After a permit has been issued by the division, and after the permit has been approved by election, the division shall issue to the permitholder an annual operating license to conduct pari-mutuel wagering ~~operations~~ at the location specified in the permit pursuant to the provisions of this chapter.

Section 3. Section 550.01215, Florida Statutes, is amended

to read:

550.01215 License application; periods of operation; license fees; bond~~, conversion of permit~~.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering ~~to conduct performances during the next state fiscal year~~. Each application for live performances must ~~shall~~ specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It must ~~shall~~ also specify which performances will be conducted as charity or scholarship performances.

(a) ~~In addition,~~ Each application for an operating ~~a~~ license also must ~~shall~~ include:~~,~~

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that ~~which~~ elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances that ~~which~~ the permitholder intends to conduct.

(b) A greyhound permitholder may not conduct live racing. A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games. A thoroughbred permitholder must conduct live

racing. A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2) and (4); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license.

(c) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(2) After the first license has been issued to a permitholder, all subsequent annual applications for a license shall be accompanied by proof, in such form as the division may by rule require, that the permitholder continues to possess the qualifications prescribed by this chapter, and that the permit has not been disapproved at a later election.

(3) The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located

within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2021-2022 state fiscal year only, the division may approve changes in operating dates for permitholders if the request for such changes is received before July 1, 2021.

(4) In the event that a permitholder fails to operate all performances specified on its license at the date and time specified, the division shall hold a hearing to determine whether to fine or suspend the permitholder's license, unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate all performances on the dates and at the times specified.

(5) In the event that performances licensed to be operated by a permitholder are vacated, abandoned, or will not be used for any reason, any permitholder shall be entitled, pursuant to rules adopted by the division, to apply to conduct performances on the dates for which the performances have been abandoned. The division shall issue an amended license for all such replacement performances which have been requested in compliance with ~~the provisions of~~ this chapter and division rules.

~~(6) Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.~~

Section 4. Section 550.0235, Florida Statutes, is amended to read:

550.0235 Limitation of civil liability.—No permitholder licensed to conduct pari-mutuel wagering ~~permittee conducting a racing meet~~ pursuant to the provisions of this chapter; no division director or employee of the division; and no steward, judge, or other person appointed to act pursuant to this chapter shall be held liable to any person, partnership, association, corporation, or other business entity for any cause whatsoever arising out of, or from, the performance by such permittee, director, employee, steward, judge, or other person of her or his duties and the exercise of her or his discretion with respect to the implementation and enforcement of the statutes and rules governing the conduct of pari-mutuel wagering, so long as she or he acted in good faith. This section shall not limit liability in any situation in which the negligent maintenance of the premises or the negligent conduct of a race contributed to an accident; nor shall it limit any contractual liability.

Section 5. Subsections (1) and (7) of section 550.0351, Florida Statutes, are amended to read:

550.0351 Charity racing days.—

(1) The division shall, upon the request of a permitholder, authorize each horseracing permitholder~~, dogracing permitholder,~~ and jai alai permitholder up to five charity or scholarship days

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in addition to the regular racing days authorized by law.

~~(7) In addition to the charity days authorized by this section, any dogracing permitholder may allow its facility to be used for conducting "hound dog derbies" or "mutt derbies" on any day during each racing season by any charitable, civic, or nonprofit organization for the purpose of conducting "hound dog derbies" or "mutt derbies" if only dogs other than those usually used in dogracing (greyhounds) are permitted to race and if adults and minors are allowed to participate as dog owners or spectators. During these racing events, betting, gambling, and the sale or use of alcoholic beverages is prohibited.~~

Section 6. Subsection (4) of section 550.0425, Florida Statutes, is amended to read:

550.0425 Minors attendance at pari-mutuel performances; restrictions.—

~~(4) Minor children of licensed greyhound trainers, kennel operators, or other licensed persons employed in the kennel compound areas may be granted access to kennel compound areas without being licensed, provided they are in no way employed unless properly licensed, and only when under the direct supervision of one of their parents or legal guardian.~~

Section 7. Subsections (2) and (14) of section 550.054, Florida Statutes, are amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(2) Upon each application filed and approved, a permit shall be issued to the applicant setting forth the name of the permitholder, the location of the pari-mutuel facility, the type of pari-mutuel activity desired to be conducted, and a statement

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showing qualifications of the applicant to conduct pari-mutuel performances under this chapter; however, a permit is ineffectual to authorize any pari-mutuel performances until approved by a majority of the electors participating in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. In addition, an application may not be considered, nor may a permit be issued by the division or be voted upon in any county, to conduct horseraces, harness horse races, or pari-mutuel wagering ~~dograces~~ at a location within 100 miles of an existing pari-mutuel facility, or for jai alai within 50 miles of an existing pari-mutuel facility; this distance shall be measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.

(14) ~~(a) Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit to conduct greyhound racing. A permitholder of a permit~~

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~~converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter.~~ The holder of a permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~pursuant to this subsection~~ or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under former subsection (14) of this section, Florida Statutes 2020, ~~this subsection~~ and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.

Section 8. Subsection (4) of section 550.09511, Florida Statutes, is amended to read:

550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.—

~~(4) A jai alai permitholder conducting fewer than 100 live performances in any calendar year shall pay to the state the same aggregate amount of daily license fees on live jai alai games, admissions tax, and tax on live handle as that~~

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~~permitholder paid to the state during the most recent prior calendar year in which the jai alai permitholder conducted at least 100 live performances.~~

Section 9. Paragraph (a) of subsection (3) of section 550.09512, Florida Statutes, is amended to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)(a) The permit of a harness horse permitholder who is conducting live harness horse performances and who does not pay tax on handle for any such ~~live harness horse~~ performances conducted ~~for a full schedule of live races~~ during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate and pay tax on handle.

Section 10. Subsections (2) and (9) of section 550.105, Florida Statutes, are amended to read:

550.105 Occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.—

(2)(a) The following licenses shall be issued to persons or entities with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels, or money room, or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories

and with fees not to exceed the following amounts for any 12-month period:

1. Business licenses: any business such as a vendor, contractual concessionaire, ~~contract kennel,~~ business owning racing animals, trust or estate, totalisator company, stable name, or other fictitious name: $50.

2. Professional occupational licenses: professional persons with access to the backside of a racetrack or players' quarters in jai alai such as trainers, officials, veterinarians, doctors, nurses, EMT's, jockeys and apprentices, drivers, jai alai players, owners, trustees, or any management or officer or director or shareholder or any other professional-level person who might have access to the jockeys' room, the drivers' room, the backside, racing animals, ~~kennel compound,~~ or managers or supervisors requiring access to mutuels machines, the money room, or totalisator equipment: $40.

3. General occupational licenses: general employees with access to the jockeys' room, the drivers' room, racing animals, the backside of a racetrack or players' quarters in jai alai, such as grooms, ~~kennel helpers,~~ leadouts, pelota makers, cesta makers, or ball boys, or a practitioner of any other occupation who would have access to the animals or~~,~~ the backside, ~~or the kennel compound,~~ or who would provide the security or maintenance of these areas, or mutuel employees, totalisator employees, money-room employees, or any employee with access to mutuels machines, the money room, or totalisator equipment or who would provide the security or maintenance of these areas: $10.

The individuals and entities that are licensed under this paragraph require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a Federal Bureau of Investigation criminal records check.

(b) The division shall adopt rules pertaining to pari-mutuel occupational licenses, licensing periods, and renewal cycles.

(9) The tax imposed by this section is in lieu of all license, excise, or occupational taxes to the state or any county, municipality, or other political subdivision, except that, if a race meeting or game is held or conducted in a municipality, the municipality may assess and collect an additional tax against any person conducting live racing or games within its corporate limits, which tax may not exceed $150 per day for horseracing or $50 per day for ~~dogracing or~~ jai alai. Except as provided in this chapter, a municipality may not assess or collect any additional excise or revenue tax against any person conducting race meetings within the corporate limits of the municipality or against any patron of any such person.

Section 11. Section 550.1155, Florida Statutes, is amended to read:

550.1155 Authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.—

(1) The stewards at a horse racetrack~~; the judges at a dog track;~~ or the judges, a panel of judges, or a player's manager at a jai alai fronton may impose a civil penalty against any occupational licensee for violation of the pari-mutuel laws or

any rule adopted by the division. The penalty may not exceed $1,000 for each count or separate offense or exceed 60 days of suspension for each count or separate offense.

(2) All penalties imposed and collected pursuant to this section at each horse ~~or dog~~ racetrack or jai alai fronton shall be deposited into a board of relief fund established by the pari-mutuel permitholder. Each association shall name a board of relief composed of three of its officers, with the general manager of the permitholder being the ex officio treasurer of such board. Moneys deposited into the board of relief fund shall be disbursed by the board for the specific purpose of aiding occupational licenseholders and their immediate family members at each pari-mutuel facility.

Section 12. Section 550.1647, Florida Statutes, is amended to read:

550.1647 Greyhound permitholders; unclaimed tickets; breaks.—All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any greyhound permitholder authorized to conduct ~~greyhound racing~~ pari-mutuel wagering ~~pools~~ in this state for a period of 1 year after the date the pari-mutuel ticket was issued, if the rightful owner or owners thereof have made no claim or demand for such money or other property within that period of time, shall~~, with respect to live races conducted by the permitholder,~~ be remitted to the state pursuant to s. 550.1645; however, such permitholder shall be entitled to a credit in each state fiscal year in an amount equal to the actual amount remitted in the prior state fiscal year which may be applied against any taxes imposed pursuant to

this chapter. In addition, each permitholder shall pay, from any source, ~~including the proceeds from performances conducted pursuant to s. 550.0351,~~ an amount not less than 10 percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of greyhounds. As used in this chapter, the term "bona fide organization that promotes or encourages the adoption of greyhounds" means any organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the Internal Revenue Service. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.

Section 13. Section 550.1648, Florida Statutes, is repealed.

Section 14. Section 550.175, Florida Statutes, is amended to read:

550.175 Petition for election to revoke permit.—Upon petition of 20 percent of the qualified electors of any county wherein any pari-mutuel wagering ~~racing~~ has been licensed and conducted under this chapter, the county commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election the question of whether any permit or permits theretofore granted shall be continued or revoked, and if a majority of the electors voting on such question in such election vote to cancel or recall the permit theretofore given, the division may not thereafter grant any license on the permit so recalled. Every signature upon

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every recall petition must be signed in the presence of the clerk of the board of county commissioners at the office of the clerk of the circuit court of the county, and the petitioner must present at the time of such signing her or his registration receipt showing the petitioner's qualification as an elector of the county at the time of the signing of the petition. Not more than one permit may be included in any one petition; and, in all elections in which the recall of more than one permit is voted on, the voters shall be given an opportunity to vote for or against the recall of each permit separately. Nothing in this chapter shall be construed to prevent the holding of later referendum or recall elections.

Section 15. Subsection (1) of section 550.1815, Florida Statutes, is amended to read:

550.1815 Certain persons prohibited from holding racing or jai alai permits; suspension and revocation.—

(1) A corporation, general or limited partnership, sole proprietorship, business trust, joint venture, or unincorporated association, or other business entity may not hold any horseracing or greyhound ~~dogracing~~ permit or jai alai fronton permit in this state if any one of the persons or entities specified in paragraph (a) has been determined by the division not to be of good moral character or has been convicted of any offense specified in paragraph (b).

(a)1. The permitholder;

2. An employee of the permitholder;

3. The sole proprietor of the permitholder;

4. A corporate officer or director of the permitholder;

5. A general partner of the permitholder;

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6. A trustee of the permitholder;

7. A member of an unincorporated association permitholder;

8. A joint venturer of the permitholder;

9. The owner of more than 5 percent of any equity interest in the permitholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary; or

10. An owner of any interest in the permit or permitholder, including any immediate family member of the owner, or holder of any debt, mortgage, contract, or concession from the permitholder, who by virtue thereof is able to control the business of the permitholder.

(b)1. A felony in this state;

2. Any felony in any other state which would be a felony if committed in this state under the laws of this state;

3. Any felony under the laws of the United States;

4. A felony under the laws of another state if related to gambling which would be a felony under the laws of this state if committed in this state; or

5. Bookmaking as defined in s. 849.25.

Section 16. Subsection (2) of section 550.24055, Florida Statutes, is amended to read:

550.24055 Use of controlled substances or alcohol prohibited; testing of certain occupational licensees; penalty; evidence of test or action taken and admissibility for criminal prosecution limited.—

(2) The occupational licensees, by applying for and holding such licenses, are deemed to have given their consents to submit to an approved chemical test of their breath for the purpose of determining the alcoholic content of their blood and to a urine

or blood test for the purpose of detecting the presence of controlled substances. Such tests shall only be conducted upon reasonable cause that a violation has occurred as shall be determined solely by the stewards at a horseracing meeting or the judges or board of judges at a ~~dogtrack or~~ jai alai meet. The failure to submit to such test may result in a suspension of the person's occupational license for a period of 10 days or until this section has been complied with, whichever is longer.

(a) If there was at the time of the test 0.05 percent or less by weight of alcohol in the person's blood, the person is presumed not to have been under the influence of alcoholic beverages to the extent that the person's normal faculties were impaired, and no action of any sort may be taken by the stewards, judges, or board of judges or the division.

(b) If there was at the time of the test an excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the person's blood, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that the person's faculties were impaired, but the stewards, judges, or board of judges may consider that fact in determining whether or not the person will be allowed to officiate or participate in any given race or jai alai game.

(c) If there was at the time of the test 0.08 percent or more by weight of alcohol in the person's blood, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that the person's normal faculties were impaired, and the stewards or judges may take action as set forth in this section, but the person may not

officiate at or participate in any race or jai alai game on the day of such test.

All tests relating to alcohol must be performed in a manner substantially similar, or identical, to the provisions of s. 316.1934 and rules adopted pursuant to that section. Following a test of the urine or blood to determine the presence of a controlled substance as defined in chapter 893, if a controlled substance is found to exist, the stewards, judges, or board of judges may take such action as is permitted in this section.

Section 17. Paragraph (d) of subsection (5), paragraphs (b) and (c) of subsection (6), paragraph (a) of subsection (9), and subsection (13) of section 550.2415, Florida Statutes, are amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(5) The division shall implement a split-sample procedure for testing animals under this section.

~~(d) For the testing of a racing greyhound, if there is an insufficient quantity of the secondary (split) sample for confirmation of the division laboratory's positive result, the division may commence administrative proceedings as prescribed in this chapter and consistent with chapter 120.~~

(6)

~~(b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.~~

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~~(c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.~~

(9)(a) The division may conduct a postmortem examination of any animal that is injured at a permitted racetrack while in training or in competition and that subsequently expires or is destroyed. The division may conduct a postmortem examination of any animal that expires while housed at a permitted racetrack, association compound, or licensed ~~kennel or~~ farm. Trainers and owners shall be requested to comply with this paragraph as a condition of licensure.

~~(13) The division may implement by rule medication levels for racing greyhounds recommended by the University of Florida College of Veterinary Medicine developed pursuant to an agreement between the Division of Pari-mutuel Wagering and the University of Florida College of Veterinary Medicine. The University of Florida College of Veterinary Medicine may provide written notification to the division that it has completed research or review on a particular drug pursuant to the agreement and when the College of Veterinary Medicine has completed a final report of its findings, conclusions, and recommendations to the division.~~

Section 18. Subsection (8) of section 550.334, Florida Statutes, is amended to read

550.334 Quarter horse racing; substitutions.—

~~(8) To be eligible to conduct intertrack wagering, a quarter horse racing permitholder must have conducted a full schedule of live racing in the preceding year.~~

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Section 19. Subsections (2) and (4), paragraph (a) of subsection (6), and subsection (11) of section 550.3551, Florida Statutes, are amended to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(2) Any horse track~~, dog track,~~ or fronton licensed under this chapter may transmit broadcasts of races or games conducted at the enclosure of the licensee to locations outside this state.

(a) All broadcasts of horseraces transmitted to locations outside this state must comply with the provisions of the Interstate Horseracing Act of 1978, 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

(b) Wagers accepted by any out-of-state pari-mutuel permitholder or licensed betting system on a race broadcasted under this subsection may be, but are not required to be, included in the pari-mutuel pools of the horse track in this state that broadcasts the race upon which wagers are accepted. The handle, as referred to in s. 550.0951(3), does not include any wagers accepted by an out-of-state pari-mutuel permitholder or licensed betting system, irrespective of whether such wagers are included in the pari-mutuel pools of the Florida permitholder as authorized by this subsection.

(4) Any greyhound permitholder or jai alai permitholder ~~dog track or fronton~~ licensed under this chapter may receive at its licensed location broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state ~~at the track enclosure of the licensee during its operational meeting~~. All forms of pari-mutuel wagering are allowed on

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dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

(6)(a) ~~A maximum of 20 percent of the total number of races on which wagers are accepted by a greyhound permitholder not located as specified in s. 550.615(6) may be received from locations outside this state.~~ A permitholder conducting live races or games may not conduct fewer than eight live races or games on any authorized race day except as provided in this subsection. A thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., unless it is determined by the department that another entity represents a majority of the thoroughbred racehorse owners and trainers in the state. If conducting live racing, a harness permitholder may conduct fewer than eight live races on any authorized race day.~~, except that such permitholder must conduct a full schedule of live racing during its race meet consisting of at least eight live races per authorized race day for at least 100 days~~. Any harness horse permitholder ~~that during the preceding racing season conducted a full schedule of live racing~~ may~~, at any time during its current race meet,~~ receive full-card broadcasts of harness horse races conducted at harness racetracks outside this state at the harness track of the permitholder and accept wagers on such harness races. ~~With specific authorization from the division for special racing~~

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~~events, a permitholder may conduct fewer than eight live races or games when the permitholder also broadcasts out-of-state races or games. The division may not grant more than two such exceptions a year for a permitholder in any 12-month period, and those two exceptions may not be consecutive.~~

(11) Greyhound permitholders ~~tracks~~ and jai alai permitholders ~~frontons~~ have the same privileges as provided in this section to horserace permitholders ~~horse tracks~~, as applicable, subject to rules adopted under subsection (10).

Section 20. Subsections (1), (3), (4), (5), and (6) of section 550.3615, Florida Statutes, are amended to read:

550.3615 Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.—

(1) Any person who engages in bookmaking, as defined in s. 849.25, on the grounds or property of a pari-mutuel facility commits ~~permitholder of a horse or dog track or jai alai fronton is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking in this state or any other state of the United States or any foreign country shall be denied admittance to and shall not attend any pari-mutuel facility ~~racetrack or fronton~~ in this state during its racing seasons or operating dates, including any practice or preparational days, for a period of 2 years after the date of conviction or the date of final appeal. Following the conclusion

of the period of ineligibility, the director of the division may authorize the reinstatement of an individual following a hearing on readmittance. Any such person who knowingly violates this subsection commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the activities of a person show that this law is being violated, and such activities are either witnessed or are common knowledge by any pari-mutuel facility ~~track or fronton~~ employee, it is the duty of that employee to bring the matter to the immediate attention of the permitholder, manager, or her or his designee, who shall notify a law enforcement agency having jurisdiction. Willful failure by the pari-mutuel facility ~~on the part of any track or fronton~~ employee to comply with the provisions of this subsection is a ground for the division to suspend or revoke that employee's license for pari-mutuel facility ~~track or fronton~~ employment.

(5) Each permittee shall display, in conspicuous places at a pari-mutuel facility ~~track or fronton~~ and in all race and jai alai daily programs, a warning to all patrons concerning the prohibition and penalties of bookmaking contained in this section and s. 849.25. The division shall adopt rules concerning the uniform size of all warnings and the number of placements throughout a pari-mutuel facility ~~track or fronton~~. Failure on the part of the permittee to display such warnings may result in the imposition of a $500 fine by the division for each offense.

(6) This section does not apply to any person ~~attending a track or fronton or~~ employed by or attending a pari-mutuel facility ~~a track or fronton~~ who places a bet through the legalized pari-mutuel pool for another person, provided such

service is rendered gratuitously and without fee or other reward.

Section 21. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering ~~jai alai games, dogracing, or thoroughbred and standardbred horse racing~~ in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit ~~for jai alai games, dogracing, or thoroughbred or standardbred horse racing~~, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

Section 22. Subsections (2) and (8) of section 550.615, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

550.615 Intertrack wagering.—

(2) A pari-mutuel permitholder that has met the applicable requirement for that permitholder to conduct live racing or games under s. 550.01215(1)(b), if any, ~~Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing~~ is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

(8) In any three contiguous counties of the state where there are only three permitholders, all of which are greyhound

permitholders, if any permitholder leases the facility of another permitholder for all or any portion of the conduct of its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year~~, including while its live meet is being conducted at the leased facility, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof~~.

(11) Any greyhound permitholder licensed under this chapter to conduct pari-mutuel wagering is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

Section 23. Subsection (2) of section 550.6305, Florida Statutes, is amended to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(2) For the purposes of calculation of odds and payoffs and distribution of the pari-mutuel pools, all intertrack wagers shall be combined with the pari-mutuel pools at the host track. ~~Notwithstanding this subsection or subsection (4), a greyhound pari-mutuel permitholder may conduct intertrack wagering without combining pari-mutuel pools on not more than three races in any week, not to exceed 20 races in a year. All other provisions concerning pari-mutuel takeout and payments, including state tax payments, apply as if the pool had been combined.~~

Section 24. Paragraph (c) of subsection (4) of section 551.104, Florida Statutes, is amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(c) If a thoroughbred permitholder, conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's responsibility to conduct ~~such number of~~ live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder.

Section 25. Subsection (4) of section 551.114, Florida Statutes, is amended to read:

551.114 Slot machine gaming areas.—

(4) Designated slot machine gaming areas must ~~may~~ be located at the address specified in the licensed permitholder's slot machine license issued for fiscal year 2020-2021 ~~within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility. If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility~~.

Section 26. Subsection (5) of section 565.02, Florida Statutes, is amended to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(5) A caterer at a pari-mutuel facility licensed under chapter 550 ~~horse or dog racetrack or jai alai fronton~~ may obtain a license upon the payment of an annual state license tax of $675. Such caterer's license shall permit sales only within

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the enclosure in which pari-mutuel wagering is conducted ~~such races or jai alai games are conducted, and such licensee shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai~~ under the authority of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation ~~is conducted at such racetrack or jai alai fronton~~. Except as in this subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

Section 27. Paragraphs (a) and (b) of subsection (5) and paragraph (d) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a) Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder and an authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities. An initial cardroom license shall be issued to a pari-mutuel permitholder only after its facilities are in place and after it conducts its first day of pari-mutuel activities on ~~live~~ racing or games.

(b) After the initial cardroom license is granted, the

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application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. ~~In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto if the permitholder ran at least a full schedule of live racing or games in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.~~

(13) TAXES AND OTHER PAYMENTS.—

(d)1. Each ~~greyhound and~~ jai alai permitholder that conducts live performances and operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement ~~greyhound purses or~~ jai alai prize money~~, respectively,~~ during the permitholder's next ensuing pari-mutuel meet.

2. Each thoroughbred permitholder or ~~and~~ harness horse

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racing permitholder that conducts live performances and operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3. No cardroom license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing and conducting live performances unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

Section 28. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 380.0651, Florida Statutes, is reenacted to read:

380.0651 Statewide guidelines, standards, and exemptions.—

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

(c) Any proposed addition to an existing sports facility complex if the addition meets the following characteristics:

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1. It would not operate concurrently with the scheduled hours of operation of the existing facility;

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility; and

3. The sports facility complex property was owned by a public body before July 1, 1983.

This exemption does not apply to any pari-mutuel facility as defined in s. 550.002.

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 29. For the purpose of incorporating the amendment made by this act to section 550.002, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 402.82, Florida Statutes, is reenacted to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(c) A pari-mutuel facility as defined in s. 550.002.

Section 30. For the purpose of incorporating the amendment

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made by this act to section 550.002, Florida Statutes, in a reference thereto, subsection (1) of section 480.0475, Florida Statutes, is reenacted to read:

480.0475 Massage establishments; prohibited practices.—

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. This subsection does not apply to a massage establishment:

(a) Located on the premises of a health care facility as defined in s. 408.07; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or bed and breakfast inn, as those terms are defined in s. 509.242; a timeshare property as defined in s. 721.05; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002;

(b) In which every massage performed between the hours of midnight and 5 a.m. is performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an advanced practice registered nurse licensed under part I of chapter 464, or a dentist licensed under chapter 466; or

(c) Operating during a special event if the county or municipality in which the establishment operates has approved such operation during the special event.

Section 31. This act shall take effect July 1, 2021.

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CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/19/2021 10:08:16 AM
Ends: 4/19/2021 5:45:40 PM Length: 07:37:25

10:08:18 AM Sen. Stargel (Chair)
10:09:45 AM Sen. Bean
10:10:41 AM S 1436
10:10:58 AM PCS 298982
10:10:59 AM Sen. Gruters
10:11:44 AM Am. 907384
10:11:52 AM Sen. Gruters
10:12:13 AM S 1436 (cont.)
10:13:15 AM S 200
10:13:25 AM PCS 808686
10:13:39 AM Am. 499062
10:13:46 AM Sen. Berman
10:14:53 AM S 200 (cont.)
10:15:02 AM Dr. Danielle Thomas, Vice President of Education, Florida PTA (waives in support)
10:16:25 AM S 1900
10:16:34 AM Sen. Boyd
10:17:11 AM PCS 410182
10:18:41 AM S 7068
10:18:57 AM Sen. Rodriguez
10:19:03 AM Am. 143252
10:20:18 AM Sen. Hutson
10:20:26 AM Sen. Rodriguez
10:20:35 AM Sen. Bracy
10:20:48 AM Sen. Rodriguez
10:21:01 AM Sen. Bracy
10:21:16 AM Sen. Rodriguez
10:21:47 AM Beth Cicchetti, Executive Director, Florida Economic Development Council (waives in support)
10:21:54 AM French Brown, Lobbyist, Florida Chamber of Commerce (waives in support)
10:22:16 AM S 7068 (cont.)
10:23:28 AM S 7082
10:23:35 AM Sen. Rodriguez
10:24:02 AM Am. 763370
10:24:08 AM Sen. Rodriguez
10:24:48 AM Sen. Bracy
10:24:54 AM Sen. Rodriguez
10:26:02 AM French Brown, Lobbyist, Florida Chamber of Commerce
10:27:18 AM Sen. Brandes
10:27:29 AM F. Brown
10:28:01 AM Sen. Brandes
10:28:08 AM F. Brown
10:28:26 AM Sen. Brandes
10:28:36 AM F. Brown
10:29:11 AM Karen Woodall, Executive Director, Florida Center for Fiscal & Economic Policy
10:30:48 AM S 7082 (cont.)
10:31:08 AM Sen. Brandes
10:32:21 AM S 900
10:32:41 AM Sen. Rodriguez
10:33:30 AM Michael Wickersheim, Director of Legislative Affairs, Department of Children and Families (waives in support)
10:34:36 AM S 352
10:34:41 AM Sen. Rodriguez
10:35:07 AM Sen. Powell

10:35:11 AM Sen. Rodriguez
10:35:27 AM Sen. Powell
10:35:37 AM Sen. Rodriguez
10:35:55 AM Sen. Gibson
10:36:14 AM Sen. Rodriguez
10:36:42 AM Sen. Brandes
10:37:13 AM Sen. Rodriguez
10:37:37 AM Sen. Brandes
10:38:02 AM Sen. Rodriguez
10:38:22 AM Sen. Brandes
10:38:33 AM Sen. Rodriguez
10:39:18 AM S 1606
10:39:26 AM Sen. Rodriguez
10:39:50 AM Sen. Powell
10:40:09 AM Sen. Rodriguez
10:40:20 AM Sen. Bracy
10:40:32 AM Sen. Rodriguez
10:40:55 AM Sen. Gibson
10:41:22 AM Sen. Rodriguez
10:41:37 AM Sen. Gibson
10:41:43 AM Sen. Rodriguez
10:42:02 AM Sen. Gibson
10:42:04 AM Sen. Rodriguez
10:42:33 AM Sen. Powell
10:44:46 AM Sen. Gibson
10:46:50 AM Sen. Bracy
10:48:45 AM Sen. Rouson
10:49:44 AM Sen. Bean (Chair)
10:49:51 AM Sen. Rodriguez
10:52:22 AM S 486
10:52:28 AM Sen. Bradley
10:54:10 AM S 918
10:54:17 AM Sen. Bradley
10:54:39 AM Sherry Reach, Deputy Regional Director, Cambridge Assessment International Education (waives in support)
10:56:04 AM S 976
10:56:11 AM Sen. Brodeur
10:56:44 AM Am. 380062
10:56:54 AM Sen. Brodeur
10:57:28 AM Am. 785526
10:57:38 AM Sen. Brodeur
10:57:53 AM Sen. Stewart
10:58:22 AM Sen. Brodeur
10:58:40 AM Sen. Stewart
10:58:54 AM Sen. Brodeur
10:59:09 AM Am. 380062 (cont.)
10:59:23 AM S 976 (cont.)
10:59:38 AM Sen. Pizzo
11:00:03 AM Sen. Brodeur
11:01:57 AM S 1616
11:02:39 AM PCS 479650
11:02:49 AM Sen. Brodeur
11:03:36 AM Am. 519034
11:03:42 AM Sen. Brodeur
11:04:05 AM Am. 305408
11:04:18 AM Sen. Brandes
11:06:05 AM Am. 902520
11:06:17 AM Sen. Brandes
11:06:40 AM Sen. Brodeur
11:06:58 AM S 1616 (cont.)
11:07:18 AM Sen. Gibson
11:08:42 AM Sen. Brodeur

11:10:24 AM S 726
11:10:35 AM PCS 692046
11:10:47 AM Sen. Taddeo
11:11:12 AM Dr. Danielle Thomas, Vice President of Education, Florida PTA (waives in support)
11:11:40 AM Am. 36332
11:11:46 AM Sen. Taddeo
11:12:18 AM S 726 (cont.)
11:13:17 AM S 676
11:13:33 AM PCS 108614
11:13:41 AM Sen. Baxley
11:14:43 AM Jeffrey Sharkey, President, Capitol Alliance Group, Margaritaville - Singing for Change (waives in support)
11:16:16 AM S 122
11:16:24 AM Sen. Baxley
11:16:50 AM Am. 242386
11:16:59 AM Sen. Baxley
11:17:29 AM Sen. Brandes
11:17:41 AM Sen. Baxley
11:17:54 AM Sen. Brandes
11:18:05 AM Sen. Baxley
11:18:48 AM S 122 (cont.)
11:19:19 AM Jerome Hurtak, Attorney, Gloria M. Silverio Foundation 501C3 / Safe Haven for Newborns
11:22:55 AM Sen. Pizzo
11:23:10 AM Jerome Hurtak, Attorney, Gloria M. Silverio Foundation 501C3 / Safe Haven for Newborns
11:23:12 AM Sen. Pizzo
11:23:20 AM Andrew Shrivell, Executive Director, Florida Voice for the Unborn (waives in support)
11:23:34 AM Bill Snyder, Citizen
11:25:48 AM Sen. Book
11:26:13 AM Sen. Stargel
11:26:48 AM Sen. Farmer
11:28:01 AM Sen. Broxson
11:29:02 AM Sen. Baxley
11:32:43 AM Sen. Stargel (Chair)
11:33:02 AM S 936
11:33:15 AM Sen. Wright
11:33:46 AM Jeffrey Sharkey, Product Capitol Alliance Group, Space X (waives in support)
11:33:59 AM Sen. Pizzo
11:34:39 AM Sen. Wright
11:35:00 AM Sen. Pizzo
11:35:28 AM Sen. Wright
11:36:55 AM S 352 (cont.)
11:37:08 AM Sen. Gibson
11:38:00 AM Sen. Rodriguez
11:39:16 AM S 1560
11:39:28 AM PCS 419562
11:39:34 AM Sen. Ausley
11:39:42 AM Am. 703658
11:39:50 AM Sen. Asuley
11:41:38 AM S 1560 (cont.)
11:41:42 AM Sen. Brandes
11:41:48 AM Sen. Ausley
11:42:04 AM Chris Doolin, Government Relations Consultant, Small County Coalition
11:42:26 AM Karen Woodall, Executive Director, Florida Center for Fiscal & Economic Policy (waives in support)
11:42:34 AM Jeff Scala, Associate Director of Public Policy, Florida Association of Counties
11:43:02 AM Sen. Farmer
11:44:29 AM S 590
11:44:35 AM Sen. Harrell
11:46:15 AM Am. 359110
11:46:22 AM Am. 358862
11:46:33 AM Sen. Harrell
11:48:02 AM Angie Gallo, Alliance for Public Schools (waives in support)
11:48:32 AM Am. 867556

11:48:41 AM Am. 733110
11:48:48 AM Sen. Harrell
11:50:43 AM Sen. Stewart
11:50:56 AM Sen. Harrell
11:51:12 AM Sen. Gainer
11:51:33 AM Sen. Harrell
11:52:31 AM Sen. Gainer
11:52:48 AM Sen. Harrell
11:53:34 AM Sen. Brandes
11:53:46 AM Sen. Harrell
11:53:56 AM Sen. Brandes
11:54:04 AM Sen. Harrell
11:54:46 AM Sen. Brandes
11:54:56 AM Sen. Harrell
11:55:43 AM Sen. Bracy
11:56:11 AM Sen. Harrell
11:57:07 AM Sen. Gibson
11:57:35 AM Sen. Harrell
11:58:15 AM Dr. Danielle Thomas, Vice President of Education, Florida Parent Teacher Association (waives in support)
11:58:44 AM S 590 cont.
11:59:49 AM Nancy Daniels, Legislative Consultant, Florida Public Defenders Association (waives in support)
11:59:51 AM Dr. Danielle Thomas, Vice President of Education, Florida Parent Teacher Association (waives in support)
11:59:57 AM David Cullen, Advocacy Institute for Children (waives in support)
12:00:02 PM Karen Woodall, Director, Florida Center for Fiscal & Economic Policy (waives in support)
12:01:07 PM A. Gallow (waives in support)
12:01:35 PM Sen. Brandes
12:04:18 PM Sen. Bracy
12:05:01 PM Sen. Farmer
12:06:12 PM Sen. Harrell
12:07:24 PM S 262
12:07:29 PM Sen. Harrell
12:08:11 PM Sen. Gibson
12:09:55 PM S 1798
12:09:59 PM Sen. Perry
12:11:27 PM S 566
12:11:34 PM Sen. Perry
12:12:06 PM Am. 782632
12:12:13 PM Sen. Perry
12:12:44 PM Leslie Dugi, Lobbyist, Enterprise Holdings (waives in support)
12:13:10 PM S 566 cont.
12:13:12 PM Sen. Rouson
12:13:25 PM Sen. Perry
12:13:44 PM Sen. Farmer
12:14:16 PM Sen. Perry
12:14:46 PM Sen. Farmer
12:15:02 PM Sen. Perry
12:15:11 PM Sen. Farmer
12:15:43 PM Sen. Perry
12:15:57 PM Sen. Farmer
12:16:10 PM Sen. Broxson
12:16:39 PM Sen. Perry
12:17:04 PM Lisa Waters, President/ CEO, Florida Airports Council (waives in opposition)
12:17:12 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
12:17:18 PM George Feijoo, Lobbyist, Avail (waives in support)
12:17:26 PM Alli Liby-Schoonover, Senior Policy Advisor, Turo (support)
12:17:31 PM Bill Cotterall, General Counsel, Florida Justice Association
12:21:58 PM Sen. Farmer
12:23:56 PM Sen. Perry
12:25:15 PM S 606
12:25:18 PM Sen. Bean
12:26:04 PM Michael Wickersheim, Director of Legislative Affairs, Department of Children and Families (waives in support)

12:26:11 PM Tim Parson, Lobbyist, Lutheran Services Florida (waives in support)
12:27:03 PM S 1292
12:27:05 PM Sen. Bean
12:28:15 PM S 92
12:28:17 PM Sen. Bean
12:28:24 PM PCS 519024
12:29:00 PM Am. 914946
12:29:07 PM Sen. Bean
12:30:07 PM Am. 857460
12:30:12 PM Sen. Book
12:30:57 PM S 92 (cont.)
12:31:03 PM Dr. Daniel Thomas, Vice President of Education, Florida Parent Teacher Association (waives in support)
12:32:43 PM Motions (Vote After Roll Call; Change Vote)
12:32:47 PM Sen. Mayfield
12:32:54 PM Sen. Farmer
12:33:06 PM Sen. Bean
12:33:23 PM Sen. Albritton
12:33:29 PM Sen. Gibson
12:33:45 PM Sen. Pizzo
12:34:03 PM Sen. Rouson
12:34:13 PM Sen. Perry
12:34:45 PM Recording Paused
1:39:11 PM Recording Resumed
1:39:25 PM S 1624
1:39:32 PM Sen. Albritton
1:40:13 PM Christian Camara, Lobbyist, Institute for Justice (waives in support)
1:41:23 PM S 402
1:41:35 PM PCS 933750
1:41:39 PM Sen. Rodrigues
1:41:55 PM Am. 443070
1:42:04 PM Sen. Rodrigues
1:44:23 PM Jim Fogler, President, The Florida Press Association
1:46:29 PM Recording Paused
1:46:30 PM Recording Resumed
1:46:35 PM Bryan Boukari, Publisher, Alachua County Today Newspaper
1:47:27 PM Am. 490496
1:47:43 PM Sen. Rodrigues
1:48:24 PM Am. 443070 (cont.)
1:48:37 PM S 402 (cont.)
1:48:42 PM Sen. Powell
1:48:50 PM Sen. Rodrigues
1:49:23 PM Sen. Powell
1:49:40 PM Sen. Rodrigues
1:49:50 PM Sen. Powell
1:49:57 PM Sen. Rodrigues
1:50:32 PM Sen. Powell
1:50:44 PM Sen. Rodrigues
1:51:58 PM Sen. Powell
1:52:08 PM Sen. Rodrigues
1:52:22 PM Sen. Broxson
1:52:28 PM Sen. Rodrigues
1:52:35 PM Sen. Bracy
1:52:56 PM Sen. Rodrigues
1:53:21 PM Sen. Bracy
1:53:43 PM Sen. Rodrigues
1:54:07 PM Emerald Greene, Publisher/Owner, Greene Publishing Incorporated
1:55:44 PM John Murphy, General Manager, Citrus County Chronicle
1:56:52 PM Todd Wilson, Publisher, Lake City Reporter (waives in support)
1:57:01 PM Wm Hatfield, Executive Editor, Tallahassee Democrat (waives in support)
1:57:09 PM Jamie Watcher, Editor, Lake City Reporter (waives in support)
1:57:15 PM Glen Nickerson, Publisher, The Daily Sun & Venice Gondolier (waives in support)
1:57:25 PM William Snowden, Editor, The Wakulla News (waives in support)

1:57:36 PM Diego Eche, Legislative Liaison, Americans for Prosperity (waives in support)
1:57:41 PM Douglas Ray, Executive Editor, Gainesville Sun, Ocala Star-Banner, Daily Commercial (waives in opposition)
1:58:17 PM Ron Book, Lobbyist, Garnet News Chain and Florida Press Association
2:00:47 PM B. Boukari
2:03:02 PM Sen. Gibson
2:05:14 PM S 406
2:05:32 PM Sen. Rodrigues
2:05:45 PM S 7072
2:06:08 PM Sen. Rodrigues
2:07:33 PM Sen. Brandes
2:07:40 PM Sen. Rodrigues
2:07:44 PM Sen. Brandes
2:07:47 PM Sen. Rodrigues
2:07:51 PM Sen. Brandes
2:08:00 PM Sen. Rodrigues
2:08:02 PM Sen. Brandes
2:08:59 PM Sen. Rodrigues
2:10:05 PM Sen. Brandes
2:10:15 PM Sen. Rodrigues
2:10:46 PM Sen. Brandes
2:11:27 PM Sen. Rodrigues
2:11:50 PM Sen. Brandes
2:11:57 PM Sen. Rodrigues
2:12:03 PM Sen. Brandes
2:12:08 PM Sen. Rodrigues
2:12:20 PM Sen. Brandes
2:12:37 PM Sen. Rodrigues
2:14:53 PM Sen. Brandes
2:16:09 PM Sen. Rodrigues
2:17:10 PM Sen. Farmer
2:17:27 PM Sen. Rodrigues
2:17:38 PM Sen. Farmer
2:18:05 PM Sen. Rodrigues
2:18:15 PM Sen. Farmer
2:18:33 PM Sen. Rodrigues
2:18:38 PM Sen. Farmer
2:19:12 PM Sen. Rodrigues
2:19:36 PM Sen. Farmer
2:20:14 PM Sen. Rodrigues
2:20:27 PM Sen. Farmer
2:20:44 PM Sen. Pizzo
2:21:07 PM Sen. Rodrigues
2:21:10 PM Sen. Pizzo
2:21:15 PM Sen. Rodrigues
2:21:28 PM Sen. Pizzo
2:21:37 PM Sen. Rodrigues
2:21:41 PM Sen.. Pizzo
2:21:49 PM Sen. Rodrigues
2:22:34 PM Sen. Pizzo
2:23:08 PM Sen. Rodrigues
2:23:35 PM Sen. Pizzo
2:23:49 PM Sen. Rodrigues
2:23:56 PM Sen. Pizzo
2:24:04 PM Sen. Rodrigues
2:24:07 PM Sen. Pizzo
2:24:14 PM Sen. Rodrigues
2:24:18 PM Sen. Pizzo
2:24:35 PM Sen. Rodrigues
2:24:57 PM Sen. Pizzo
2:25:26 PM Sen. Rodrigues
2:25:32 PM Sen. Pizzo

2:25:38 PM Sen. Rodrigues
2:25:46 PM Sen. Pizzo
2:25:51 PM Sen. Rodrigues
2:26:01 PM Sen. Pizzo
2:26:22 PM Sen. Rodrigues
2:26:28 PM Sen. Pizzo
2:26:41 PM Sen. Rodrigues
2:26:44 PM Sen. Pizzo
2:26:57 PM Sen. Rodrigues
2:27:27 PM Sen. Bracy
2:27:50 PM Sen. Rodrigues
2:28:12 PM Sen. Bracy
2:28:16 PM Sen. Rodrigues
2:28:19 PM Sen. Bracy
2:28:31 PM Sen. Rodrigues
2:28:53 PM Sen. Bracy
2:29:02 PM Sen. Rodrigues
2:29:18 PM Sen. Brandes
2:30:17 PM Sen. Rodrigues
2:31:08 PM Sen. Brandes
2:31:22 PM Sen. Rodrigues
2:31:34 PM Sen. Brandes
2:32:14 PM Sen. Rodrigues
2:32:47 PM Sen. Brandes
2:32:50 PM Sen. Rodrigues
2:32:59 PM Sen. Perry
2:33:13 PM Sen. Rodrigues
2:33:25 PM Sen. Gibson
2:33:36 PM Sen. Rodrigues
2:33:52 PM Sen. Gibson
2:34:31 PM Sen. Rodrigues
2:34:53 PM Sen. Gibson
2:35:17 PM Sen. Rodrigues
2:35:44 PM Sen. Gibson
2:36:11 PM Sen. Rodrigues
2:36:52 PM Sen. Gibson
2:37:03 PM Sen. Rodrigues
2:37:39 PM Sen. Pizzo
2:37:44 PM Sen. Rodrigues
2:37:47 PM Sen. Pizzo
2:37:49 PM Sen. Rodrigues
2:37:55 PM Samantha Fillmore, State Government Relations Manager, The Heartland Institute
2:40:26 PM Sen. Pizzo
2:40:38 PM S. Fillmore
2:41:17 PM Sen. Pizzo
2:41:26 PM S. Fillmore
2:41:52 PM Carl Szabo, Vice President, Netchoice
2:44:11 PM Sen. Pizzo
2:44:50 PM Sen. Brandes
2:48:00 PM Sen. Bracy
2:49:17 PM Sen. Broxson
2:50:11 PM Sen. Farmer
2:52:04 PM Sen. Powell
2:53:17 PM Sen. Rodrigues
2:56:49 PM S 7074
2:56:56 PM Sen. Rodrigues
2:57:21 PM Sen. Pizzo
2:57:27 PM Sen. Rodrigues
2:57:36 PM Sen. Pizzo
2:57:52 PM Sen. Rodrigues
2:58:08 PM Sen. Pizzo
2:58:27 PM Sen. Rodrigues

2:58:28 PM Sen. Pizzo
2:58:37 PM Sen. Rodrigues
2:58:42 PM Sen. Pizzo
2:58:51 PM Sen. Rodrigues
2:59:08 PM Sen. Gibson
2:59:28 PM Sen. Rodrigues
2:59:35 PM Sen. Farmer
3:00:11 PM Sen. Rodrigues
3:01:02 PM Sen. Farmer
3:01:32 PM Sen. Rodrigues
3:01:49 PM Sen. Farmer
3:01:59 PM Sen. Brandes
3:02:09 PM Sen. Rodrigues
3:02:53 PM Sen. Brandes
3:04:03 PM Sen. Rodrigues
3:04:59 PM S 754
3:05:04 PM Sen. Diaz
3:06:08 PM S 1672
3:06:14 PM Sen. Diaz
3:07:33 PM S 1372
3:07:41 PM Sen. Burgess
3:08:13 PM Am. 409918
3:08:19 PM Am. 741914
3:08:26 PM Sen. Burgess
3:09:00 PM S 1372 (cont.)
3:09:53 PM S 2004
3:10:08 PM Sen. Burgess
3:10:34 PM S 764
3:10:45 PM Sen. Burgess
3:11:16 PM Sen. Brandes
3:11:23 PM Sen. Burgess
3:12:02 PM Sen. Brandes
3:12:11 PM Sen. Burgess
3:12:35 PM Sen. Brandes
3:12:52 PM Sen. burgess
3:13:29 PM Sen. Pizzo
3:14:49 PM Sen. Burgess
3:15:47 PM S 1344
3:16:02 PM Sen. Burgess
3:16:30 PM Am. 693350
3:16:34 PM Sen. Burgess
3:16:58 PM S 1344 (cont.)
3:17:27 PM Daniel Olsen, Director of Government Relations (waives in support)
3:17:39 PM Karen Murillo, Assistant Statewide Prosecutor (waives in support)
3:17:59 PM Sen. Pizzo
3:18:26 PM Sen. Burgess
3:20:19 PM S 1592
3:20:29 PM Sen. Burgess
3:20:48 PM Am. 430276
3:20:59 PM Sen. Burgess
3:21:50 PM Sen. Bean
3:22:03 PM Sen. Burgess
3:22:18 PM Sen. Bean
3:22:42 PM Sen. Brandes
3:22:49 PM Sen. Burgess
3:22:53 PM Sen. Brandes
3:23:08 PM Sen. Powell
3:23:40 PM Sen. Burgess
3:24:30 PM Sen. Powell
3:24:41 PM Sen. Burgess
3:25:15 PM S 1592 (cont.)
3:25:27 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)

3:26:50 PM s 1786
3:27:02 PM Sen. Burgess
3:28:38 PM Am. 754030
3:28:48 PM Sen. Burgess
3:30:39 PM Am. 140544
3:31:10 PM Sen. Book
3:36:53 PM William Large, President, Florida Justice Reform Institute
3:40:45 PM Sen. Farmer
3:40:54 PM W. Large
3:41:02 PM Sen. Farmer
3:41:05 PM W. Large
3:41:28 PM Mark Delegal, Lobbyist, The Doctors Company, ProAssurance, MagMutual
3:42:37 PM Sen. Farmer
3:42:57 PM M. Delegal
3:43:14 PM Sen. Farmer
3:43:18 PM M. Delegal
3:43:29 PM Sen. Farmer
3:43:35 PM M. Delegal
3:43:46 PM Sen. Farmer
3:44:01 PM Stephen A. Ecenia, General Counsel, Florida Birth-Related, Neurological Injury Compensation Association
3:46:11 PM Sen. Pizzo
3:47:05 PM S. Ecenia
3:48:40 PM Sen. Book
3:49:03 PM S. Ecenia
3:50:15 PM Sen. Rouson
3:51:09 PM Sen. Burgess
3:51:56 PM Sen. Book
3:53:07 PM Am. 790104
3:53:15 PM Sen. Farmer
3:53:26 PM Am. 601382
3:53:39 PM Sen. Farmer
3:55:12 PM M. Delegal
3:56:13 PM Sen. Burgess
3:56:53 PM Sen. Farmer
3:59:54 PM Am. 754030 (cont.)
4:00:14 PM S 1786 (cont.)
4:00:28 PM W. Large
4:01:41 PM Bill Cotterall, General Counsel, Florida Justice Association (waives in support)
4:02:07 PM M. Delegal
4:03:30 PM Sen. Brandes
4:03:38 PM Mark D
4:03:54 PM Sen. Brandes
4:04:11 PM M. Delegal
4:05:39 PM Sen. Brandes
4:05:55 PM Sen. Burgess
4:06:10 PM Sen. Stargel
4:06:25 PM Sen. Brandes
4:06:33 PM Sen. Stargel
4:06:44 PM Sen. Brandes
4:06:49 PM Sen. Stargel
4:06:52 PM Sen. Burgess
4:07:34 PM S. Ecenia
4:08:51 PM Beth A. Vecchioli, Senior Policy Advisor, National Association of Mutual Insurance Companies
4:09:29 PM Shawna Pollock, Citizen
4:13:52 PM Rock, Citizen
4:17:15 PM Michael Devine, Citizen
4:22:15 PM Jayme Lo'Connell, Citizen
4:27:31 PM Bibi Khan, Citizen
4:30:15 PM Sen. Stargel (Chair)
4:31:05 PM Sen. Farmer
4:34:25 PM Sen. Brandes

4:35:35 PM Sen. Burgess
4:36:54 PM S 1816
4:37:18 PM Sen. Rouson
4:38:37 PM S 1002
4:38:53 PM PCS 622452
4:38:55 PM Sen. Stewart
4:40:10 PM Barbara Devane, Lobbyist, Florida Now (waives in support)
4:40:18 PM Carol Orans, Citizen (waives in support)
4:40:22 PM Gail Gardners, Citizen, Survivors for System Change
4:44:45 PM Sen. Stewart
4:46:24 PM S 1108
4:46:32 PM Sen. Diaz
4:46:50 PM Am. 886910
4:46:59 PM Sen. Diaz
4:47:18 PM Dr. Danielle Thomas, Vice President of Education, Florida Parent Teacher Association (waives in support)
4:47:36 PM S 1108 (cont.)
4:47:42 PM Robert Holladay, Professor, Tallahassee Community College
4:49:09 PM S 1944
4:49:21 PM Am. 529128
4:49:32 PM Am. 820550
4:49:45 PM Sen. Albritton
4:52:36 PM S 1944 cont.
4:52:45 PM Sen. Gibson
4:52:59 PM Sen. Albritton
4:54:40 PM Sen. Gibson
4:55:23 PM Sen. Albritton
4:56:30 PM Sen. Gibson
4:56:56 PM Sen. Albritton
4:57:44 PM Sen. Stewart
4:58:18 PM Sen. Albritton
4:59:53 PM Sen. Brandes
5:00:05 PM Sen. Albritton
5:01:06 PM Sen. Brandes
5:01:14 PM Christie Mason, Director of Government Affairs, Lumen
5:03:12 PM Charlie Dudley, Attorney, Florida Internet and Television
5:05:19 PM Charles Zolehaloi, Attorney, Florida Power and Light
5:07:28 PM Tracy Hatch, Senior Legal Counsel, AT&T
5:09:43 PM Sen. Pizzo
5:10:08 PM Sen. Gibson
5:12:20 PM Sen. Passidomo (Chair)
5:12:28 PM Sen. Albritton
5:14:39 PM S 1094
5:14:46 PM Sen. Bean
5:16:11 PM S 1132
5:16:15 PM Sen. Bean
5:16:41 PM Am. 834122
5:16:50 PM Sen. Bean
5:17:29 PM S 1132 (cont.)
5:17:40 PM Melody Arnold, Associate Director of Government Affairs, Florida Health Care Association (waives in support)
5:17:43 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
5:17:47 PM Lynn Hearn, Legal Advocate, Florida Long-Term Care Ombudsman Program (waives in opposition)
5:17:55 PM Ken Kniepmann, Associate, Florida Conference Catholic Bishops (waives in support)
5:18:58 PM Sen. bean (Chair)
5:19:03 PM S 1028
5:19:09 PM PCS 479284
5:19:10 PM Sen. Hutson
5:19:30 PM Am. 608684
5:19:36 PM Sen. Hutson
5:19:40 PM Am. 672026
5:19:44 PM Sen. Hutson
5:20:01 PM Sen. Gibson

5:20:08 PM Sen. Hutson
5:21:00 PM Am. 408536
5:21:02 PM Sen. Hutson
5:21:07 PM Am. 933456
5:21:17 PM Sen. Hutson
5:22:12 PM Am. 781700
5:22:27 PM Sen. Hutson
5:22:41 PM Am. 608684 (cont.)
5:22:54 PM Stuart Brown, Lobbyist, Knowledge is Power Program Miami (waives in support)
5:23:05 PM Adam Miller, Vice President of Policy and Advocacy, Individuals with Disabilities Education Act Public Schools (waives in support)
5:23:23 PM S 1028 (cont.)
5:23:43 PM Andreina Figueroa, Lobbyist, Academica
5:24:05 PM Chris Doolin, Consultant, Small School Districts Council Consortium
5:27:03 PM S 192
5:27:12 PM Sen Book
5:27:37 PM Dr. Danielle Thomas, Vice President of Education, Florida PTA (waives in support)
5:27:47 PM David Cullen, Advocacy Institute for Children (waives in support)
5:27:53 PM Pamela Burch Fort, Lobbyist, NAACP Florida State Conference (waives in support)
5:28:55 PM S 1242
5:29:07 PM Sen. Book
5:29:10 PM PCS 246400
5:30:40 PM S 1532
5:30:48 PM Sen. Book
5:32:21 PM S 404
5:32:30 PM Sen. Rouson
5:33:08 PM Clay Meenan, Government Relations Coordinator, Florida Hospital Association
5:33:14 PM Karen Woodall, Executive Director, Florida Center for Fiscal & Economic Policy (waives in support)
5:33:23 PM Barbara Devane, Lobbyist, Florida Now (waives in support)
5:35:05 PM Motions (Vote After Roll Call; Change Vote)
5:35:13 PM Sen. Gibson
5:35:25 PM Sen. Passidomo
5:35:36 PM Sen. Perry
5:35:46 PM Sen. Gainer
5:36:03 PM Sen. Hooper
5:36:10 PM Sen. Broxson
5:36:31 PM Sen. Mayfield
5:36:40 PM Sen. Farmer
5:37:17 PM Sen. Book
5:37:29 PM Sen. Bracy
5:38:16 PM Sen. Pizzo
5:38:38 PM Sen. Powell
5:39:41 PM Recording Paused
5:42:17 PM Recording Resumed
5:42:31 PM S 1574
5:42:42 PM PCS 274232
5:42:58 PM Sen. Brandes